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The European Union's external relations: example of EU & Pakistan

Sadia Khattak

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Sadia Khattak. The European Union's external relations: example of EU & Pakistan. Law. Université Paris-Saclay, 2020. English. NNT : 2020UPASV004 . tel-03287516

HAL Id: tel-03287516

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The European Union's External
Relations: Example of EU & Pakistan
Les relations extérieures de l'UE, l'exemple
de l'UE et du Pakistan

Thèse de doctorat de l'université Paris-Saclay

École doctorale n° 578, Sciences de l'homme et de la société (SHS)

Spécialité de doctorat : sciences juridiques

Unité de recherche : Université Paris-Saclay, UVSQ, Centre de Recherche Versailles
Saint Quentin Institutions Publiques (VIP), 78280, Guyancourt, France

Référent : Université de Versailles, Saint-Quentin-en-Yvelines

Thèse présentée et soutenue à Guyancourt, le 20 février 2020, par

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Titre : Les relations extérieures de l'UE, l'exemple de l'UE et du Pakistan

Mots clés : Union européenne, relations extérieures, Pakistan, Chine, politique étrangère, partenariat stratégique.

Résumé : Les relations entre le Pakistan et l'UE s'étendent sur une période de plus de cinquante ans. Leurs relations sont restées essentiellement centrées sur le commerce et limitées à des programmes d'aide et à des objectifs de développement. L'UE a été considérée par le Pakistan comme l'un de ses seuls partenaires importants en matière de commerce et d'investissement. L'UE a toujours été bien accueillie par le gouvernement pakistanais, les médias et la société civile en tant que promoteur des droits de l'homme, de la démocratie et de l'État de droit. D'importants développements politiques sur la scène internationale ont transformé les relations centrées sur le commerce entre les deux parties en un partenariat politique qui a récemment abouti à un Partenariat stratégique. Les engagements diplomatiques du Pakistan avec les États extérieurs sont généralement déterminés par les objectifs de sa politique étrangère, rendus nécessaires par ses préoccupations en matière de sécurité et par l'équilibre des intérêts du pouvoir dans la région.

C'est pour cette raison que la politique étrangère du Pakistan a toujours accordé une priorité aux relations avec l'Amérique, la Chine et le Royaume-Uni, ce dernier pays ayant la particularité de partager une ancienne relation coloniale avec le Pakistan. La rivalité traditionnelle avec le voisin oriental immédiat, l'Inde, fait qu'il est impératif d'établir des relations solides avec l'Amérique et la Chine, qui peuvent lui apporter le soutien économique, politique et militaire nécessaire pour maintenir l'équilibre du pouvoir dans la région, l'Inde étant plus puissante économiquement, et l'Afghanistan, un voisin du nord politiquement instable. C'est dans ce contexte que l'objectif de cette thèse est de tenter une analyse approfondie des relations extérieures de l'UE avec le Pakistan. La thèse vise à explorer la coopération entre les deux partenaires, en particulier dans les domaines du commerce, de la démocratie et des droits de l'homme, de la lutte contre le terrorisme et l'extrémisme violent et de la non-prolifération nucléaire. L'analyse couvrira toutes les questions juridiques, politiques, sociales et économiques qui ont une incidence sur la coopération entre les deux partenaires dans ces domaines spécifiques

Title: The European Union's External Relations: Example of EU & Pakistan

Keywords: EU, EU external relations, Pakistan, China, Foreign Policy, Strategic Partnerships

Abstract: Relations between Pakistan and the EU extend over a period of more than fifty years. Their relations have remained mainly trade-oriented and limited to aid programs and development objectives. The EU has been considered by Pakistan as one of its only important trade and investment partners. The EU has always been welcomed by the Pakistani government, the media and civil society as a promoter of human rights, democracy, and the rule of law. Important political developments on the international scene have transformed the trade-focused relationship between the two sides into a political partnership that has recently resulted in a Strategic Partnership. Pakistan's diplomatic commitments with external states are generally determined by its foreign policy objectives, necessitated by its security concerns and the balance of power interests in the region. For this reason, Pakistan's foreign policy has always given priority to relations with America, China and the United Kingdom, the latter having the particularity of sharing a long-standing colonial relationship with Pakistan.

The traditional rivalry with immediate eastern neighbor, India, makes it imperative to build strong relationships with America and China, which can provide the economic, political, and military support necessary to maintain the balance of power in the region, with India being more economically powerful and Afghanistan, a politically unstable northern neighbor. Considering this complexity of the region, the objective of this thesis is to attempt an in-depth analysis of the EU's external relations with Pakistan. The thesis aims to explore cooperation between the two partners, in the areas of trade, democracy, and human rights, the fight against terrorism and violent extremism and nuclear non-proliferation. The analysis will cover all legal, political, social, and economic issues that have an impact on the cooperation between the two partners in these specific areas.

to my beloved mother & father

Abstract

European Union is a product of legal construct. The Treaty of Paris in 1951 set the foundation of first European Community. Since its foundation the European Community has been constantly evolved in its structure, procedures and subject matters over the period of years. Hence the evolution process of the European Community can be best described as integration through law. Treaties and successive amendments in treaties process have contributed a great deal in the development of the present day structure of the European Union which has evolved as a prominent economic and political bloc of 28 Member States on international scene. Inspiring to play a more influential role as global actor in economic and political sphere beyond the Europe the Treaty of Lisbon brought important modifications in the framework of Union external policy action. The objective was to bring coherence and effectiveness in the Union external action. This has been achieved through the creation of External Action Service and particularly equipping the Union with necessary policy tools to enhance Union global influence in those areas which can help it in achieving its role as a significant international actor. EU external action provides a framework of how the EU conducts its relations with the outside world and to perpetuate its policy objectives outline in its external action thereby exerting its influence in social, economic and political sphere. Undoubtedly in recent past EU has developed a profound external relations with third countries, regions as well as organizations and has emerged as a credible economic and political bloc. Since its emergence it has been playing a very prominent and effective role in promotion of its democratic values, human rights, good governance, sustainable development and protection of environment world wide. The European Union has also acquired a major role in security and conflict prevention, counter-terrorism, nuclear non-proliferation and dealing with other global challenges. It is with this background that this thesis aims to examine the EU external relations with Pakistan particularly the bilateral engagements between the two partners in area of trade and investment, democracy, human rights, good governance and sustainable development, countering terrorism and radicalization as well as nuclear non-proliferation.

Acknowledgements

First, I am grateful to Almighty Allah, with all his blessings I accomplish this work.

I would like to express my sincere gratitude to my research supervisor Professor Emmanuelle Saulnier-Cassia for accepting me as her research student and giving me the opportunity to carry out my research work under her supervision in the University de Versailles St Quentin. She has been very kind, tolerant and supportive and has provided me her invaluable guidance concerning my research work. As a foreign research student, she had showed a deep understanding concerning my limitations in French language. I am really impressed with her immense knowledge and expertise in the field of European Union law and International law, style of guidance and her elegant personality which inspires many of her research students. I feel really honoured to complete my research work under her supervision.

I am very thankful to all the members of PhD review panel who have agreed to review my work. I would like to express my special thanks to Professor Suhail Shahzad, a very well-known legal academician in Pakistan who has travelled all the way from Pakistan to participate as an reviewer. I am also very thankful to Professor Laure Clement-Wilz and Professor Patrick-Jacob, UVSQ-Paris Saclay for reviewing my work and participation. Their insightful comments and suggestions greatly helped in improvement of my work.

I would also like to express my special thanks to H.E. Mr. Jean François Cautain Ambassador of the European Union to Pakistan. I really appreciate him for providing me relevant information concerning my research work. I am grateful for his prompt replies to my queries despite his busy schedule and engagement in his office.

At this moment I would like to express my utmost gratitude to my Parents who had instil in me the enthusiasm for learning and knowledge and for progressing in life through hard work and dedication.

I am thankful to my brother Aamir Khattak for his useful insights concerning political issues and friend Civil Judge Qaiser Shahzad for providing me assistance in my research work.

Last but not the least, I am very thankful to my husband Dr Mubashir Hassan for his immense support and encouragement that he has offered at different stages of my research work. I believe without his encouragement I would not have been able to pursue my doctoral degree and accomplish my research work. I am also very thankful to my beloved children Eliane and Mikhaal who had to bear the strict routine.

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List of Abbreviations

European Economic Community (EEC)
European Union (EU)
European External Action Service (EEAS)
Strategic Engagement Plan (SEP)
Nuclear Non-Proliferation Treaty (NPT)
European Coal and Steel Communities (ECSC)
European Defence Community (EDC)
European Political Community (EPC)
European Atomic Energy Community (EURATOM)
Single European Act (SEA)
Intergovernmental Conference (IEC)
Economic and Monetary Union (EMU)
Treaty on European Union (TEU)
Common Foreign and Security Policy (CFSP)
Justice and Home Affairs (JHA)
European System of Central Bank (ESCB)
European Central Bank (ECB)
European Economic Area (EEA)

European Free Trade Association (EFTA)

European Charter for Human Rights (ECHR)

Area of Freedom, Security and Justice (AFSJ)

Inter-Governmental Conference (IGC)

Treaty on the Functioning of the European Union (TFEU)

High Representatives of the Union for Foreign Affairs and Security Policy (HR for FASP)

Qualified Majority Voting (QMV)

United Kingdom Independence Party (UKIP)

Police and Judicial Cooperation in Criminal Matters (PJCCM)

United Nations Economic Commission for Europe (UNECE)

International Road Transport Association (ERTA)

Africa, Caribbean and Pacific (ACP)

European Neighbourhood Policy (ENP)

International Maritime Organization (IMO)

Common Security and Defence Policy (CSDP)

World Trade Organization (WTO)

International Tribunal for the Law of the Sea (ITLOS)

Anti-Counterfeiting Trade Agreement (ACTA)

International Labour Organization (ILO)

International Security Assistance Force (ISAF)

Election Observation Mission (EOM)

European Initiative for Democracy and Human Rights (EIDHR)

Country Strategy Paper (CSP)

Development Cooperation Instrument (DCI)

Millennium Developments Goals (MDG)

International Monetary Fund (IMF)

Development through Enhanced Education Programme (DEEP)

Growth for Rural Advancement and Sustainable Programme (GRASP)

Trade Related Technical Assistance (TRTA)

Generalized System of Preference (GSP)

EEAS

Treaty Implementation Cell (TIC)

Convention on the Elimination of all Forms of Racial Discrimination (CEFRD)

Federally Administered Tribal Area (FATA)

Implementation of International Covenant on Civil and Political Rights (IIC-CPR)

Juvenile Justice System Ordinance (JJSO)

Inter-Services Public Relations (ISPR)

Commission of Inquiry on Enforce Disappearances (CIED)

First Information Report (FIR)

Joint Investigation Team (JIT)

Convention on the Elimination of All Forms of Discrimination Against Women (CEFDAW)

National Commission on Status of Women (NCSW)

Provincial Commission on the Status of Women (PCSW)

Convention on the Rights of Child (CRC)

Islamabad Capital Territory (ICT)

Sindh Child Protection Authority Act (SCPA)

Child Protection and Welfare Commission (CPWC)

Child Protection and Welfare Act (CPWA)
Employment of Children Act (ECA)
Income Support Programme (ISP)
National Commission for Protection of Child Rights (NCPCR)
National Commission on the Rights of Child (NCRC)
District Standing Medical Board (DSMB)
Ministry for Overseas and Human Resource Development (MOHRD)
International Labour and Environmental Legislation (ILES)
International Trade Union Confederation (ITUC)
Criminal Procedure Code of Pakistan (CPCP)
Denim Clothing Company (DCC)
Export Processing Zone (EPZ)
Pakistan International Airline (PIA)
Industrial Relation Ordinance (IRO)
Industrial Relations Act (IRA)
National Industrial Relations Commission (NIRC)
Workers Employer's Bilateral Council of Pakistan (WEBCOP)
Khyber Pakhtunkhwa Industrial Relation Act (KPIRA)
Punjab Industrial Relation Act (PIRA)
Sindh Industrial Relation Act (SIRA)
Baluchistan Industrial Relations Act (BIRA)
Sindh Agriculture and Fishing Workers Union (SAFWU)
Information, Education and Communication (IEC)
Overseas Pakistanis & Human Resource Development (OPHRD)
Convention on International Trade in Endangered Species of Wild Flora and

Fauna (CITIES)

United Nations Environment Programme (UNEP)

International Union for Conservation of Nature (IUCN)

Biodiversity Action Plan (BAP)

Global Environment Facility (GEF)

National Biodiversity and Action Plan (NBAP)

Sustainable Development Goals (SDG)

Aichi Biodiversity Targets (ABT)

Advance Informed Agreement (AIA)

National Biosafety Centre (NBC)

Institutional Biosafety Committee (IBC)

Persistent Organic Pollutant (POP)

United Nation Development Programme (UNDP)

United Nations Framework Convention on Climate Change (UNFCCC)

Clean Development Mechanism (CDM)

Nationally Determined Contribution (NDC)

Climate Risk Index (CRI)

Green Climate Fund (GCF)

United Nations Office on Drugs and Crime (UNODC)

Anti-Narcotics Force (ANF)

Control of Narcotics Substances (CNS)

Inter-Agency Task Force (IATF)

Border Liaison Offices (BLO)

United Nation Convention against Corruption (UNCC)

National Accountability Bureau (NAB)

Financial Monitoring Unit (FMU)
National Accountability Ordinance (NAC)
Anti Money Laundering Act (AMLA)
International Criminal Police Organization (INTERPOL)
Weapons of Mass Destruction (WMD)
European Neighbourhood Policy (ENP)
European Neighbourhood and Partnership Instrument (ENPI)
African Centre for Study and Research on Terrorism (ACSRT)
Multiannual Financial Framework (MFF)
Tehrik-e-Taliban Pakistan (TTP)
National Counter-Terrorism Authority (NCTA)
National Internal Security Policy (NISP)
Comprehensive Response Plan (CRP)
Composite Deterrence Plan (CDP)
Directorate of Internal Security (DIS)
General Affairs and External Relations Council (GAERC)
Support for Electoral Reforms in Pakistan (SERP)
International Foundation for Electoral System (IFES)
Free and Fair Elections Network (FAFEN)
Election Follows Mission (EFM)
Civilian Capacity Building for Law Enforcement (CCBLE)
Post Crisis Needs Assessment (PCNA)
Pakistan's Action to Counter Terrorism (PACT)
Counter Violent Extremism (CVE)
Global Counter Terrorism Forum (GCTF)

Anti-Money Laundering Ordinance (AMLO)
Federal investigation Agency (FIA)
Security Exchange Commission of Pakistan (SECP)
Comprehensive Nuclear-Test-Ban Treaty (CNTBT)
Biological and Toxin Weapons Convention (BTWC)
Chemical Weapons Convention (CWC)
Korean Peninsula Energy Development Organization (KPEDO)
National Security Council (NSC)
Employment Control Committee (ECC)
Development Control Committee (DCC)
Strategic Force Command (SFC)
National Institute of Safety and Security (NISS)
Nuclear Supplier Group (NSG)
Container Security Initiative (CSI)
Nuclear Security Action Plan (NSAP)
Central Reserve Police Force (CRPF)
Non-Nuclear Weapons States (NNWS)
Nuclear Weapons States (NWS)
Nuclear Free Zone (NWFZ)
Fissile Material Cutoff Treaty (FMCT)
Prevention of Arms Race in Outer Space (PAROS)
Negative Security Assurances (NSA)
Conference on Disarmament (CD)

Résumé

La principale motivation à l'origine de la création des deux Communautés européennes par les Traités de Rome en 1957 (après la Communauté européenne du charbon et de l'Acier par le Traité de Paris en 1951) a consisté en le rapprochement des politiques économiques des six États membres d'origine et le maintien de la paix entre eux. Depuis lors, les Communautés européennes n'ont pas seulement évolué dans leur structure, mais se sont également développées dans leur envergure et leur ambition. Les 28 États membres que compte l'Union européenne (UE) aujourd'hui, sont non seulement un bloc régional puissant, qui est aussi devenu un acteur mondial important, un modèle politique sur la scène internationale. Les traités et leurs modifications successives ont joué un rôle important dans le développement de la structure actuelle de l'Union européenne. Ils ont largement contribué au développement de la législation, des institutions, des procédures, de la création du marché unique et de la libre circulation des biens, des personnes, des services et des capitaux de l'UE, en élargissant le champ d'action de l'Union, des questions économiques et monétaires aux questions sociales et politiques, en établissant une coopération policière et judiciaire en matière pénale, une politique commune de l'immigration et de l'asile, mais aussi en développant la politique étrangère et la défense commune. L'une des principales réalisations du Traité de Lisbonne a été la réalisation de certaines réformes

indispensables dans le cadre institutionnel de l'Union. Depuis l'émergence des Communautés européennes en tant que bloc dans la politique mondiale et promoteur de la défense des principes de démocratie, de liberté, de diversité et de droits de l'homme, il a fallu les doter progressivement d'outils institutionnels et procéduraux afin qu'elles puissent jouer un rôle plus déterminant et influent dans la politique mondiale, au-delà de ses frontières. Cela a exigé de réfléchir à l'organisation d'une action extérieure de l'Union pour lui permettre de conduire ses relations avec le monde extérieur. C'est ainsi que le Traité de Lisbonne a intégré d'importants changements de fond et institutionnels concernant le système d'action extérieure de l'Union afin de développer une politique étrangère de l'Union plus cohérente et ambitieuse et d'assurer une meilleure cohérence entre les aspects politiques et économiques de ses relations. La création du Service européen pour l'action extérieure (SEAE) dirigé par le Haut représentant de l'Union pour les affaires étrangères et la politique de sécurité, a ainsi franchi une étape majeure. Le SEAE œuvre pour une politique étrangère de l'UE plus cohérente et plus efficace, afin de renforcer notamment la visibilité et l'influence de l'UE dans ses relations extérieures avec les pays tiers. L'action extérieure de l'UE fournit le cadre général dans lequel s'inscrivent ses relations avec le monde extérieur. Les objectifs de l'action extérieure de l'UE sont de promouvoir les principes fondamentaux de l'Union que sont la démocratie, les droits de l'homme et l'État de droit. Étant l'un des plus grands blocs commerciaux et économiques par son action extérieure, il visait également à favoriser le développement économique, social et environnemental durable des États faibles dans le but d'éradiquer la pauvreté. En outre, par son action extérieure, l'Union entend jouer un rôle plus déterminant en matière de sécurité mondiale, de préservation de la paix et de prévention des conflits et faire face à l'émergence de nouvelles menaces

comme le terrorisme, la prolifération nucléaire et les nouveaux défis mondiaux. Au fil de ces dernières années, l'UE a acquis, par son action extérieure, une plus grande crédibilité et s'est imposée comme un acteur international efficace pour la promotion de ses valeurs fondamentales telles que la démocratie, les droits de l'homme et l'État de droit dans ses relations extérieures avec les pays tiers tout en jouant un rôle important en matière de sécurité, tant sur le front de la paix et de la prévention des conflits que sur ceux de la lutte contre le terrorisme et de la non-prolifération nucléaire. Les relations entre le Pakistan et l'UE s'étendent sur une période de plus de cinquante ans. Leurs relations sont restées essentiellement centrées sur le commerce et limitées à des programmes d'aide et à des objectifs de développement. L'UE a été considérée par le Pakistan comme l'un de ses seuls partenaires importants en matière de commerce et d'investissement. L'UE a toujours été bien accueillie par le gouvernement pakistanais, les médias et la société civile en tant que promoteur des droits de l'homme, de la démocratie et de l'État de droit. D'importants développements politiques sur la scène internationale ont transformé les relations centrées sur le commerce entre les deux parties en un partenariat politique qui a récemment abouti à un Partenariat stratégique. Les engagements diplomatiques du Pakistan avec les États extérieurs sont généralement déterminés par les objectifs de sa politique étrangère, rendus nécessaires par ses préoccupations en matière de sécurité et par l'équilibre des intérêts du pouvoir dans la région. C'est pour cette raison que la politique étrangère du Pakistan a toujours accordé une priorité aux relations avec l'Amérique, la Chine et le Royaume-Uni, ce dernier pays ayant la particularité de partager une ancienne relation coloniale avec le Pakistan. La rivalité traditionnelle avec le voisin oriental immédiat, l'Inde, fait qu'il est impératif d'établir des relations solides avec l'Amérique et la Chine, qui peuvent lui apporter le soutien

économique, politique et militaire nécessaire pour maintenir l'équilibre du pouvoir dans la région, l'Inde étant plus puissante économiquement, et l'Afghanistan, un voisin du nord politiquement instable. La montée en puissance de l'UE en tant que bloc économique-politique important n'a pas été anticipée par le gouvernement, les médias et la société civile pakistanais. Par conséquent, le Pakistan a tardé à établir ses liens diplomatiques avec les Communautés puis l'Union européennes. Néanmoins à partir du moment où les Communautés européennes se sont imposées comme un important partenaire commercial potentiel, le Pakistan a manifesté son intérêt à avoir accès au marché européen en franchise de droits. Il en a résulté un engagement bilatéral formel entre les Communautés et le Pakistan lorsque les deux parties ont signé leur premier accord officiel de coopération commerciale en 1976, lequel a été suivi d'un accord quinquennal de deuxième génération en 1986, par lequel les deux partenaires entendaient atteindre un objectif économique et social plus large. Le commerce et la coopération au développement occupent traditionnellement une place centrale dans les relations UE-Pakistan. Comme le montre le premier document stratégique européen intitulé "Vers une nouvelle stratégie pour l'Asie", adopté en 1994, le principal intérêt de l'organisation européenne en Asie du Sud était de promouvoir la démocratie, de renforcer les droits de l'homme, de résoudre les conflits régionaux et d'établir ses liens commerciaux et d'investissement avec des économies fortes en Asie du Sud. En termes d'importance politique et économique, l'UE a toujours donné la priorité à la Chine et à l'Inde dans son programme UE-Asie. Jusqu'à présent, le Pakistan n'était considéré, dans l'ordre du jour de la politique étrangère de l'UE, que sous l'angle du commerce et des investissements, même si l'UE a toujours rappelé l'importance des réformes socio-économiques, de promotion et de protection des droits de l'homme, de consolidation de la démocratie et de soutien de

l'État de droit au Pakistan. Bien que l'UE soit le principal partenaire commercial et investisseur du Pakistan, il n'y a eu aucun engagement politique véritable entre les deux parties. La guerre menée par les États-Unis et leurs alliés contre le terrorisme après les attentats du 11 septembre 2001 a grandement influencé la dynamique de la sécurité internationale. Le rôle du Pakistan en tant qu'État de première ligne dans la guerre des États-Unis contre le terrorisme a accru son importance régionale et mondiale. Cela a également entraîné un changement dans la politique de l'UE à l'égard du Pakistan et a grandement contribué à modifier la dimension des relations extérieures de l'UE avec ce pays. Au cours de cette période, l'UE a apporté son plein soutien au rétablissement de la démocratie instaurée après le coup d'État militaire de 1999 au Pakistan. Après le rétablissement d'un gouvernement démocratique, les deux parties ont signé leur accord de coopération de troisième génération sur le partenariat et le développement, qui est entré en vigueur en 2004. La consolidation de la démocratie, le soutien aux droits de l'homme, la réduction de la pauvreté, l'éducation et le développement rural sont restés les domaines prioritaires de l'aide européenne au Pakistan. Après les attentats terroristes du 11 septembre 2001, le Pakistan a été perçu par l'UE comme d'une importance accrue, prenant de plus en plus conscience que pour parvenir à la paix en Afghanistan, il était indispensable de contribuer à la stabilité du Pakistan. Depuis lors, l'UE a fourni 33 000 forces de l'OTAN, en tant que principal allié de la guerre américaine contre le terrorisme. Dans le premier document de stratégie de sécurité de l'UE, adopté en 2003, il était souligné que le terrorisme et la prolifération des armes nucléaires constituaient une menace majeure pour l'Europe. Il a également été mentionné que la faiblesse de la structure des États peut être le terreau propice à l'émergence du terrorisme et à la radicalisation dans une société donnée. Tous ces facteurs ont conduit l'UE à élaborer

une nouvelle politique pour le Pakistan, qui exigeait un engagement politique faisant face aux défis du terrorisme et de la radicalisation, en particulier après l'invasion de l'Afghanistan par les Américains et leurs alliés, et surtout en tenant compte du statut nucléaire de facto qu'il a atteint en 1998. L'objectif était d'intervenir par le biais du développement socio-économique, afin de parvenir à une société démocratique, stable et pluraliste qui respecte les droits de l'homme et l'état de droit. C'est pourquoi l'UE, en fournissant une assistance économique par le biais d'interventions sociales et de développement au Pakistan, a pour ambition le développement durable et inclusif de tous les citoyens pakistanais pour lutter contre le terrorisme et la radicalisation de la société, représentant potentiellement une menace non seulement pour la région mais pour le monde entier. A cette fin, l'UE a donné la priorité en termes de soutien financier à secteurs clés au Pakistan comme l'éducation, la réduction de la pauvreté et le développement rural par le biais de programmes indicatifs pluri-annuels. Au cours de cette période, l'UE et le Pakistan ont signé un nouvel accord de coopération de troisième génération en 2004. La consolidation de la démocratie, le soutien à l'État de droit et le renforcement des droits de l'homme ont toujours été au centre des préoccupations de l'UE au Pakistan. Tous ces développements ont également préparé le terrain pour la tenue du premier sommet UE-Pakistan en juin 2009 à Bruxelles. Cela impliquait l'intention de l'UE d'élargir sa coopération avec le Pakistan sur le plan politique. Pour la toute première fois, les deux parties ont réaffirmé, dans la déclaration commune du sommet, leur engagement à travailler ensemble dans le domaine de la lutte contre le terrorisme et pour atteindre les buts et objectifs du désarmement universel et de la non-prolifération nucléaire. En 2012, un nouveau plan d'engagement a été adopté, qui a porté les relations entre l'UE et le Pakistan à un nouveau niveau. Cela implique que l'UE a intérêt à faire

passer ses relations avec le Pakistan de ce qui a été traditionnel, davantage axé sur le commerce, à des relations plus politiques. Le plan d'engagement a fourni un cadre global pour l'engagement des deux partenaires dans des domaines significatifs tels que le commerce et l'investissement, la démocratie, les droits de la personne et le développement socio-économique, la lutte contre le terrorisme, la non-prolifération nucléaire, l'énergie et d'autres domaines de coopération sectorielle. Le plan de mission a été mené à bien en 2017. Compte tenu des progrès réalisés dans le cadre de l'accord de coopération UE-Pakistan 2004 et du plan d'engagement quinquennal, l'UE a manifesté son intérêt à établir un partenariat stratégique avec le Pakistan. L'UE et le Pakistan entretiennent depuis longtemps des relations de développement et de coopération. Les deux partenaires ont un intérêt commun à lutter contre les questions de sécurité nécessaires à la réalisation de la sécurité régionale et internationale, les questions énergétiques, la lutte contre le trafic de drogue et la criminalité organisée, les questions de migration, l'accroissement des échanges et des investissements, la réalisation des objectifs du Millénaire pour le développement et la résolution des autres défis mondiaux, les relations de l'UE avec le Pakistan sont essentielles. En juin 2019, les deux parties ont conclu un plan d'engagement stratégique pour 2019 afin de renforcer le partenariat existant pour le développement de la paix et la prospérité. Le plan d'engagement stratégique récemment établi entre l'UE et le Pakistan, qui n'est limité dans le temps, implique que les relations entre les deux parties sont passées en plus de cinquante ans d'un simple partenariat commercial à un véritable partenariat stratégique. C'est dans ce contexte que l'objectif de cette thèse est de tenter une analyse approfondie des relations extérieures de l'UE avec le Pakistan. La thèse vise à explorer la coopération entre les deux partenaires, en particulier dans les domaines du commerce, de la démocratie et des droits de l'homme,

de la lutte contre le terrorisme et l'extrémisme violent et de la non-prolifération nucléaire. L'analyse couvrira toutes les questions juridiques, politiques, sociales et économiques qui ont une incidence sur la coopération entre les deux partenaires dans ces domaines spécifiques.

Méthodologie et sources

Les méthodes de recherche utilisées dans la réalisation de cette thèse de recherche sont principalement des analyses descriptives et explicatives. Les premières sources de cette recherche sont les traités de l'Union européenne, l'accord de partenariat entre l'UE et le Pakistan, c'est-à-dire le premier accord formel de coopération commerciale de 1976, l'accord quinquennal CE-Pakistan de 2^{ème} génération de 1986, l'accord de coopération et de développement de 2004 et le plan stratégique 2019 pour un engagement. Ensuite, ont été utilisées nombre de législations nationales et provinciales adoptées par le gouvernement pakistanais concernant les droits de l'homme, les droits du travail et les législations environnementales pour satisfaire aux conditions requises pour maintenir le statut SPG + de l'UE, qui sont particulièrement traitées en détail dans le chapitre 5 de la thèse. En outre, tous les rapports et documents de travail pertinents de la Commission européenne ainsi que les documents et conclusions du Conseil européen sur le Pakistan ont été évalués et analysés dans la thèse, en parallèle aux commentaires doctrinaux disponibles. Des informations pertinentes ont également été recueillies auprès de l'ambassadeur de l'UE au Pakistan concernant le commerce, les interventions de l'UE dans la lutte contre le terrorisme et la lutte contre l'extrémisme violent au Pakistan, et le soutien financier et technique de l'UE à divers projets en cours au Pakistan. En ce qui concerne les sources secondaires, cette

thèse a utilisé une vaste contribution académique, comme des ouvrages généraux en droit de l'Union européenne et spécialisés sur les relations extérieures, des articles de revues, des déclarations politiques, des rapports institutionnels et de groupes de réflexion, des articles de presse et les informations d'actualité disponibles sur les sites Internet pertinents, notamment du Service européen pour l'action extérieure.

Structure

Afin de pouvoir être utilisée au Pakistan où le droit de l'Union européenne est peu connu, la thèse a été rédigée en anglais et articulée selon la méthodologie doctorale anglo-saxonne. Elle est divisée en sept chapitres. Le chapitre 2 de la thèse, intitulé "Développement historique de l'Union européenne", retrace l'histoire du développement des Communautés européennes. La montée du « nationalisme » européen au XIXe siècle a joué un rôle déterminant dans l'intégration européenne. Le traité de Paris a jeté les bases de la première Communauté européenne du charbon et de l'acier en intégrant six États membres européens, à laquelle sont venues s'ajouter deux autres Communautés européennes en 1957. Depuis lors, les Communautés ont évolué sur une période de soixante ans. L'adoption de divers traités et les amendements successifs apportés au droit primaire ont joué un rôle important dans le développement de la structure de l'UE. L'UE, qui compte actuellement 28 États membres européens, est sans aucun doute devenue un acteur mondial important dans les domaines économique et politique. Le chapitre traite également du droit de retrait de l'État membre de l'Union pour garder à l'esprit le cas en cours du Brexit qui pourrait avoir une influence sur les relations extérieures avec le Pakistan, même s'il est difficile au stade où la thèse a été achevée d'être rédigée, de tirer beaucoup

de conclusion et où il serait délicat de faire de la prospective. Le troisième chapitre de la thèse, intitulé "Action extérieure de l'UE" examine en détail la base juridique de l'action extérieure de l'Union. Ce chapitre propose une analyse approfondie des modifications apportées par le traité de Lisbonne à l'action extérieure de l'UE, avec les outils institutionnels et politiques nécessaires pour renforcer son rôle dans ses relations extérieures afin de faire de l'Union un acteur mondial efficace sur la scène internationale. Le quatrième chapitre de la thèse, intitulé « L'UE et le Pakistan : historique des relations », tente d'examiner le fondement et le développement des relations extérieures de l'UE avec le Pakistan. Le domaine initial de coopération entre l'UE et le Pakistan était principalement le commerce et l'économie. Les relations entre les deux ont évolué au fil des ans vers d'autres domaines d'engagement importants. Il s'agit de s'interroger sur le fait de savoir quels ont été les principaux facteurs importants qui ont contribué au développement des relations entre les simples partenaires commerciaux et les partenaires stratégiques. Le chapitre cinq de la thèse s'intitule "Le respect par le Pakistan des conventions relatives aux droits de l'homme, au droit du travail, à la gouvernance et à l'environnement après l'octroi du statut SPG plus". En tant que bénéficiaire d'un statut SPG+ de l'UE, le Pakistan est tenu de ratifier et de mettre en œuvre les 27 conventions internationales fondamentales relatives aux droits de l'homme, aux droits du travail, à la gouvernance et à la législation environnementale, ce qui est l'une des conditions importantes liées au maintien du statut SPG+ de l'UE. Ce chapitre examine en détail l'état de la mise en œuvre de ces conventions fondamentales des Nations Unies par l'adoption de législations nationales et provinciales au Pakistan. Le sixième chapitre s'intitule "Engagement antiterroriste UE-Pakistan". L'UE a adopté sa première stratégie de lutte contre le terrorisme en 2005, qui repose sur quatre piliers : prévenir, pour-

suivre, protéger et réagir. L'UE a reconnu que, pour une Europe sûre, il est non seulement nécessaire d'adopter des mesures antiterroristes au sein de l'Europe, mais aussi d'apporter un soutien aux États tiers qui sont aux prises avec des défis terroristes. Ce chapitre analyse la lutte de l'UE contre le terrorisme et les interventions de lutte contre l'extrémisme violent et la radicalisation au Pakistan par le biais de son assistance financière et technique au cours de la période allant de 2007 à ce jour. Ces évaluations démontreront que l'UE est devenue un donateur et un acteur majeur dans la lutte contre le terrorisme au Pakistan. Le septième chapitre de la thèse, intitulé "La stratégie de l'UE en matière d'ADM et le défi de la nucléarisation du Pakistan", tente d'analyser en profondeur l'approche de l'UE en tant qu'acteur de la non-prolifération du statut nucléaire du Pakistan qui a été élaborée en dehors du cadre nucléaire international. Ce chapitre traite également de la position politique et juridique du Pakistan à l'égard du traité de non-prolifération nucléaire (TNP), qui est la pierre angulaire de la politique de non-prolifération de l'UE et couvre les engagements actuels et la coopération entre les deux parties dans le domaine de la non-prolifération nucléaire. Tout comme le Pakistan, l'engagement initial entre l'UE et l'Inde était essentiellement commercial et économique. L'émergence de l'Inde en tant qu'économie à la croissance la plus rapide au cours des années a renforcé la coopération économique, politique et sectorielle entre l'UE et l'Inde. Le huitième chapitre de cette thèse intitulé "Analyse comparative des accords de partenariat entre l'Inde et le Pakistan et l'UE dans certains domaines de coopération" a pour objectif de présenter le point de comparaison le plus pertinent scientifiquement et important stratégiquement et politiquement pour le Pakistan. Le neuvième chapitre est conclusif afin de proposer quelques recommandations et suggestions politiques.

1 Introduction

The major motivation behind the establishment of the first European community was the economic gains for the Member States and to preserve peace among them. This objective was achieved when the Treaty of Rome was adopted in 1951 which set the foundation of the first European Economic Community (EEC) through the integration of six European Member states. Since then the European Community has not only evolved in its structure but its Membership has also increased currently consisting of 28 European Members. It is not only a powerful regional bloc but has emerged as an important global actor, an epitome of power and politics on the international scene. Treaties and successive amendments in the treaties process have played a profound role in the development of the present structure of the European Union (EU). All these treaties have contributed a great deal in the development of the EU laws, institutions, procedures, creation of single market and free movement of goods, persons, and capital, broadening the subject matter of the Union from economic and monetary to social and political matters, establishment of the Union police and judicial cooperation in criminal matters, Union's common immigration and asylum policy, and not the least in the development of the Union common foreign and defense policies.

One of the Principal achievement of the Treaty of Lisbon was that it success-

fully achieved the much-needed reforms in the institutional framework of the Union. Since the emergence of the EU as a power bloc in world politics and well known for upholding the Principles of democracy, liberty, diversity, and human rights, the objective was to equip the Union with such tools so that it can play a more defining and influential role in the challenging global politics, beyond the European borders. This required the overall organization of the Union External action for conducting its relations with the outside world needed for exerting its influence as an important international actor in the global economic and political sphere. To accomplish these objectives, the treaty of Lisbon successfully incorporated important substantive and institutional changes concerning the Union's system of external action in order to develop the Union's coherent foreign policy and to provide for better coherence between the political and economic aspects of its relations. This has been achieved through the creation of an important institution of European External Action Service (EEAS) headed by the High Representative of the Union Foreign Affairs and Security Policy. The EEAS works for a more coherent and effective EU foreign policy and to strengthen the EU's visibility and influence in its external relations with the third countries. The EU external action provides the overall framework for conducting its relations with the outside world. The objectives of the EU external action is to promote the Union's fundamental principles of democracy, human rights, rule of law. Being one of the biggest trade and economic bloc through its external action, it also aimed to foster sustainable economic, social and environmental development of the weak states with the objective of eradicating poverty. Furthermore, through its external action, it aimed to play a more defining rôle in world security matters, preservation of peace, and conflict prevention and dealing with the emergence of new threats such as counter-terrorism, nuclear non -proliferation and new global chal-

lenges. Over the period of years, EU through its external action has acquired the reputation of soft power bloc guided by the principles of normative vision and has emerged as an effective international actor not only well known for the promotion of its fundamental values such as democracy, human rights and rule of law in its external relations with the third countries but has achieved a rôle of important security actor in recent years in domain of peace and conflict prevention, counter-terrorism and nuclear non-proliferation.

Pakistan and EU relations span over a period of more than fifty years. The relations between the two have remained mostly trade centric and limited to aid and development perspectives only. EU has been viewed by Pakistan as one of its important trade and investment partner only. EU has always been well received by the Pakistani government, media, civil society as a promoter of human rights, democracy, and rule of law. Important political developments on the international scene have transformed the trade – centric relations between the two into the political partnership which has recently been culminated into a Strategic Engagement Partnership.

Pakistan's diplomatic engagements with the external states are usually determined by its foreign policy objectives necessitated by its security concerns, and balance of power interests in the region. Due to these very reasons Pakistan foreign policy has always prioritized relations with America, China, and the United Kingdom as the two shared their past colonial history. Its traditional arch rivalry with its immediate eastern neighbor India make it imperative to establish strong relations with America and China which can render economic, political and military support it required for maintaining the balance of power in the region, especially against the larger and economically strong India and politically unstable northern neighbor Afghanistan.

The rise of the EU as an important economic-political bloc could not be grasped by the Pakistan government, media, and civil society for several good years. Therefore, it lagged behind in establishing its diplomatic link with EC. Since EC prominence as an important trade bloc, Pakistan showed an interest in having access to the duty-free market of EC. This resulted in the development of the formal bilateral engagement between EU and Pakistan when the two sides signed their first formal Commercial Co-operation agreement in 1976. This was followed by 2nd generation five year EC-Pakistan agreement in 1986. Through this agreement, both the partners intended to achieve wider economic and social objectives.

The trade and development co-operation has traditionally occupied a central place in EU-Pakistan relations. The relations between the two remained predominantly trade centric. As depicted from EU first strategic document ‘Towards a New Strategy for Asia’ adopted in 1994, its main interest in South Asia was to promote democracy, strengthen human rights, solve regional conflicts and to establish its trade and investment ties with strong economies in South Asia. In terms of political and economic importance, EU has always prioritized China and India on its EU’s-Asia agenda. Pakistan was hitherto on EU foreign policy agenda which was viewed from trade and investment perspective only. On the other hand, EU has always been well received for its soft power approach for bringing a socio-economic reforms, promotion and protection of human rights, consolidation of democracy and its support for rule of law in Pakistan. Despite EU being Pakistan’s largest trading and investing partner, there has been no political engagement between the two partner. America and its allies war on terrorism after 9/11 terrorists attacks have greatly shaped the international security dynamics. Pakistan rôle as a front line state in America’s war on terrorism has increased its regional and global significance. This

has also brought a change in EU's policy towards Pakistan and has greatly contributed in changing the dimension of EU external relations with Pakistan. During this period EU's extended its full support for the reinstatement of democratic set up after the 1999 military coup in Pakistan. After the reinstatement of the democratic government, the two sides signed their third generation Co-operation agreement on Partnership and Development which entered into force in 2004. Consolidation of democracy, Support for human rights, reduction of poverty, education and rural development remained the prioritized areas for EU support in Pakistan. The perceived importance of Pakistan for EU increased after 9/11 terrorist attacks. Since then there has been growing awareness in EU circles which have contributed 33, 000 NATO forces as the main ally of American war on terror, that for achieving peace in Afghanistan it is pertinent to achieve stable and secure Pakistan. In EU, first security strategy document, adopted in 2003, pointed out that terrorism and proliferation of nuclear weapons posed the main threat to Europe. It was also mentioned that weak structure of states can be the breeding ground for giving rise to terrorism and radicalization in any given society. All these factors led the EU to develop a new policy for Pakistan, which demanded political engagement with Pakistan which was dealing with the challenges of terrorism and radicalized forces specifically after the American and its allies invasion of Afghanistan and more importantly keeping in view the de facto nuclear status which it has achieved in 1998. The objective was to make interventions through socio-economic development for attaining democratic, stable and pluralistic society that respects human rights and rule of law. Hence the EU by providing the economic assistance through social and development interventions in Pakistan aim to achieve the sustainable and inclusive development of all its citizens which it believes will also help in countering terrorism and radicalization in

the society which can otherwise be a threat not only for the whole region but for the entire world.

To that end, EU prioritize the key sectors in Pakistan for extending its financial support e.g education, reduction of poverty, and rural development through multi-annual indicative programmes. During this period EU and Pakistan signed a new third-generation Co-operation agreement 2004. Consolidation of democracy, support for rule of law and strengthening of human rights had always remained the main focus of EU in Pakistan. All these developments also set the ground for holding of first EU-Pakistan summit in June 2009 in Brussels. This implied the EU intention to broaden its co-operation with Pakistan on the political level. For the very first time the two sides in the joint declaration of the summit reaffirmed their commitment to work together in the area of counter-terrorism and for achieving the goals and objectives of universal disarmament and nuclear non- proliferation.

In 2012 a new engagement plan was adopted, which graduated the relations between EU and Pakistan to a new level. This implies the interest of EU to shift the relations with Pakistan from what has been traditional, trade-oriented to more political. The engagement plan provided a comprehensive framework for engagement between the two partners in key areas such as trade and investment, democracy, human rights and socio-economic development, counter-terrorism, and nuclear non-proliferation and other sectoral co-operation. The Engagement plan was successfully completed in 2017. Keeping in view the progress achieved under the EU–Pakistan Cooperation agreement 2004 and the five-year engagement plan, the EU showed its interest in establishing a strategic partnership with Pakistan. EU and Pakistan have a long-standing development and co-operation relationship. Both the partners share a mutual interest in combating security issues necessary for attaining regional and

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international security, energy issues, tackling drug trafficking and organized crime, migrations issues, increase trade and investment, to meet the Millennium Development Goals and for tackling other global challenges, the EU relations with Pakistan is crucial. In June 2019 the two sides entered into a Strategic Engagement PSlan 2019 (SEP) to strengthen the existing partnership for development and prosperity. The recently established EU- Pakistan Strategic Engagement PSlan, which is not limited by any time span, implies that the relationship between the two has evolved over more than a period of fifty years from mere trade partners into a full-fledged strategic partnership.

It is with this setting, the objective of this thesis is to attempt an in-depth analysis of the EU external relations with Pakistan. The thesis seeks to explore the co-operation between the two partners specifically in areas of trade, democracy and human rights, counterterrorism and countering violent extremism, and nuclear non-proliferation. The analysis will cover all the legal, political, social and economic issues which have a bearing on the co-operation between the two partners in these specific areas.

1.1 Research Methodology and Sources

The research methods used in carrying out this research thesis are mainly descriptive and explanatory analysis. Besides that, the underlying primary sources for this research are the European Union treaties, EU and Pakistan Partnership agreement i.e first formal Commercial Co-operation agreement 1976, 2nd generation five year EC-Pakistan agreement 1986, Co-operation and development agreement 2004 and Strategic Engagement plan 2019. Number of national and provincial legislations

adopted by Pakistan Government concerning human rights, labour rights and environmental legislations to fulfil conditionality requirement for sustaining the EU GSP + status. All these legislations are covered extensively in chapter 5 of the thesis. In addition to that, all the relevant European Commission reports and working papers, European Council documents and conclusions on Pakistan have been scanned, evaluated, analysed and referred in the thesis. Relevant information has also been taken from EU ambassador in Pakistan related to trade, EU counter – terrorism and countering violent extremism interventions in Pakistan as well as EU financial and technical support to ongoing various projects in Pakistan. With regard to secondary sources, this thesis has used a vast academic contributions, such as books, journal articles, policy papers, think tank reports of well known institutions, newspapers articles and the information available on the relevant websites of the European External Action Service.

1.2 Structure

The thesis is divided into seven Chapter.

Chapter 2 of the thesis titled ‘Historical development of the European Union’ charts the historical account of the development of the European Communities. The rise of European Nationalism in nineteenth century has played a defining rôle towards European Integration. Treaty of Rome set the foundation of first European Coal and Steel Community through integration of six European Member States. Since then European community has evolved over the period of sixty years. Adoption of various treaties and successive amendments in treaties process have played a profound role in the development of the structure of the EU. EU, which currently

consists of 28 European Member states, has undoubtedly emerged as an important global actor both in economical and political sphere. The chapter also discusses the right of withdrawal of the Member state from the Union keeping in view the recent case of Brexit.

Chapter three of the thesis titled ‘EU External action’ examine in detail the legal basis for the Union external action. The chapter attempts the indepth analysis concerning the modifications brought by the Lisbon treaty in the EU external action with the necessary institutional and political tools to strengthen its rôle in its external relations in order to make the Union an efficient global actor on an international scene.

Chapter four of the thesis titled ‘EU and Pakistan historical account of relationship’ attempts to examine the foundation and development of EU external relations with Pakistan. The initial area of cooperation between EU and Pakistan was mainly trade and economics. The relationship between the two have evolved over the period of fifty syears into other important areas of engagements. What were the main important factors which have contributed in the development of relations from mere trade partners to the strategic partners is analysed in detail in this chapter.

Chapter five of the thesis is titled ‘Pakistan’s compliance with human rights, labour laws, governance and environmental laws conventions after the grant of GSP plus status’. Being a beneficiary of a EU GSP+ status, Pakistan is required to ratify and implement the 27 core international conventions on human rights, labour rights, governance and environmental laws which is one of the important conditionality linked with the continuation of the EU GSP+ status. This Chapter will examine in detail the status of the implementation of those core UN Conventions through adoption of national and provincial legislations in Pakistan.

The sixth Chapter is titled ‘EU- Pakistan Counter terrorism engagement’. The EU adopted its first counter terrorism strategy in 2005 which is established on four pillars of prevent, pursue, protect and respond. The measures under the respond pillars aim for combating the terrorism in the Third States. The EU has recognized the fact that for a secure Europe it is not only necessary to adopt counter terrorism measures within the Europe but also to provide support to third States which are struggling with terrorism challenges. This chapter will analyse the EU Counter terrorism and countering violent extremism/ radicalisation interventions in Pakistan through its financial and technical assistance during the period between 2007 till present. These evaluations will demonstrate that EU has become a major donor and actor for combating terrorism in Pakistan.

The seventh Chapter of the thesis titled ‘The EU WMD strategy and challenge of Pakistan’s nuclearization’ attempts to make an in-depth analysis of the EU approach as a non-proliferation actor towards Pakistan’s nuclear status that has been developed outside the international nuclear framework. The chapter also discuss Pakistan political and legal stance towards Nuclear non-proliferation treaty (NPT), which is the corner stone of EU’s non-proliferation policy and covers the current engagements and co-operations between the two in the area of nuclear non-proliferation.

Just like Pakistan, the initial engagement between EU and India was mainly trade and economic. India’s emergence as a fastest growing economy over the period of years has bolstered the economic, political and sectoral cooperation between EU and India. Eighth Chapter of this thesis is titled ‘Comparative analysis of India and Pakistan Partnership agreements with EU in selected areas of cooperation’. By selecting India as a case study, the aim is to determine for Pakistan potential new

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areas of cooperation with EU.

Chapter ninth ends as a concluding chapter with recommendations and policy suggestions.

2 Historical Development of the European Union

2.1 Introduction

This chapter attempts to provide an in depth analysis of the development of the European Union. The Chapter is divided into three parts. The first part overview the evolution of the idea of European nationalism in the backdrop of historical perspectives and its contribution towards the movement of European integration. The prominent political scientists during that period contributed to a great level to the idea of united Europe through their scholarly writings and essays. After the huge amount of destruction and loss of human lives brought forth by the two world wars, finally the European nationalism replace the destructive forces of nationalism and eventually set the foundation of the first European community.

The second part of the Chapter will provide a detailed overview of the evolution of the European integration starting from the setting up of first ECSC Community in 1951 to the establishment of the present legal structure of the European Union after the adoption of Lisbon Treaty in 2007. It is said that European union is born through treaties. The analysis of the adoption of all the treaties and important

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treaty reforms that have contributed in the gradual evolvement of the European Union through the development of its institutional and procedural structure will be analysed in detail.

The third part of the Chapter discusses the new case of Brexit, the first of its kind wherein the UK government consequent upon the result of the referendum on EU membership have taken a decision to exercise its right of withdrawal from the Union membership under Article 50 of the Lisbon treaty. Whether the State can unilaterally exercise its right of withdrawal from the Union membership or required the consensus of the Member States is analysed in detailed.

2.2 The Rise of the European Nationalism and its Contribution in Making of European Union

The origin of the ideas regarding the European unity can be traced back to the late seventeenth century, although in the beginning these ideas remained strictly confidential in nature. The ultimate authority still vested in the states. For the very first time the idea of European integration gained prominence through an Essay written by a prominent English Quaker William Penn titled ‘Towards the Present and Future Peace of Europe’ who suggested for a European parliament which should be consisted of the representatives of the Member States¹. The primary objectives of this parliament would be to prevent war between the states and to promote justice. Further John Bellars in 1710 gave a far-reaching proposal on European Integra-

¹ Derek W Urwin, *The community of Europe: A history of European integration since 1945* (Routledge 1995); John Pinder, *The European Union: A very short introduction* (vol 36, Oxford University Press, UK 2013)

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tion. He suggested a cantonal system to be established on a Swiss Model whereby the whole Europe would be divided into 100 cantons, and each canton will send its representatives to a European Senate and would be required to contribute to a European army². Frenchman Simon gave a suggestion for a sovereign central body which would replaced a state system in Europe. His proposal was published in a pamphlet in 1814, titled 'Plan for the Reorganisation of the European Society'. He considered that all the states should be governed by the national parliaments, but for the consideration of common interest of states, a European parliament should be established. According to his suggestion the European Parliament should consist of two houses. First, the House of Commons which should be composed of the representatives from the local associations and second the House of Lords which will consist of the peers appointed by a European monarch³. Saint Simon's views received appreciation during the first part of the nineteenth century. Similarly Mazzini, who is known as the eminence grise of Italian nationalism, along with Proudhon and Victor Hugo favoured the united Europe⁴. Although the ideas regarding the European integration became part of political discourse still, the nineteenth century represented the age of the nation-state system, and idea of the European unity could not take off further. However the destruction and miseries brought by the events of the First World war that was fought mainly on the external factor of nationalism, acted as a stimuli for idea of European unity which will serve as mean to prevent the war among the European states but will also provide a way out of compet-

² Paulette Carrive, 'Un grand réformiste: le quaker John Bellers (1654-1725)' (1983) 15(1) *Dix-Huitième Siècle* 265.

³ *ibid.*

⁴ *ibid.*

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ing against the United states, Argentina, and Japan. As a consequence after the end of the first world war a pan -European movement was set up in 1920s by the Czech Count Coudenhove-Kalergi⁵. This movement received a widespread support among the European intellectuals and some politicians. The movement was genuinely transnational having ‘Economic Councils’ both in Paris and Berlin⁶. During 1920s the idea of the European unity gained further momentum when the French Foreign Minister submitted the Briand Memorandum to twenty-six other European States in 1929. While analysing the weak performance of the League of Nations to regulate the international politics the memorandum proposed a European Federal Union, which would police states, irrespective of affecting the sovereign rights of those states which will be the part of such association. Though the proposal was strictly confederal in character and maintained the authority of the state, received a like warm response from other states⁷.

The destruction brought forth by the second world war generated a widespread feeling for establishment of the international organization with the main objective of avoiding the large scale conflicts and for the maintenance of peace among the nation-state. This set-up the foundation of the United Nations in 1945. Besides that the founding of the united Europe could also be attributed to the repercussion of the two world wars. Throughout the war, the Resistance movements had strongly supported the idea of European unity to replace the destructive forces of nationalism⁸. Still

⁵ Richard N Coudenhove-Kalergi, *Pan-Europa* (NewYork, 1926); Carl Hamilton Pegg, *Evolution of the European Idea, 1914-1932* (vol 30, University of North Carolina Press Chapel Hill 1983)

⁶ Damian Chalmers, Gareth Davies, and Giorgio Monti, *European Union Law: Cases and Materials* (Cambridge University Press 2010) 7.

⁷ *ibid.*

⁸ Walter Lipgens, *A History of European Integration: 1945-1947* (Oxford University Press 1985).

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EEC took almost a decade before it was established⁹.

In the backdrop of the brief historical account regarding the rise of European nationalism, following is the detail account of the concrete steps taken through adoption of various treaties which have set the foundation of the European communities.

2.3 The Historical Account of the Institutionalization of the European Communities

2.3.1 From the Founding Treaty of Paris to the Treaty of Rome

The origins of the current European union was the consequence of the crisis provoked by the establishment of the Federal Republic of Germany. The Ruhr an industrial and a coal mining region, which was under the administration of the International High Commission was due to be handed back to the Federal Republic along with Saar in 1949. This administrative change was a cause of main concern for French who fear the emergence of the German Industrial might due to its increasing share of European steel production. To counter the German industrial might the French responded with the Schuman Plan which was named after the French Foreign Affairs Minister, Robert Schuman and was drafted by the French civil servant, Jean Monnet¹⁰. Steel and coal were the precious material for waging the war. The plan was consciously designed to place the production of these material under the inter-

⁹ Paul Craig, 'Development of the EU' in Catherine Barnard and Steve Peers (eds), *European union law* (Oxford University Press 2017) 13.

¹⁰ William Diebold, *The Schuman Plan: A Study in International Cooperation* (Oxford University Press 1959).

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national body, to pacify the fears that Germany might covertly rearm. The proposal can be termed partly economic but in large part political and it was framed in such a manner so that other states could also join. Moreover, the political architecture in Europe had changed dramatically after 1945 due to the Russian dominance in the eastern Europe and start of cold war. Therefore, the aim was to bring the Germany within the mainstream Europe fold¹¹. This plan set the foundation of the Treaty of Paris in 1951, which established the European Coal and Steel Communities (ECSC)¹². The treaty was signed by France, Italy, Belgium, Germany, Netherlands and Luxembourg in 1951 and entered into force on 23 July 1952. The treaty had a life span of fifty years thus was expired on 23 July 2002¹³.

The treaty which had established a common market in coal and steel had four principal institutions namely the High Authority, the Assembly, the Council, and a Court of Justice. The High Authority was a main executive institution and was composed of nine independent appointees of the six Member States' governments. The High Authority was given a decision making power to determine the conditions of production and prices for coal and steel¹⁴. The Assembly had the supervisory and advisory powers and was made up of national parliament's delegates. The Council which had limited decision power and broader consultative role was composed of a representative from each national government. The Court of Justice, that was the fourth institution consisted of nine judges. It is important to note that though

¹¹ Craig, 'Development of the EU' (n 9) 13.

¹² Pierre Gerbet, 'The Origins: Early Attempts and the Emergence of the Six (1945-52)' in Roy Pryce (ed), *The Dynamics of European Union* (Routledge 1987).

¹³ Decision of the representatives of the Member States meeting within the Council on the consequence of the expiry of the European Coal and Steel Community [2002] OJ L194/35.

¹⁴ Raymond Poidevin and R Spierenburg, *The History of the High Authority of the European Coal and Steel Community. Supranationality in Operation* (London 1994).

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the remit of the ECSC was specified to coal and steel, however the proponents of community view it as a supranational authority in which the High Authority could adopt decisions otherwise than unanimity which could then serve as the first step way towards the broader European integration¹⁵. The United Kingdom which was invited refused to participate in the negotiations as was against both the ideas of high authority and remit of powers¹⁶. The treaty of Paris had a life span of fifty years and was expired on 23 July 2002¹⁷.

2.3.2 European Defence Community (EDC) and European Political Community (EPC)

During 1950s, several setbacks were witnessed towards the European integration which, however, played an important role in the overall creation of the EEC. Among these the prominent ones were the proposals for the creation of the European defence community (EDC) and European political community (EPC) that failed to materialise¹⁸. The proposal for the creation of European Defence Community was outcome of French opposition of German membership of the NATO. France suggested the alternative for the membership of the NATO, which was outlined in its Pleven plan of 1950 which proposed for the European army, a common budget and institutions under the EDC. In 1952, the six ECSC states signed the EDC treaty. The UK

¹⁵ Francois Duchene and Jean Monnet, *Jean Monnet: The first statesman of independence* (Norton 1994) 239.

¹⁶ Christopher Lord, ‘“With but not of”: Britain and the Schuman Plan, a Reinterpretation’ (1998) 4 *Journal of European Integration History* 23, 23; Edmund Dell, *The Schuman Plan and the British abdication of leadership in Europe* (1995)

¹⁷ Decision of the representatives of the Member States meeting within the Council on the consequence of the expiry of the European Coal and Steel Community [2002] OJ L194/35 (n 13).

¹⁸ Craig, ‘Development of the EU’ (n 9) 14.

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refused to participate in the treaty and the ratification process of the treaty was slowed. However, at this stage it was realized that for the existence of the European army, there should be some form of European foreign policy, which will work as a catalyst for the plans to establish the European Political Community (EPC)¹⁹. In 1953, the draft statute for the EPC was crafted by the ECSC Assembly and gained support through adherence of certain additional members, with the principal work being done by the constitutional committee. It gave out a far reaching plan for the federal and parliamentary style of European integration, which included a bicameral ('two level') legislature consisting of the Parliament to be elected by the universal suffrage and the Senate to be selected by the national parliaments. The Parliament thus constituted would have the real legislative powers. Besides the bicameral legislature, the Executive council was also to be constituted which was in effect the governing body of the EPC and was responsible to the parliament. The draft statute also contained provisions for the establishment of Court of justice and Economic and Social council²⁰. Though the draft statute for the establishment of the EPC received unanimous support in the assembly of ECSC, the reaction of the six foreign ministers of the ECSC was quite discreet and there was a significant opposition against the level of the parliamentary power that was outlined in the draft statute²¹. It is important to note that the realization of the EPC was inextricably linked with the success of EDC, which failed to materialised when the French National Assembly refused to ratify the EDC in 1954²². The left and right wings parties in France op-

¹⁹ Craig, 'Development of the EU' (n 9).

²⁰ *ibid.*

²¹ *ibid.*

²² Edward Fursdon, *The European defence community: a history* (Springer 1980); Rita Cardozo, 'The Project for a Political Community (1952-4)' in Roy Pryce (ed), *The Dynamics of European Union*

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posed the EDC although for different reasons²³. This caused a major set-back for the integration process and deferring the plans for the defence and political union²⁴.

2.3.3 European Economic Community (EEC)

The failure to realize the plans for the European Political Community and European Defence Community did not halt the movement for the European integration. However the failure of these ambitious plans had led the proponents of these projects to focus more directly on the economic factors rather than political²⁵. The nationalistic policies of the Mendes-France government in France particularly its attempt to upgrade its relations with the German was disturbing for the BENELUX states²⁶. In 1955, the Belgian Foreign Minister, Paul-Henri Spaak made suggestions for integration in a limited number of sectors like energy and transport²⁷. However, Netherlands did not well receive that proposal well as it feared that the said proposal could threaten to restrict its efficiencies, especially in the transport sector. Thus the Dutch government responded by reactivating the 1953 Beyen Plan, which proposed a common market that would eventually lead to economic union²⁸. A meeting of the six Foreign Affairs Ministers was held in Messina (Italy) in 1955. The British were also invited, but they only send their Board of Trade official to attend the meeting. During the conference, resolution was passed for establishment of the

(Routledge 1987).

²³ John Pinder and others, *The building of the European Union* (Oxford University Press 1998).

²⁴ Craig, 'Development of the EU' (n 9) 14.

²⁵ *ibid.*

²⁶ Chalmers, Davies, and Monti (n 6) 11.

²⁷ *ibid.*

²⁸ *ibid.*

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Intergovernmental committee and its task was to examine the establishment of a common market. The committee, which was chaired by Paul-Henri Spaak, Belgian prime Minister, published its report in 1956 which laid down the basis for establishment of the European Atomic Energy Community (EURATOM) and European Economic Community (EEC)²⁹. The EEC treaty also known as the treaty of Rome was then signed in March 1957 and came into force on 1st January 1958³⁰. The treaty was signed by the six Member States: Germany, France, Belgium, Netherlands, Italy and Luxembourg. The same Member States were also the signatories of the EURATOM treaty which came into force at the same time as the EEC treaty³¹. The primary objective of these treaties was a shift towards economic integration, however the underlying objective have had a far reaching political aspects.

The establishment of the European Economic Community was a response to the failure of the previous attempts to an integrated Europe³². The prominent feature of the EEC was the establishment of the ‘Common Market’³³. The Common market was central to the treaty of Rome 1957 that established the European Economic Community³⁴. Article 2 of the Treaty of Rome declared that ‘the (then) European Economic Community (EEC) aimed to establish a Common Market between the

²⁹ Chalmers, Davies, and Monti (n 6).

³⁰ Ennio Di Nolfo, *Great Britain, France, Germany and Italy and the Origins of the EEC, 1952-1957* (Walter de Gruyter 2012); Enrico Serra, ‘The relaunching of Europe and the Treaties of Rome’ [1989] Baden-Baden: Nomos.

³¹ Di Nolfo (n 30); Serra (n 30).

³² Desmond Dinan, *Europe recast: a history of European Union* (vol 373, Palgrave Macmillan Basingstoke 2004).

³³ Paul Craig, ‘The Internal market and the philosophies of market integration’ in Catherine Barnard and Steve Peers (eds), *European union law* (Oxford University Press 2017).

³⁴ *ibid.*

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Member States'³⁵. There have been different paradigms of European market integration. The first steps towards that integration was the establishment of the common market. The term common market was originally envisaged in the Spaak Report that prepared the ground for the Treaty of Rome. Later it was replaced by the single market paradigm during the period of 1970s and 1980s³⁶. The term single market was introduced by the Single European Act 1986 which coexisted with common market in the language of the treaty³⁷. When Lisbon treaty came into force in 2009, it replaced all references to the common market with internal market³⁸.

For the establishment of the common market three actions were required. The first step was the setting up of the custom union. Through creation of the custom union the aim was to abolish the custom duties, quotas and those national regulations that either restrict foreign competitions or eliminate them completely³⁹. The custom union aim at setting up of common external tariffs for all the member countries. At the same time it was recognized that a common European-level regulations would be required taking into consideration the public interest or due to the nature of productions or particular markets⁴⁰. The accomplishment of the common market had to take place over the transitional period of several years during which tariff barriers would be removed and common custom tariff would be set

³⁵ Treaty of Rome (EEC) [1957] (https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf), art 2.

³⁶ *ibid.*

³⁷ Craig, 'The Internal market and the philosophies of market integration' (n 33) 317.

³⁸ *ibid.*

³⁹ *ibid* 318; Consolidated Version of Treaty Establishing the European Community (EC) [1992] OJ C35/ (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1992:224:FULL&from=EN>), art 23; Armin Cuyvers, 'The EU Common Market' in Emmanuel Ugirashebuja and others (eds) (Brill Nijhoff 2017) 295

⁴⁰ Craig, 'The Internal market and the philosophies of market integration' (n 33) 318.

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up⁴¹. This covered the ‘four freedoms’, which meant there should be no restrictions on the movement of goods, workers, services and capital within the community. For instance, if a labourer in one state was unable to seek employment, he could search or get employment in other state where there was an excess of demand of labour. This has had positive consequences of enhancing the value of the labour resources within the community⁴². Further distortions of competition was dealt with through the harmonization mechanism which required setting up of the competition policy for curbing the anti-competitive practices whether they result from business practices, State aids or the disparities between the national legislations for ensuring the level playing field in the community⁴³. The procedure to harmonize the national laws were also put in place whose differences prevent State intervention in economy in the form of State aids, business practices and public undertakings were closely regulated⁴⁴. To prevent discrimination against imports, Member States fiscal regimes on goods were also regulated⁴⁵. The treaty also give provision for general cooperation in the field of economic policy so that the broader economic policy making did not disrupt the common market⁴⁶. The common commercial policy was also formulated for regulating the Community’s trade relations with third states⁴⁷. The treaty also established a Common Agriculture Policy and a Common transport policy⁴⁸. The

⁴¹ Craig, ‘The Internal market and the philosophies of market integration’ (n 33).

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ Chalmers, Davies, and Monti (n 6) 12.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ *ibid.*

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treaty also contained a limited Social Policy, under which European Social fund was established along with European Investment Bank to shelter the work force, to provide assistance in business modernization and help under develop regions⁴⁹. Taking into consideration the French concerns regarding its higher social costs that would undermine the French companies certain social provisions were included which required to harmonize and improve the working conditions and standard of living for workers and setting out the principle of equal amount of pay for work of equal value irrespective of men and women⁵⁰.

The common market can be called a calibrated mix of freedom and fairness⁵¹. The Markets were opened but in a controlled fashion. It involved process of adjustment, adaptation and fair competition and elimination of creative destruction⁵². In the beginning the market integration process advanced successfully. It involved the complete elimination of custom duties and quotas. However the harmonization of the national laws could not be achieved as planned. The empty chair crisis and Luxembourg accord of mid-1960s had brought changes in voting rules in the council with the requirement of obtaining unanimous votes instead of majority voting rules⁵³. This requirement caused the hindrance of successful harmonization of the national laws⁵⁴. Further, the task for setting up of common market was probably

⁴⁹ Craig, 'The Internal market and the philosophies of market integration' (n 33) 318.

⁵⁰ Catherine Barnard, 'The economic objectives of Article 119' in Tamara K Hervey and David O'Keeffe (eds), *Sex equality law in the European Union* (John Wiley & Son Ltd 1996) 321,322-4; see also Craig, 'The Internal market and the philosophies of market integration' (n 33) 318

⁵¹ Barnard (n 50); Craig, 'The Internal market and the philosophies of market integration' (n 33)

⁵² Barnard (n 50); Craig, 'The Internal market and the philosophies of market integration' (n 33)

⁵³ John Gillingham, *European integration, 1950-2003: superstate or new market economy?* (Cambridge University Press 2003) 68-72.

⁵⁴ Craig, 'The Internal market and the philosophies of market integration' (n 33) 318.

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greaten than had been anticipated⁵⁵. In that context one of the observer remarked that ‘the lowering of tariffs has, in effect, been like draining a swamp. The lower water levels has revealed all the snugs and stumps of non-tariff barriers that still have to be cleared away’⁵⁶.

2.3.4 Institutional Arrangement Under the EEC Treaty

Under the treaty of Rome the disposition of power through institutional arrangement was considered its most remarkable feature. The institutional setting could be seen as a mixture of continuity of the past in terms of institutional ordering under the ECSC, combined with the novel arrangements formulated for the EEC which consisted of four central institutions⁵⁷. The principal institutional players were the Commission and the Council⁵⁸. The Commission works as an independent body and represented the community. It was composed of the Member States. For the development of the Community Policy the Treaty of Rome has placed the Commission in a driving seat⁵⁹. It has the power to initiate legislative proposal, it can alter the measure before the Council acted and amendments in its measures could only be brought by achieving unanimity in the Council⁶⁰. It also prepared the overall legislative agenda and had a plethora of administrative, executive and judicial func-

⁵⁵ Craig, ‘The Internal market and the philosophies of market integration’ (n 33) 318.

⁵⁶ Robert Edward Baldwin, ‘Nontariff distortions of international trade’ in Michelle Egan (ed), *Constructing a European market: standards, regulation, and governance* (Oxford University Press 2001).

⁵⁷ Craig, ‘Development of the EU’ (n 9) 15.

⁵⁸ Paul P Craig, ‘Institutions, Power and Institutional Balance’ in Paul Craig and Gráinne De Búrca (eds), *The evolution of EU law* (OUP Oxford 2011) 43.

⁵⁹ *ibid* 43.

⁶⁰ Art 250(1) EC (n 39).

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tions⁶¹. For instance Commission played the role of ‘watchdog’ regarding Member States compliance not only with the treaty, but it has to ensure that Member States effectively implement all the regulations, directives and decisions that were enacted pursuant to the treaty⁶².

The Assembly was composed, initially, of the national parliamentarians. It had a right to be consulted where a particular Treaty article required⁶³. The Assembly that later developed into European Parliament in 1962 was a body responsible for holding the Commission to account⁶⁴. The executive authority was to council of Ministers an executive which represented the national governments. It was composed of the national representative from each member state as a mean to represent its national interest in the Council. The Council was the decision making authority in almost all areas of the EEC activity⁶⁵. The location of the executive and legislative power was important to the arrangements put in place in the Treaty of Rome. For instance, the draft statute of the European Political Community was parliamentary in its orientation, wherein considerable power was proposed for the bicameral legislature which had aroused considerable opposition from the ECSC members⁶⁶. Similarly, in the treaty of Rome, the same amount of unwillingness to give power to the parliamentary institutions was evident as well⁶⁷. The legal and political reality under the treaty of Rome was the division of the legislative power between the Commission,

⁶¹ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 43.

⁶² Craig, ‘Development of the EU’ (n 9) 15.

⁶³ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 43.

⁶⁴ Chalmers, Davies, and Monti (n 6) 12.

⁶⁵ *ibid* 13.

⁶⁶ Craig, ‘Development of the EU’ (n 9) 15.

⁶⁷ *ibid*.

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which had the right to propose legislations, and the Council of Ministers, having the executive power to vote on them⁶⁸. However it was not easy for the Council of Ministers to alter the Commission's proposal⁶⁹. Thus for the emerging Community the Commission might therefore have become something similar to a 'government'⁷⁰.

The nature of the issue would determine the voting procedure. In some limited cases voting was by simple majority, in many other instances it was through 'qualified majority', while in yet other instances unanimous voting was required⁷¹. In instance of the qualified majority, weightage was given to the larger Member States over the smaller Member States, which reflected the differences in population of the Member States. However, the vote weightage was not perfectly proportional in this respect⁷².

The Commission had also power of the principal negotiator for negotiating international agreement on behalf of the community with third states. The Council of Ministers has also few executive powers, for instance planning of the policy agenda, Community budget along with conclusion of international agreements⁷³. The Assembly was also given some power over the budget, besides that it also possessed the strong power to censure which it had never used despite the tabling of many motions for censure moved over the years, including the motion moved shortly before the dramatic resignation of the Commission in 1999⁷⁴.

⁶⁸ Craig, 'Development of the EU' (n 9).

⁶⁹ Craig, 'Institutions, Power and Institutional Balance' (n 58) 43.

⁷⁰ Karlheinz Neunreither, 'Transformation of a political role: reconsidering the case of the Commission of the European Communities' (1971) 10 *J. Common Mkt. Stud* 233.

⁷¹ Craig, 'Development of the EU' (n 9) 16.

⁷² *ibid.*

⁷³ *ibid* 16.

⁷⁴ *ibid*; Kieran St C Bradley, 'The Institutional Law of the European Union in 1999' (1999) 19(1) *Yearbook of European Law* 547 (<https://doi.org/10.1093/yel/19.1.547>)

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2.3.5 The Developments Between EEC Treaty and Single European Act

It is important to take a periodic account of the developments that took place between EEC treaty and adoption of Single European Act (SEA).

2.3.6 Expansion of the Community Membership

The community membership expanded through addition of new Member States. The UK first application to join the EEC in 1961, along with Ireland, Denmark and Norway was vetoed by the French President, Charles De Gaulle in 1963. After resignation of Charles de Gaulle, the UK application for membership was accepted along with those of Denmark and Ireland on 1st January 1973⁷⁵. Greece became member in 1981, followed by Spain and Portugal in 1986⁷⁶.

2.3.7 Luxembourg Accord

The very important development came in the form of the Luxembourg Accord. In 1965, when tension in the community surfaced, the Commission had made three proposals. Firstly, to increase the power of the Assembly, Secondly, for making the communities financially independent and not dependant on the national contributions, it suggested the 'system of own resources'. Thirdly, it gave out a series of financial regulations which would allow the common agriculture policy to make

⁷⁵ Uwe Kitzinger, *Diplomacy and persuasion: how Britain joined the Common Market* (Thames and Hudson 1973); David Hannay, *Britain's Entry into the European Community: Report on the Negotiations of 1970-1972 by Sir Con O'Neill* (Taylor & Francis 2018)

⁷⁶ Chalmers, Davies, and Monti (n 6) 18,19.

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progress⁷⁷. These proposals were either to be accepted entirely or none. When negotiations on these proposals broke down, France walked out of the Council in 1965, and refused to take part in EEC business⁷⁸. The French president action came under a considerable domestic criticism⁷⁹. Even the Commission was also apprehended of adopting the high handed approach⁸⁰. Eventually, the crisis which had lasted for seven months from June 1965 to January 1966 were diffused in Luxembourg in such a manner that would have cast a shadow over the development of the EEC for the next twenty years, through the adoption of the Luxembourg Accord in January 1966⁸¹. The Luxembourg accord was known as ‘agreement to disagreement’ over the voting methods in the Council. Under the accord, if a member raised ‘very important interest’ before the voting in the Council has taken, then it could be agreed that the matter would not be moved for a vote. This agreement gave to every member a right to veto in almost every field of decision making⁸². Though the power to veto was developed at the behest of France, it was equally used by all the Member States⁸³. Using ‘very important interest’ was invoked at every turn even where the interest in question was insignificant to Member States. For instance, in 1985 Germany invoked the ‘very important interest’ several times to prevent a 1.8 percentage decrease in

⁷⁷ Chalmers, Davies, and Monti (n 6).

⁷⁸ Pinder and others (n 23) 12.

⁷⁹ Wilfried Loth, *Crises and compromises: the European project 1963-1969* (Nomos Baden-Baden 2001); Craig Parsons and others, *A certain idea of Europe* (Cornell University Press 2003)

⁸⁰ Chalmers, Davies, and Monti (n 6) 13.

⁸¹ *ibid.*

⁸² *ibid* 13; European Council, EC Bulletin 3-1966 (1966)

⁸³ William Nicoll, ‘The Luxembourg Compromise’ (1984) 23 J. Common Mkt. Stud 35; Jean-Marie Palayret, Helen Wallace, and Pascaline Winand, *Visions, Votes and Vetoes: Reassessing the Luxembourg Compromise 40 Years On* (European University Press 2006)

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the price of Colza, a cooking oil seed⁸⁴. This marked a ‘return to intergovernmentalism’ with primacy given to individual Member state’s wish even if it was opposed by the majority, which halted the legislative process to a greater extent in the following years, which was conducted under the shadow of the veto⁸⁵.

During the period between EEC treaty and SEA, certain developments took place which enhanced the Member States power over the decision making and intergovernmentalism. For instance this period saw the emergence of the European Council as a political actor⁸⁶. The treaty of Rome did not assign any institutional role to the head of state, but meeting between them were common from the early 1960⁸⁷. The Davignon report in 1970 suggested holding of quarterly meetings of the Foreign Affairs ministers of the state, which turned into an intergovernmental forum for cooperation in foreign policy. Later this forum became a European Political Cooperation in 1973, which enabled the EEC to be represented as one voice in other international organizations in which all the Member States participated⁸⁸. The decision to institutionalized such meetings was taken at the Paris Summit in 1974 through establishment of the European Council⁸⁹. The Council consisted of the heads of the governments of the member state, along with president of the com-

⁸⁴ Martin Vasey, ‘The 1985 farm price negotiations and the reform of the Common Agricultural Policy’ (1985) 22(4) Common Market Law Review 649.

⁸⁵ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 44; Jonathan Golub, ‘In the shadow of the vote? Decision making in the European Community’ (1999) 53(4) International Organization 733, 37

⁸⁶ Simon Bulmer and Wolfgang Wessels, *European Council: Decision-making in European Politics* (Springer 1987); Philippe De Schoutheete and Helen S Wallace, *The European Council* (Notre Europe Bruxelles 2002).

⁸⁷ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 50.

⁸⁸ Craig, ‘Development of the EU’ (n 9) 17.

⁸⁹ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 50.

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mission attending its biannual meetings. Although the European council ‘summitry’ provided the Community with much needed direction, but represented to some as undermining the supranational elements of the Community⁹⁰. Both European Council and the European political cooperation provided the forum for the expressions of the Member States views at the highest level, to impact on matters of economic and political concerns thus shaping the subsequent community policy⁹¹. Although European Council conclusion were not formally binding but would usually provide a frame within which binding community initiatives would be followed⁹². Moreover that the Council function as a forum for a Community response to external problems and also facilitated the resolution of disagreements between the Member States which could not be resolved through Council mechanism⁹³.

Further the Member States also took over greater role over the detail of community secondary legislation through the creation of the process known as ‘comitology’⁹⁴. This enabled the Member States of exercising the greater influence on the content of secondary community legislation in a manner that had not been envisaged in the original EEC treaty⁹⁵. The gained influence of the Member States on the secondary community legislation was deplored by many commentators as the dilution

⁹⁰ Craig, ‘Institutions, Power and Institutional Balance’ (n 58).

⁹¹ *ibid.*

⁹² Craig, ‘Development of the EU’ (n 9) 17.

⁹³ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 50.

⁹⁴ Robin H Pedler and Guenther F Schaefer, *Shaping European law and policy: The role of committees and comitology in the political process* (vol 9, European Institute of Public Administration 1996); Carl Fredrik Bergström, *Comitology: delegation of powers in the European Union and the committee system* (Oxford University Press 2005)

⁹⁵ Craig, ‘Development of the EU’ (n 9) 17; Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 49

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of the EEC's supranational dimension⁹⁶. It was also considered the principal reason why the legislative initiatives that were required to elaborate the requirements of the treaty articles could not be enacted or it could only took place after a significant delay⁹⁷.

2.4 Developments which Enhanced Supranationalism

Few important institutional developments took place during the period between EEC and adoption Single European Act which enhanced supranational character of the community. For instance, at the time of signing the treaty of Rome, the conventions, which were common to certain European communities, established a single assembly and single court for the three communities⁹⁸. Merger of the Commission and council took place with a Merger treaty in 1965⁹⁹. In 1970, through own resources decision, the communities were provided with their own budget and autonomous revenue¹⁰⁰. In 1976, agreement on direct election to the Assembly was reached¹⁰¹. Under that agreement first elections to the European Parliament were

⁹⁶ Craig, 'Development of the EU' (n 9); Craig, 'Institutions, Power and Institutional Balance' (n 58).

⁹⁷ Pieter Dankert, 'The European Community-Past, Present and Future' in Loukas Tsoukalis (ed), *The European Community: past, present & future* (Oxford: Basil Blackwell 1983).

⁹⁸ Chalmers, Davies, and Monti (n 6) 14.

⁹⁹ P-HJM Houben, 'The Merger of the Executives of the European Communities' (1966) 3(1) *Common Market Law Review* 37.

¹⁰⁰ Decision of 21 April 1970 on the replacement of the financial contribution of the Member States by the Communities own resources [1970] OJ L94/19 ([https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=DD:I:1970\(I\):TOC:EN](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=DD:I:1970(I):TOC:EN)).

¹⁰¹ Decision of 8 October 1976 of the Representatives of the Member States on the act of taking direct universal suffrage of Members of the Assembly [1976] OJ L278/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:1976:278:FULL&from=IT>).

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held in 1979 since then regular elections were held with five-year interval¹⁰². Although this agreement provided the direct electoral mandate to the Assembly which it had lacked so far, but the negative impact of this development was that voter turnout was low, and elections were often contested on national basis instead of preferring the community issues¹⁰³. The direct electoral mandate also highlighted the Assembly's limited power in the legislative process¹⁰⁴. Further, developments relating to resources and budget unequivocally enhanced the supranational dimension of the community during this period. In 1969, Agreement was concluded on funding from the community's own resource rather than contributions from the national resources and expansion of the Parliament's role in the budgetary process. These developments resulted in giving greater financial independence to the Community and strengthened the role of parliament as a decision maker¹⁰⁵. The adoption of 1976 second budgetary treaty furthered these developments¹⁰⁶.

During the same period the European Court of Justice also made important contributions in enhancing the supranational dynamics of the community. The revolutionary decision in *Van Gend en Loos* case by the Court of Justice marked the most important development of the alternate vision of the political community – a supranational one. The brief facts of the case were, a person named Van Gend en Loos, who imported chemicals from Germany, was charged with import duties by the Dutch authorities. The duty charge was considered in breach of Article 12

¹⁰² Chalmers, Davies, and Monti (n 6) 14.

¹⁰³ Martin Holland, *European integration: from community to union* (Pinter 1994) 42.

¹⁰⁴ Craig, 'Development of the EU' (n 9) 18.

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.*

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(Rome Treaty), which prohibited levying custom duties or charges on the movement of goods between the Member States. This provision was invoked by him before the Dutch tax court, the *Tariefcommissie*. Through this case a very important question was raised before the court, that was whether a party can invoke or rely on provisions of the Community before a national court. The Court's decision was that it could¹⁰⁷. Through this decision the Court created the supremacy of the Community laws over the national laws. The Court broadly interpreted the provisions of the treaty to further the overall aim of the Community, such as the free movement of goods. During the period between 1960s and 1970s the ECJ also made use of the doctrine of direct effect and supremacy for making the Community policies effective irrespective of the difficulties of securing legislation through a political process¹⁰⁸. Direct effect enabled individuals to assert rights from the Treaty articles and Community legislation before the national courts by pleading that national law was inconsistent with Community law. The national courts referred to ECJ issues concerning Community law that were raised in such disputes. The ECJ would then interpret the relevant Community provisions related to those disputes in a manner that would ensure the continued vitality of those provisions irrespective of difficulties in the political process¹⁰⁹.

From the supranational perspectives, these developments could be counted as positive relating to the community, however the period from the mid-1970 to

¹⁰⁷ Case 26/72 *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration* [1963] ECR.

¹⁰⁸ Craig, 'Development of the EU' (n 9) 18.

¹⁰⁹ Craig, 'Institutions, Power and Institutional Balance' (n 58) 52; Paul P Craig, 'Once upon a Time in the West: Direct Effect and the Federalization of EEC Law' (1992) 12 *Oxford J. Legal Stud* 453; Case 2/74 *Jean Reyners v Belgian State* [1974] ECR 63

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mid-1980s was perceived as a period of relative political stagnation in the EEC. For instance, the Commission faced the difficulty in securing the passage of its legislation through the Council which rejected social measures, such as directives on co-determination and worker consultation and many other legislations were hold over awaiting the Council approval¹¹⁰. The difficulties in the process of legislation led to what Middlemas termed a ‘condition of immobility’¹¹¹. There was a growing concern regarding the Community objectives that remained unfulfilled¹¹². This situation was also reported in a high-level reports from 1970s onwards, for instance in Tindermans Report 1974-5 and that of the ‘Three wise Men’¹¹³. Though these reports recommend to diminish the impact of the intergovernmentalism and strengthened the supranational elements of the Community, but neither was acted upon¹¹⁴.

Later in 1984, the European Parliament proposed a radical reform through ‘draft treaty on the European Union’, which proposed a fully federal Europe with a macro-economic and trade policies, common foreign policy along with developed system of central institutions but that draft treaty was largely disregarded¹¹⁵. Meeting of the head of states was held in Fontainebleau European Council in June 1984, and established two committees. First, the ad hoc committee on a People’s Europe received the mandate to investigate that aspect of the EC that is visible to the common citizen for instance customs formalities for individual, the creation of European symbols,

¹¹⁰ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 51.

¹¹¹ Keith Middlemas, *Orchestrating Europe: the informal politics of the European Union, 1973-95* (Fontana Press 1995) 90.

¹¹² Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 51.

¹¹³ EC Bulletin 11-1979 (1979) 1.5.2.

¹¹⁴ Craig, ‘Development of the EU’ (n 9) 18.

¹¹⁵ M Burgess, *An Ever Closer Union: A Critical Analysis of the Draft Establishing the European Union* (Blackwell Publications 1986); [1984] OJ C77/33

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equivalence of university diplomas, and European volunteer programs. The second ad hoc committee was for Institutional Affairs also known as Dooge Committee after its Irish chairman was given the task to consider institutional economic and political reforms¹¹⁶. This led the European Council in Milan in 1985 to set up the intergovernmental conference (IGC) to consider the treaty amendment on the basis of the Dooge Committee report and White paper of the Commission¹¹⁷. The IGC led to the adoption of the Single European Act in February 1986¹¹⁸. The drift towards the treaty reform was further emphasized through the release of the Commission ‘white paper’ which set deadline for the completion of the internal market, and removal of a long list of barriers before 1992¹¹⁹.

2.4.1 Single European Act 1986

This Act is considered as one of the significant Treaty revisions in the history of the European Union. It amended the treaty of Rome for the objective of ‘concrete progress towards the European unit’ as declared in Article 1¹²⁰. At that time, the

¹¹⁶ For a detail accounts on Committee agendas see Andrew Moravcsik, ‘Negotiating the Single European Act: national interests and conventional statecraft in the European Community’ (1991) 45(1) *International organization* 19, 38.

¹¹⁷ Commission of the European Communities, *Completing the Internal Market*. White Paper from the Commission to the European Council (Milan, 28-29 June 1985). COM (85) 310 final, 14 June 1985 (1985); See Richard Corbett, *The European Parliament’s role in closer EU integration* (Springer 1998)

¹¹⁸ On negotiating history of Single European Act Jean De Ruyt, *L’Acte unique européen: commentaire* (Editions de l’Université de Bruxelles 1989).

¹¹⁹ Commission of the European Communities, *Completing the Internal Market*. White Paper from the Commission to the European Council (Milan, 28-29 June 1985). COM (85) 310 final, 14 June 1985 (n 117).

¹²⁰ A Campbell, ‘The single European act and the implications’ (1986) 35(4) *International & Comparative Law Quarterly* 932; Single European Act [1987] OJ L169/1 (https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf)

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principal achievements of the Act appeared modest and limited¹²¹. These achievements were also described as a victory for minimalism¹²². The Act introduced significant institutional and procedural changes besides that much of the Act was about giving formal recognition to pre-existing policies and institutions. The Act was disappointing for those who favoured far-reaching reforms submitted by the European Parliament in its draft treaty on the European Union¹²³.

At the institutional level, the Act introduced two significant reforms. First, the commitment to established the internal market by 31 December 1992 that is now set out in Article 26(2) TFEU. It reads as:

‘The internal market shall comprise an area without internal frontiers in which free movement of goods, persons, service and capital is ensured in accordance with the provisions of the Treaties’

Further it introduces new areas of competence for the EEC, i.e. cooperation in economic and monetary policy, harmonisation and improvement of the health and safety of workers, particularly in working environment, the strengthening of the scientific and technological basis of European Industry, strengthening of economic and social cohesion by reducing the inequality between the regions and the backwardness of the least -favoured regions, protection of human health, the preservation, protection and improvement of the quality of environment and the prudent and rational use of natural resources¹²⁴.

¹²¹ Chalmers, Davies, and Monti (n 6) 20.

¹²² George A Bermann, ‘The Single European Act: A New Constitution for the Community’ (1988) 27 Columbia Journal of Transnational Law 529.

¹²³ Craig, ‘Development of the EU’ (n 9) 18.

¹²⁴ Campbell (n 120) 933.

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Secondly, it gave a formal recognition to the European Council and establishes formal meeting of the EC head of Government thus institutionalising the political practice that had not been provided for in the Treaty of Rome¹²⁵. The Council of Ministers was also granted the power to establish the additional European court (Court of first instance) to ease the workload of present Court with a right of appeal on points of law to ECJ¹²⁶. The comitology procedure, under which the Council could delegate power to the Commission under certain conditions, was legally covered under Article 202 of EC¹²⁷.

The Act brought a significant changes in the voting procedure, by introducing Qualified Majority Voting in the Council instead of unanimous voting on various matters which are not however 'fundamental' but basically arise in the completion of the internal market¹²⁸. The unanimous voting has been maintained for core provisions on the internal market such as taxation, freedom of movement of persons, rights and interests of employed persons¹²⁹. The provisions allowing the Qualified Majority Voting Procedure concerns areas such as the right of establishment, alteration or suspension of duties, the movement of capital, sea and airport, restrictions on rights to provide services, research and technological development, the health and safety of persons and certain decisions relating to environment¹³⁰. The new voting procedure effect upon the Luxembourg Accord was uncertain, especially as the

¹²⁵ Campbell (n 120) 933.

¹²⁶ *ibid*; The Bill contains the words 'any court', covering the possibility that the European Court might propose two Specialist chambers. The Bill amends section 3 of the European Communities 1972 in extending it not only to the European Court but also to 'any court' attached thereto

¹²⁷ Craig, 'Development of the EU' (n 9) 18.

¹²⁸ *ibid* 934

¹²⁹ *ibid*; Art 100 A(2) SEA (n 120)

¹³⁰ Craig, 'Development of the EU' (n 9).

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United Kingdom, Denmark and Greece insisted upon a Declaration, being appended to the SEA, asserting that nothing within it impacts the Member's state right to invoke accords¹³¹.

Single European Act is known for bringing a change political and legislative culture of the Union¹³². In legislative terms, Member States became more tolerant towards each other's use of invoking the Luxembourg Accord. This change was reflected in 1987 Council decision on the 'vote to go to a vote' which signify that if a simple majority of Member States voted in favour of formal vote, then that vote should be taken¹³³.

Furthermore the legislative process became more energised. All the measures contained in the White Paper had been formally proposed by the Commission by the end of 1990¹³⁴. By the end of 1992, total Almost 95 percent of these measures had been enacted and 77 percent had been implemented by the Member States¹³⁵. Besides that, the legislative output was also increased up to 2, 500 binding acts per year by 1994¹³⁶. France, inspired by its treaty obligations, adopted 53 percent of the legislative measures till 1991¹³⁷. Similarly during the early 1990s the 30 percent of

¹³¹ Chalmers, Davies, and Monti (n 6) 21.

¹³² *ibid.*

¹³³ Council Rules of Procedure [1987] OJ L291/27, art 5.

¹³⁴ European Communities, Twenty Sixth General Report on the Activities of the European Communities 1992, Luxembourg (1991) 53; George Ross, *Jacques Delors and European Integration* (Oxford University Press, USA 1995)

¹³⁵ European Communities, Twenty Sixth General Report on the Activities of the European Communities 1992, Luxembourg (1993) 35.

¹³⁶ Wolfgang Wessels, 'An ever closer fusion? A dynamic macropolitical view on integration processes' (1997) 35(2) *JCMS: Journal of Common Market Studies* 267.

¹³⁷ G Federico Mancini, 'Europe: the case for statehood' (1998) 4 *Eur. LJ* 29, 40.

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all Dutch legislation, implemented EU legislation¹³⁸.

2.4.2 Maastricht Treaty

Undoubtedly, the SEA reinvigorated the Community, consequently many measures were duly enacted for completion of the internal market during the period between 1986-1992¹³⁹. However, at the same time when the technical façade of the white papers was exposed, highly divisive questions became more salient. These include matters for instance the relationship between State and market, role of the central government actors and regulation of non-economic public goods such as public health and environment¹⁴⁰. These matters have given rise to tension on three fronts that were vehemently opposed by the British government that perceived these areas as extremely centralising and interventionist¹⁴¹. The first front concern the degree of regulation required completing the internal market. In context of this issue, Commission president Jacques Delors in his speech to the European Parliament in July 1988, observed that it could lead to at least 80 percent of Member State economic legislation being passed as community law¹⁴². The second front relate to the question of the social dimension of the EC. With regard to that, the commission from 1986 onwards tried to link the development of the community social policy to the realisation of the internal market on the ground that some harmonisation of the social legislation

¹³⁸ Mancini (n 137).

¹³⁹ Craig, 'Development of the EU' (n 9) 20.

¹⁴⁰ Joseph HH Weiler, 'The transformation of Europe' [1991] *Yale Law Journal* 2403; Renaud Dehousse, 'Integration v. Regulation: On the Dynamics of Regulation in the European Community' (1992) 30 *J. Common Mkt. Stud* 383.

¹⁴¹ Chalmers, Davies, and Monti (n 6) 22.

¹⁴² *ibid.*

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drift towards the attainment of the internal market. In order to achieve that, the Commission proposed in May 1989 a Community Charter of Fundamental Social Rights which was adopted by all the Member States at the Strasbourg European Council apart from Britain¹⁴³.

The third front relates to the Economic and monetary Union (EMU). Regarding this issue, the Commission in early 1987 pointed that due to the uncertainty raised by the national currency stability, the gain anticipated for the single market could not be realised without some form of economic and monetary union¹⁴⁴. On the other hand the attainment of the single market was perceived to contribute to the monetary stability and to keep a check on the anti-inflammatory policies adopted by the Member States¹⁴⁵. The issue concerning monetary and economic union was no doubt a Trojan Horse¹⁴⁶. It conformed to the aspirations of President Kohl of Germany and President Mitterrand of France who have perceived the year 1992 as being the cantilever to open the gate to greater political integration¹⁴⁷. Thus, the question concerning economic and monetary union was placed on the agenda of the Hanover Summit, that was held in June 1988. There the head of the states declared : 'that the Single European Act confirmed the objective of the progressive realisation of economic and monetary union'¹⁴⁸.

¹⁴³ Conclusions of Strasbourg European Council, EC Bulletin 12-1989 (1989) s 1.1.1.

¹⁴⁴ Tommaso Padoa-Schioppa, Michael Emerson, and Fritz W Scharpf, *Efficiency, stability, and equity: a strategy for the evolution of the economic system of the European Community: a report* (Oxford University Press, USA 1987).

¹⁴⁵ Wayne Sandholtz, 'Choosing union: monetary politics and Maastricht' (1993) 47(1) International Organization 1.

¹⁴⁶ Chalmers, Davies, and Monti (n 6) 22.

¹⁴⁷ *ibid.*

¹⁴⁸ Conclusions of Hanover European Council, EC Bulletin 6-1988 (1988) ss 1.1.1-1.1.5.

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The Commission President Jacques Delors, who headed the Committee of central bank governors, known as Delors Committee was given the mandate to work on the concrete steps for the realisation of the economic and monetary union. The ‘Report of the Committee for the Study of Economic and Monetary Union’ (Delors Report) was submitted to the head of states in June 1989¹⁴⁹. The report suggested gradual realisation of the Economic and monetary Union in three stages. The first stage required competition of the internal market, liberalisation of the capital movements and Member States adhering to Exchange Rate Mechanism. The second stage necessitated the establishment of the European Central Bank, convergence of the national economies and gradual take over the functions of the national central bank by the European central bank. The last stage required the European Central bank to completely take over the functions of the National Central Bank and taking on the monopoly over the money supply¹⁵⁰. Though the report faced the opposition of all the Member States, it was finally agreed that first stage should begin on 1 July 1990. It was also agreed that the IGS conference should be called to amend the treaties, with a view to economic and monetary union¹⁵¹. However, both German and French presidents, considered that Economic and monetary Union could not be achieved without further political integration, for achieving that they launched an initiative in April 1990¹⁵². Furthermore it was agreed in June 1990 Dublin European Conference to convene an IGC on political union which took place in parallel with

¹⁴⁹ Conclusions of the Madrid European Council, EC Bulletin 6-1989 (1989) s 1.1.11.

¹⁵⁰ Michael J Artis, ‘The Maastricht road to monetary union’ (1992) 30 J. Common Mkt. Stud 299.

¹⁵¹ Chalmers, Davies, and Monti (n 6) 23.

¹⁵² For details on the Franco-German role in the negotiations leading to Maastricht Colette Mazzucelli, *France and Germany at Maastricht: politics and negotiations to create the European Union* (Routledge 2002).

2.4. DEVELOPMENTS WHICH ENHANCED SUPRANATIONALISM

the IGC on Economic and Monetary Union¹⁵³. The motivation that drive towards the political union was partly due to the new agenda of post-cold war International relations and partly by the political ramifications as a consequence of economic integration¹⁵⁴. This IGC con political union considered wide issues such as institutional reform, foreign policy, the development of new internal policy competences, policing and citizenship¹⁵⁵. The important issue that was debated in the ICG political union was regarding the structure of the Treaty. The pro integrationists Member States like Belgium and Netherland saw the ICG as an opportunity to overcome the main limitation of Single European Act, its ‘pillared’ structure¹⁵⁶.The Act, have given the formal recognition to the European Council and European Political Cooperation (EPC), have kept these institution and practices outside the Community system proper, were confirmed under the conventional international law but was not covered under the EC law¹⁵⁷. The pro integrationist Member States saw ICG as an opportunity to bring these practices fully into the community, specifically within the jurisdiction of the European Court of Justice¹⁵⁸. This led them proposed the ‘tree trunk’ approach to the community¹⁵⁹. Built on that the Luxembourg Presidency of the Council in April 1999 proposed ‘Luxembourg non-paper’, which proposed the

¹⁵³ See Conclusion of the Dublin European Conference, EC Bulletin 6-1990 (1990) s 1.11; Richard Corbett, ‘The Intergovernmental Conference on Political Union’ (1992) 30 J. Common Mkt. Stud 271; Daniel Wincott, ‘Federalism and the european union: The scope and limits of the treaty of Maastricht’ (1996) 17(4) International Political Science Review 406

¹⁵⁴ *ibid* 406.

¹⁵⁵ *ibid*.

¹⁵⁶ *ibid* 407.

¹⁵⁷ *ibid*.

¹⁵⁸ *ibid*.

¹⁵⁹ *ibid*.

2.5. THE TREATY ON EUROPEAN UNION: THE THREE PILLARS SYSTEM

three‘pillars’ structure for the European Union, the existing communities, foreign policy pillar and third pillar encompassing the intergovernmental cooperation in the area of Justice and home affairs¹⁶⁰. The final meeting of the conference was held in Maastricht on 10 December 1991 that culminated in a new treaty that was signed in Maastricht on 7 February 1992, known as Treaty on European Union (‘TEU’)¹⁶¹.

2.5 The Treaty on European Union: The Three Pillars System

The treaty on European union made not only substantive and institutional changes in the treaty of Rome, but its significance lays in terms of overall legal architecture it gives to the treaty by introducing the three pillars structure for the European Union. The large part of the Maastricht treaty is drawn with amending the EEC treaty, while the other part of the treaty stand in their own right¹⁶². The EEC treaty was officially renamed as the Treaty Establishing the European Community (‘EC’)¹⁶³ and the EEC is renamed the ‘European Community’¹⁶⁴. The first pillar dealt with ‘communities’. The second pillar dealt with the Common Foreign and Security Policy (CFSP), which was established on earlier mechanism for European Political Cooperation. The third pillar dealt with Justice and home affairs and was

¹⁶⁰ Wincott (n 153).

¹⁶¹ Trevor C Hartley, ‘Constitutional and institutional aspects of the Maastricht agreement’ (1993) 42(2) *International & Comparative Law Quarterly* 213; Treaty on European Union [1992] (https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_european_union_en.pdf)

¹⁶² Hartley (n 161).

¹⁶³ Deirdre Curtin, ‘The constitutional structure of the Union: A Europe of bits and pieces’ (1993) 30(1) *Common Market Law Review* 17; EC (n 39)

¹⁶⁴ art G(A) TEU (n 161).

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established on earlier informal initiatives taken in this area. In Principle these three pillars constitute a single institutional framework¹⁶⁵. The unitary legal framework was established in such a manner that understanding one pillar could only be had by referring to the TEU as a whole¹⁶⁶. Through this treaty, the EU was given new competence in areas of Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). The addition of these new areas of competence raised the question that why were these areas were not added when SEA widened the range of community competence through addition of new titles and chapters to the already existing treaty of Rome¹⁶⁷. The principal reason was that the Member States wished for the establishment of mechanism through which they could cooperate in relation to JHA and CFSP matters. As there was no established mechanism, this would mean that for discussion of every new issue, meetings had to be set up again, which was a time consuming and cumbersome process. Also the Member States were not willing to give in these areas to normal supranational procedure of a decision-making. Besides that, matters relating to JHA and CFSP were concerning issues to be at the core of the national sovereignty, therefore, Member States did not want the Commission and ECJ to exercise powers which they had under the community pillar. The decision making under second and third pillars became more intergovernmental with the Member States in the Council and the European Council maintaining the hold of power. The community institutions like European parliament, Commission or the ECJ role in decision making with either second or third pillars were reduced

¹⁶⁵ Art 3 TEU (n 161).

¹⁶⁶ Deirdre Curtin and Ige Dekker, 'The EU as a Layered International Organization: Institutional Unity in Disguise' in Paul Craig and Gráinne De Búrca (eds), *The evolution of EU law* (OUP Oxford 2011).

¹⁶⁷ Craig, 'Development of the EU' (n 9) 21.

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to minimum in comparison to its decision making under the community pillar¹⁶⁸.

The treaty of Maastricht introduced a number of significant institutional changes in the treaty of Rome. The treaty introduced a co-decision procedure, which had enhanced the Parliament's legislative involvement. Under this procedure, the Parliaments can block the legislation which it disapproved, if it was subject to this procedure¹⁶⁹. This change was further amended and strengthened by the Treaty of Amsterdam. Parliament was also given the power acting by majority of its members, to request the Commission to submit any 'appropriate proposal' on matter on which it considers that legislation is required for the purpose of implementing the Treaty¹⁷⁰. Further the Parliament was given the power to approve the appointment of new Commission¹⁷¹. The position of the European Council was established as an ultimate political authority. For the very first time, Its role as a body responsible for visioning and coordinating all the EU activities was formally endorsed¹⁷². The Member States commitment to respect the fundamental rights was recognized as a general principle of a Community law¹⁷³. Other significant institutional provisions relate to European system of central bank and (ESCB) and European central bank (ECB) at its helm for the supervision of the Economic and monetary Union¹⁷⁴. The ESCB is

¹⁶⁸ Craig, 'Development of the EU' (n 9); Case 160/03 *Spain v Eurojust* [2005] ECR

¹⁶⁹ Hartley (n 161) 224.

¹⁷⁰ Art 138b EC (n 39).

¹⁷¹ *ibid* art 158(1)(2).

¹⁷² Art 4 TEU (n 161).

¹⁷³ *ibid* F(2).

¹⁷⁴ Alicia Hinarejos, 'Economic and Monetary Union' in Catherine Barnard and Steve Peers (eds), *European union law* (Oxford University Press 2017) 575; René Smits, *The European Central Bank: Institutional Aspects* (Kluwer Law International 1997)

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supposed to be independent and free from any political influence¹⁷⁵. Parliamentary Ombudsman was established for keeping a check on acts of mal-administration by the EU institutions with the exception of the Court of Justice and the Court of First Instance acting within their judicial sphere¹⁷⁶.

The Maastricht Treaty introduced the ‘Principle of Subsidiarity’¹⁷⁷ for removing the fears that EC is becoming more ‘federal’. Now it is established as a general principle in the Community treaties¹⁷⁸. ‘Principle of subsidiarity’ distinguishes the areas where action is taken at the community level and at the national level¹⁷⁹. In the Preamble to the Treaty on European Union, it is declared that ‘in the process of creating an ever closer union among the peoples of Europe, the decisions will be taken ‘as closely as possible to the citizen in accordance with the Principle of subsidiarity’¹⁸⁰. And in achieving the objectives of the Union, the principle of Subsidiarity will be respected¹⁸¹. The principle of Subsidiarity read as ‘In areas which do not fall within its exclusive competences, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives

¹⁷⁵ Treaty on the Functioning of the European Union [2007] (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:4301854&from=EN>), art 130.

¹⁷⁶ Art 138e EC (n 39).

¹⁷⁷ Commission, ‘The Principle of Subsidiarity’ (communication) SEC(92)1990; Overall Approach to the Application by the Council of the Subsidiarity Principle and Article 3b of the Treaty on European Union’ Annex I to Part A of the ‘Conclusions of the Presidency’, European Council in Edinburgh, 11-12 Dec. 1992; Akos G Toth, ‘The principle of subsidiarity in the Maastricht Treaty’ (1992) 29(6) Common Market Law Review 1079

¹⁷⁸ It was introduced in a limited area (the environment) by Treaty of Rome (EEC) [1957] (https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf) (n 35) art 130r(4) inserted by Single European Act, art 5 EC (n 39)

¹⁷⁹ *ibid* art 5.

¹⁸⁰ A(second para) TEU (n 161).

¹⁸¹ *ibid* B(final para).

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of proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of proposed action, be better achieved by the Community'¹⁸².

A new concept of European citizenship was introduced¹⁸³. It provides that every person holding the nationality of a Member State will be the citizen of the Union¹⁸⁴. Important provisions relating to economic and monetary union were introduced¹⁸⁵, which set the foundations for introduction of single currency for the community¹⁸⁶. The EC was given a new area of competences, which included education, public health, the establishment of trans-European networks in transports, energy and telecommunication, consumer protection, industrial policy and development cooperation¹⁸⁷.

2.5.1 Common Foreign and Security Policy

The Community treaties obtained a foreign policy dimension in 1987 through introduction of Part III of the Single European Act which institutionalised the European Political Cooperation (EPC) that can be traced back to as early as 1969¹⁸⁸. In the beginning, EPC was strictly separated from Community matters and Community

¹⁸² Art 3b(second para) TEU (n 161).

¹⁸³ Arts 17,21 EC (n 39).

¹⁸⁴ *ibid* art 8(1).

¹⁸⁵ *ibid* art 98-124.

¹⁸⁶ For more details see Jörn Pipkorn, 'Legal Arrangements in the Treaty of Maastricht for the Effectiveness of the Economic and Monetary Union' (1994) 31(2) *Common Market Law Review* 263.

¹⁸⁷ Chalmers, Davies, and Monti (n 6) 25.

¹⁸⁸ Arts 1. It is regarded as originating with the Hague Summit of December 1969 and Luxembourg Report of October 1970 SEA (n 120).

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institutions were prevented to participate in EPC deliberations¹⁸⁹. With passage of time this practice changed, and the Single European Act provided that the Commission would be ‘fully associated with the proceedings of the Political Co-operation’¹⁹⁰ and that the European Parliament would be ‘closely associated’¹⁹¹. Article 30 of SEA built an institutional structure for EPC¹⁹². It gave the provision for the regular meetings of Ministers of Foreign Affairs to discuss EPC, created political Committees somewhat parallel to COREPER, constituted by political directors from the 12 Foreign Affairs ministers¹⁹³. Provisions were also made for working groups¹⁹⁴, European Correspondents’ group¹⁹⁵ and a secretariat based in Brussels¹⁹⁶. The contracting State holding the presidency of EPC¹⁹⁷ was responsible to initiate actions and coordinate positions¹⁹⁸. These provisions were repealed by the Treaty on European Union¹⁹⁹ and is replaced by Title V – ‘Common Foreign and Security policy’. The Member States are obliged to support a Community foreign and security policy in a spirit of loyalty and mutual solidarity²⁰⁰. The CFSP is to be pursued by two

¹⁸⁹ Hartley (n 161) 230.

¹⁹⁰ Art 30(3)(b) SEA (n 120).

¹⁹¹ *ibid* art 30(4).

¹⁹² *ibid* art 30(3)(a).

¹⁹³ *ibid* art 30(10)(c); See now J.8(5) TEU (n 161)

¹⁹⁴ Arts 30(10)(e), 30(10)(f) SEA (n 120).

¹⁹⁵ *ibid* art 30(10)(e).

¹⁹⁶ *ibid* art 30(10)(g).

¹⁹⁷ *ibid* art 30(10)(a) provided that the Presidency of EPC would be held by the same State as held the Presidency of the Council of the Council of the EC.

¹⁹⁸ *ibid* art 30(10)(b).

¹⁹⁹ P(2) TEU (n 161).

²⁰⁰ *ibid* J.1(4).

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means systematic co-operation and joint action²⁰¹. Systematic co-operation is included consultation, common positions (policies of Member States must conform to it and coordinated actions)²⁰². Joint action came into operation if the Council take decision (on the basis of the guidelines from the European Council) that a matter is to be the subject of joint action²⁰³. Once determined it will lay down the scope, objectives and duration of the joint action, along with the means, procedures and conditions for the implementation of joint action²⁰⁴. Issues involving defence implications are not subject to the provisions of joint action but is covered by Article J.4 which envisioned the ultimate framing of a common defence policy which ‘might in time lead to a common defence’²⁰⁵. The CFSP established the objectives of the European Union in this area which included preservation of peace and international security, respect for human rights and development of democracy²⁰⁶. The European Council hold the overall control of the CFSP. It is responsible to define the principles and general guidelines, while the EC Council is responsible to take decisions to implement it²⁰⁷. Despite the decision making of CFSP is predominantly given to the European Council and Council, the Commission is also required to be fully associated with the work carried out in the CFSP area²⁰⁸ as well as the European

²⁰¹ J.1(3) TEU (n 161).

²⁰² *ibid* J.2.

²⁰³ Hartley (n 161) 230.

²⁰⁴ *ibid*.

²⁰⁵ J.4(1) TEU (n 161).

²⁰⁶ Craig, ‘Development of the EU’ (n 9) 22.

²⁰⁷ J.8 TEU (n 161).

²⁰⁸ *ibid* J.9.

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Parliament is to be kept informed about foreign and security policy²⁰⁹.

2.6 Joint Operation in Area of Justice and Home Affairs

A similar pattern of co-operation has been established under the pillar of JHA which includes asylum policy, immigration from non-member States, controls on the Community's external frontiers, international fraud, drug addiction, judicial co-operation in civil and criminal matters, custom co-operation and police co-operation for combating serious international crime. The Member States are required under the treaty to consult, collaborate and co-ordinate their action in these areas²¹⁰. Decision making was dominated by the Council which may adopt joint action and joint positions²¹¹. The Council can also frame the conventions to be adopted by the Member States. Measures to implement those conventions will be adopted within the Council by the majority decision of two-thirds of the contracting states, unless provided to the contrary by such conventions²¹².

2.6.1 Treaty of Amsterdam

After the Maastricht Treaty came into force, some important development took place on the European Union scenario. Most importantly the expansion of the EU membership through joining of new Member States. The Sweden, Austria and Finland

²⁰⁹ Craig, 'Development of the EU' (n 9) 22.

²¹⁰ Hartley (n 161) 231.

²¹¹ *ibid.*

²¹² K.3(2)(c) TEU (n 161).

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acceded to TEU on 2 January 1995²¹³. With Norway, accession agreement was also negotiated, but national referendum opposed accession with the EU, similar to its earlier national referendum held in 1973²¹⁴. An Agreement on European Economic Area (EEA) was concluded between EC and Member States of the European Free Trade Association (EFTA). The agreement entered into force in 1994²¹⁵.

The Treaty of Amsterdam was signed in 1997 and entered into force on 1st May 1999²¹⁶. The aim was to prepare the Union for accession of Eastern European Countries; however, this matter was postponed till the Nice treaty. Though Treaty of Amsterdam brought small-scale treaty reforms, however it had not only deleted the obsolete provisions from the EC treaty, but also renumbered all the articles, titles and sections of the EC and TEU Treaty²¹⁷. It is important to highlight here the reasons for the reforms introduced by the treaty of Amsterdam. The period of 1990s witnessed a surge of political and academic debate on the legitimacy of the EU. It can be said that the rationale behind the introduction of treaty reforms through

²¹³ For discussion on accession negotiations see Marc Jorna, 'The accession negotiations with Austria, Sweden, Finland and Norway: a guided tour' (1995) 20(2) *European Law Review* 131

²¹⁴ Craig, 'Development of the EU' (n 9) 22.

²¹⁵ The agreement provided provisions for free-movement similar to those in the EC treaty. Similar Rules on competition policy, and close cooperation in other policy areas, having been declared compatible with the EC treaty by the ECJ Case 1/91 *Opinion of the Court of 14 December 1991* [1991] ECJ; Case 1/92 *Opinion of the Court of 10 April 1992* [1992] ECJ; Thérèse Blanchet, Risto Piipponen, Maria Westman-Clément, and others, *The agreement on the European Economic Area (EEA): a guide to the free movement of goods and competition rules* (Oxford University Press 1994); John Forman, 'The EEA Agreement five years on: dynamic homogeneity in practice and its implementation by the two EEA courts' (1999) 36(4) *Common Market Law Review* 751

²¹⁶ Kirsty Hughes, 'The 1996 intergovernmental conference and EU enlargement' (1996) 72(1) *International Affairs* 1, 72; Steve Peers, 'Justice and Home Affairs' (2000) 49(1) *International & Comparative Law Quarterly* 222; Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Final Act [1997] OJ C340/115 (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:11997D/AFI&from=EN>)

²¹⁷ Craig, 'Development of the EU' (n 9) 23.

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Amsterdam Treaty was a way to enhance the EU's legitimacy²¹⁸. Concerning the decision making process, the principle of openness, under which the decisions were meant to be taken 'as openly as possible and as closely as possible to the citizen' was added²¹⁹. Establishment of the area of 'freedom, security and justice' and promotion of the high level employment were added to the EU objectives²²⁰, as well as the assertion that the Union was founded on respect for human rights, democracy and rule of law²²¹ and the membership of the Union was made conditional on respect for these principles²²². The Treaty of Amsterdam also declared that the EU should respect the fundamental human rights set out in European Charter for Human Rights (ECRH) and in national Constitutions of the Member States²²³. And if any Member State is found of 'serious and persistent breach' of principles concerning democracy, rule of law and human rights by the Council, this could lead to suspension of some of those states' rights under the treaty²²⁴.

The institutional reforms, introduced by the Treaty of Amsterdam, were mostly an extension and consolidation of the reform process introduced through the Single European Act. The European Parliament powers were increased through amendment of the co-decision procedure and the treaty articles to which this procedure was applicable were expanded²²⁵. The areas that were governed by the co operation

²¹⁸ Craig, 'Development of the EU' (n 9) 22.

²¹⁹ Consolidated Version of the Treaty on European Union [1997] OJ C340/145 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11997M/TXT&from=EN>), art 1.

²²⁰ *ibid* art 2.

²²¹ *ibid* art 6.

²²² *ibid* art 49.

²²³ *ibid* art 6(2).

²²⁴ *ibid* art 7.

²²⁵ Joint Declaration on Practical Arrangements for the New Co-Decision Procedure [1999] OJ C148/

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procedure were upgraded to co-decision procedure, thus it became the method for making important Community legislation²²⁶. The co-decision method required the approval of the Council and European Parliament before a measure being adopted and emphasized the conclusion of jointly approved text²²⁷. Despite disagreement about the ‘power dynamics’ within the co-decision method specifically concerning the power of the European Parliament under this method and other legislative procedures²²⁸. Co-decision was successful in practice and helped in accommodating differing interest with a stake in legislative process²²⁹. The European Parliament makes use of its veto power under Article 251 EC to a less extent, in spite of that fact the decision-making takes place under its shadow²³⁰. A research indicate that amendments made by the EP modified the Commission proposal, by could not significantly alter it²³¹. That is because the draft proposals were discussed with EP and Council/Coreper, before Article 251 was initiated, which helped in accommodating the diverse opinions²³². Still if this dialogic process could not reconcile the differences on proposed legislation, the EP and Council could propose amendments,

1; Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 54

²²⁶ For details on co-decision procedure or ordinary legislative procedure see <http://ec.europa.eu/codecision/indexen.htm>

²²⁷ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 57.

²²⁸ Geoffrey Garrett and George Tsebelis, ‘Understanding better the EU legislative process’ (2001) 2(3) *European Union Politics* 353; Richard Corbett, ‘A response to a reply to a reaction (I hope someone is still interested!)’ (2001) 2(3) *European Union Politics* 361

²²⁹ Alan Dashwood, ‘3 European Community Legislative Procedures After Amsterdam’ (1998) 1 *Cambridge Yearbook of European Legal Studies* 25.

²³⁰ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 58.

²³¹ Amie Kreppel, ‘Moving beyond procedure: an empirical analysis of European Parliament legislative influence’ (2002) 35(7) *Comparative Political Studies* 784; Robert Thomson and Madeleine Hosli, ‘Who Has Power in the EU? The Commission, Council and Parliament in Legislative Decision-making’ (2006) 44(2) *JCMS: Journal of Common Market Studies* 391

²³² Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 58.

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which impelled the Commission to bring the required modification, as with Service Directive²³³. Within the co-decision procedure the Commission also retained its influence. For instance before a measure is adopted it could withdraw and or submit the modified version of the measures. Similarly it gives a regular response to EP propose amendments, indicating those acceptable to it or not. In situation where the Commission gives its negative response on EP second-reading amendments, the Council could only adopt it through a unanimous voting²³⁴. The modifications introduced to the co-decision process by the Treaty of Amsterdam had secured to EP a co-equal role in the legislative process with the Council²³⁵. The procedure embodied an institutional balance in which the EP, the Council and the Commission all played a role in legislative process²³⁶.

Further treaty amendment, which required the Parliament's assent for appointment of the Commission President, indicates the increase in the European parliament's power²³⁷. The scope of the community power was enhanced through addition of new heads, such as a new title on employment was added, or through modification of the existing heads, for instance provisions on social policy were modified, the title on public health was replaced and enhanced and on consumer protection was

²³³ Commission of the European Communities, 'Proposal for a Directive of the European Parliament and of the Council, on services in the internal market' COM (2004) 2 final 3 Brussels (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004PC0002&from=EN>); European Parliament, 'Report on the proposal for a directive of the European Parliament and of the Council on services in the internal market Committee on the Internal Market and Consumer Protection' COM(2005) A6-0409 final Brussels; Commission, 'Amended Proposal for a Directive of the European Parliament and of the Council, on services in the internal market' COM (2006) 160 final

²³⁴ Craig, 'Institutions, Power and Institutional Balance' (n 58) 58.

²³⁵ *ibid* 58.

²³⁶ *ibid* 58.

²³⁷ Art 214(2) EC (n 39).

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amended²³⁸. The community was authorised to do necessary legislation to struggle discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation²³⁹. The Treaty of Amsterdam also made amendments in the second and third pillars. The amendments made in the second pillar were though quite modest. For assistance of the council presidency the Secretary-General of the Council was nominated as ‘High Representative for the CFSP’. Besides that, Council was given the power to conclude international agreement²⁴⁰.

2.6.2 The Area of Freedom, Security and Justice (AFSJ)

Under the Treaty of Amsterdam, more significant changes were made to the Third Pillar. The Justice and Home Affairs pillar governed the policies related to immigration, asylum, ‘third country’ nationals, cooperation on international crime issues, and various form of police, judicial and custom cooperation. The treaty through amendment moved the immigration, asylum and third country national to title IV, and subject the third pillar provisions to institutional controls closer to those under the Community pillar. Title IV along with third pillar was then renamed ‘Police and Judicial Cooperation in Criminal matters’. The objective behind remodelling of third pillar was to provide citizens high level of safety in area of freedom, security and justice through introduction of ‘common action’ in three areas, such as Judicial cooperation in criminal matters, police cooperation in criminal matters and

²³⁸ Craig, ‘Development of the EU’ (n 9) 23.

²³⁹ Art 13 EC (n 39).

²⁴⁰ Art 24 EU (n 219); Jaap W De Zwaan, ‘The legal personality of the European Communities and the European Union 1’ (1999) 30 *Netherlands Yearbook of International Law* 75

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prevention and combating of racism and xenophobia²⁴¹. It was through legal instruments specific to third pillar these objectives were pursued²⁴². For instance decisions, framework decisions, common positions and conventions²⁴³.

2.6.3 Treaty of Nice and the European Charter of Fundamental Rights and Freedoms

The two areas, which required further consideration, were, first whether the European Union shall have its own Bills of Right? This question had already generated lots of debate²⁴⁴. The provision regarding the expulsion of the Member States for gross violations of the human rights were seen by states quite excessive²⁴⁵. The Second question was regarding the institutional pressure generated by the possible expansion of the European Union²⁴⁶.

2.6.4 EU Charter of Rights

The Member States in there meeting at Cologne in 1999, agreed that an EU Charter of fundamental Rights should be established which classified these rights. For that achieving that objective a special convention was set up to agree the Charter instead of leaving it to the intergovernmental negotiations²⁴⁷. The Convention was

²⁴¹ Art 29 EU (n 219).

²⁴² *ibid* art 34.

²⁴³ Peers (n 216) 223.

²⁴⁴ Chalmers, Davies, and Monti (n 6) 34.

²⁴⁵ *ibid*.

²⁴⁶ *ibid*.

²⁴⁷ Gráinne De Búrca, 'The drafting of the EU Charter of Fundamental Rights' (2001) 26(2) *European Law Review* 126.

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composed of fifteen representatives of national governments, thirty representatives of national parliaments, sixteen representatives of the European Parliament and one representative of the Commission and was headed by former German President Roman Herzog²⁴⁸. It also received extensive representation from the civil society. The Convention met in open session and matters were decided by consensus rather than voting. Parliamentarians proposed 805 amendments where as only 356 amendments were proposed by the government representatives²⁴⁹. The discussion in the convention took the form of a deliberative decision-making unlike the previous routine negotiations between the governments and successfully drafted the European Union Charter of Fundamental Rights and Freedoms. The Charter was wide ranging in terms of the rights it recognized²⁵⁰. It was then adopted by the Convention in 2000²⁵¹. At Nice European Council in December 2000, the Charter received political support of the Member States²⁵². The Charter was drafted to be a legally binding instrument, and its legal status was intended to be resolved during the deliberation of the Treaty of Nice. However, its legal status remained unresolved at Nice and decision regarding its legal status was put on ‘post-Nice agenda and deferred till the 2004 IGC²⁵³.

The treaty of Amsterdam had failed to address the institutional structure, pending enlargement of the Union. This necessitated the call for further IGC, to

²⁴⁸ Chalmers, Davies, and Monti (n 6) 35.

²⁴⁹ Andreas Maurer, ‘The Convention, the IGC 2004 and European System development. A Challenge for parliamentary democracy’ [2003] Joint Conference ‘Democracy and Accountability in the Enlarged European Union’ SWP AND Austrian Academy of Social Sciences.

²⁵⁰ Chalmers, Davies, and Monti (n 6) 35.

²⁵¹ *ibid.*

²⁵² Official Journal of the European Communities [2000] OJ C364/1.

²⁵³ Craig, ‘Development of the EU’ (n 9) 25.

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pave the way for treaty amendments, which was unavoidable. The IGC was convened in 1999 to discuss composition of the Commission, extension of the Qualified majority voting and weighing of the votes in the Council²⁵⁴. Pursuant to that, the Treaty of Nice was concluded on 11 December 2000, after over ninety hours of acrimonious, direct negotiations between the head governments and came into force on 1st February 2003²⁵⁵. The treaty brought a number of changes to the Treaty of Rome, especially relating to the internal structure of the Community. The consensus was reached for the reforms of the institutional arrangement to accommodate the new future members. Besides that, the treaty provisions concerning the distribution of seats in the Parliament, vote weightage in the Council and the composition of the Commission were amended²⁵⁶.

2.6.5 The Laeken Declaration

At Nice, the Member States had already announced that there would be another IGC in 2004 for consideration of the matters that had remained unresolved. These matters included the status of the EU Charter of the fundamental rights, setting out adequately the role of the national parliaments in the European architecture and simplification of the treaties. There was also dissatisfaction over the intractable process of closed negotiations between the governments running up against the dead-

²⁵⁴ Craig, 'Development of the EU' (n 9).

²⁵⁵ Mark Gray and Alexander Stubb, 'The Treaty of Nice-Negotiating a Poisoned Chalice' (2001) 39 *J. Common Mkt. Stud* 5; See also René Barents, 'Some Observations on the Treaty of Nice' (2001) 8(2) *Maastricht Journal of European and Comparative Law* 121; Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Declarations Adopted By The Conference - Declaration on the future of the Union [2001] OJ C80/85 (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12001C/DCL/23&from=EN>)

²⁵⁶ Craig, 'Development of the EU' (n 9) 25.

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lines brought by every IGC²⁵⁷. In a declaration at Nice, the Member States called ‘for a deeper and a wider debate about the future of the European Union’ which should cover ‘wide ranging discussions with all interested parties: representatives of the national parliaments and those reflecting public opinion, namely political, economic and university circles, representatives of civil society, etc’²⁵⁸. The declaration was preceded by a significant debate among the political leaders regarding the nature of the institutional reforms started by the German Foreign Minister Joschka Fischer at the Humboldt University in Berlin. He deliberated that ‘European Integration had to have a finalite and that this should be a European Constitution’²⁵⁹. His idea of European Constitution was supported by numerous head of States. Likewise in the late 1990s many national governments seemed to agree to reform the Union’s institutional structure which in its present shape could not accommodate a large and disparate number of Member States and the current title required to improve the democratic credentials in the light of ever increasing expansion of the tasks conferred on the Union²⁶⁰. This consensual belief of the Member States was the main reason behind convening a Convention on the Future of Europe to draft a

²⁵⁷ Chalmers, Davies, and Monti (n 6) 36.

²⁵⁸ Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certa in related acts - Declarations Adopted By The Conference - Declaration on the future of the Union [2001] OJ C80/85 (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12001C/DCL/23&from=EN>) (n 255).

²⁵⁹ See speech by Joschka Fischer, ‘From confederacy to federation: thoughts on the finality of European integration’ [2000] (<https://ec.europa.eu/dorie/fileDownload.do?docId=192161&cardId=192161>).

²⁶⁰ European Parliament resolution of 20 February 2008 on the Treaty of Lisbon (2007/2286(INI)), points B and C. In the words of the European Parliament, since the Treaty of Maastricht, the Member States have ‘tried to settle the institutional structure of the Union’ because they recognised the ‘need to reform and strengthen the structures of the Union in order to consolidate [the Union’s] achievements and to improve the capacity of a Union of twenty-seven, and potentially more, Member States to function effectively so as to enable it to face common new challenges and to be subject to greater democratic accountability.

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new treaty with the laudable objective of making the functioning of the Union more democratic, transparent and efficient²⁶¹.

Later in December 2001, the debate re-emerged at Laeken in Belgium when the Member States had to plan about the preparation for the upcoming IGC 2004²⁶². There an agreement was reached that reforms brought through the Amsterdam and Nice treaty was not sufficient to equip the Union with new challenges and nor were they adequate to engage the popular enthusiasm²⁶³. Thus, what was required was to initiate the process of the democratic regeneration. The process of democratic regeneration not only required a wide -ranging institutional reforms, but also required an extraordinary process²⁶⁴. These opinion was the catalyst for the establishment of the convention on the Future of Europe Convention²⁶⁵.

2.6.6 Constitutional Treaty

The Convention²⁶⁶ was chaired by the Former French President Giscard d'Estaing, with two vice chairmen and was composed of representatives from the national governments, national parliaments, the European Parliament and the Commission²⁶⁷.

²⁶¹ Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Declarations Adopted By The Conference - Declaration on the future of the Union [2001] OJ C80/85 (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12001C/DCL/23&from=EN>) (n 255).

²⁶² Chalmers, Davies, and Monti (n 6) 37; Paul Craig, 'Constitutional Process and Reform in the EU: Nice, Laeken, the Convention and the IGC' (2004) 10(4) *European Public Law* 653

²⁶³ European Council of Laeken, Presidency Conclusions 14–15 December 2001. Annex I: Laeken Declaration on the Future of European Union (12, Laeken, 15 December 2001) (<https://www.refworld.org/docid/3ef2ceb44.html>).

²⁶⁴ *ibid.*

²⁶⁵ The European Convention, Draft Treaty establishing a Constitution for Europe [2003].

²⁶⁶ <http://european-convention.europa.eu/EN:bienvenue2352.html?lang=EN>

²⁶⁷ <http://European-convention.europa.eu/EN/bienvenue/bienvenue2352.html>

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The Praesidium undertook the executive role in the convention²⁶⁸. The convention began its work in 2002, and for the consideration of those particular topics, extensive use of the working groups were made²⁶⁹. The Convention gave the proposals for the Treaty on the Constitution of Europe. As a result a Constitutional treaty was emerged from the Convention in June 2003 that was agreed by the Member States after some amendments²⁷⁰. The treaty was submitted to the European Council in July²⁷¹.

Despite differences of the Member States in the European Council on certain issues, the agreement on the constitutional treaty was secured at the European Council meeting in June 2004²⁷². As a prerequisite for becoming a law, the constitutional treaty required ratification by each Member State. Fifteen Member States ratified the treaty, but the ratification process came to halt when Netherland and France rejected the constitutional treaty in there referendum²⁷³. The reasons for the cast of the negative votes by the opponents were concerning the issues like globalization, fears about the Turkish membership of the Union, the consequences of the 2004 enlargement of the Union and in Netherland the voters showed their displeasure at the perceived power of the large Member States in the Union²⁷⁴. As a result,

²⁶⁸ It was composed of the Convention Chairman and Vice Chairmen , and nine other members

²⁶⁹ Working groups were established on subsidiarity

²⁷⁰ Treaty Establishing a Constitution for Europe [2004] OJ C310/1.

²⁷¹ The European Convention, Draft Treaty establishing a Constitution for Europe (n 265).

²⁷² European Union, Brussels European Council,17-18 June 2004 (2004) 02/S-2004, paras 4-5.

²⁷³ Renaud Dehousse, 'The unmaking of a constitution: Lessons from the European referenda' [2006] , 151.

²⁷⁴ Flash Eurobarometer, The European Constitution: Post-Referendum Survey in France and in The Netherlands. This was Notwithstanding that 82 percent of the Dutch a 88 percent of the French still had the positive perception of the Union after the referendum (https://ec.europa.eu/commfrontoffice/publicopinion/flash/fl171_en.pdf); European Commission, 'The period of

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other also Member States postponed their ratification process. Thus, the European Council in 2005 took a decision and halted the ratification process and call for a ‘period of reflection’ while taking into consideration that the negative votes against the treaty by the France and Netherland may prompt other states to vote against the treaty²⁷⁵. The constitutional treaty, which never ‘recovered’ from the negative votes of Netherland and France, and became the law²⁷⁶. However the Lisbon treaty which was ratified in 2009 retained all the reforms contained in the Constitutional treaty²⁷⁷. It is said that the significant difference from the Constitutional treaty was the given up of the word ‘constitution’²⁷⁸. There were two main reasons behind it. First the Lisbon treaty pursued the same objectives as was under the Constitutional treaty that is ‘to enhance the efficiency and democratic legitimacy of the Union and to improve the coherence of its action’ Secondly the national governments did not want to restart the long drawn process of treaty negotiation that has already been concluded under the Constitutional treaty²⁷⁹.

Reflection and Plan D, Brussels’ COM (2006) 212 2

²⁷⁵ Craig, ‘Development of the EU’ (n 9) 27.

²⁷⁶ *ibid.*

²⁷⁷ *ibid.*

²⁷⁸ Grainne de Burca, *Reflections on the path from the Constitutional Treaty to the Lisbon Treaty* (techspace rep, Jean Monnet Working Paper No 03/08 2008) (<https://jeanmonnetprogram.org/paper/reflections-on-the-path-from-the-constitutional-treaty-to-the-lisbon-treaty-3/>).

²⁷⁹ Paul Craig, ‘The Treaty of Lisbon: Process, architecture and substance’ (2008) 33(2) *European law review* 137, 158; See also Hervé Bribosia, ‘The main institutional innovations of the Lisbon treaty’ in Stefan Griller and Jacques Ziller (eds), *The Lisbon Treaty: EU constitutionalism without a constitutional treaty?* (Springer 2008) vol 11, 57

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2.6.7 The Lisbon Treaty: Negotiations and Formation

The negative reaction against the Constitutional treaty and its failure to become a law has given rise to public debate as to what should happen to a ‘constitutional project’²⁸⁰. The German government in March 2007, at the fiftieth anniversary of the Treaty of Rome, obtained a commitment from other Member States to ‘place the European Union on a renewed common basis before the European Parliament elections in 2009’²⁸¹. Germany, which was holding the presidency of the European Council in first half of 2007, was given this task to assess the possibilities of Treaty reform. The Germany was chosen on the basis of its organizational capacity and power to move the matters forward on the treaty reforms. After its commitment to a deadline to ratify a new treaty, Germany got engaged in a series of bilateral discussions with Member States to determine whether an agreement could be reached on a revised treaty reforms²⁸². Germany’s presidency of the European Council, which came to an end with the June 2007 European Council²⁸³. The European Council had set out the changes that should be made to the Constitutional treaty in order to obtain the successful conclusion of the revised version of the treaty²⁸⁴. This led

²⁸⁰ Gráinne De Búrca, ‘The European Constitution project after the referenda’ (2006) 13(2) *Constitutions* 205; Andrew Duff, *Plan B: how to rescue the European Constitution* (Notre Europe Paris 2006) (<https://institutdelors.eu/en/publications/plan-b-how-to-rescue-the-european-constitution/>)

²⁸¹ EU Council, Declarations on the occasion of the fiftieth anniversary of the signature of Rome , Brussels ,25 March 2007 , para 3

²⁸² Craig, ‘Development of the EU’ (n 9) 27.

²⁸³ The Council of the European Union, Presidency Conclusion 21-22 june 2007, Brussels (20 July 2007) 11177/1/07 REV 1 (https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/94932.pdf).

²⁸⁴ *ibid.*

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the birth of the reform treaty²⁸⁵. In that context the European Council concluded that ‘after the two years of uncertainty over the Union’s treaty reform process, the time had come to resolve this issue and for the Union to move on’²⁸⁶. An Intergovernmental Conference (IGC) was convened²⁸⁷, to work on a detailed mandate provided in Annex I to the conclusion of the European Council, and to wind up the deliberations till the end of 2007²⁸⁸. The reform treaty was to contain two principal clauses which would amend the EC treaty that would be renamed the treaty on the functioning of the European Union TFEU and TEU²⁸⁹. More importantly the Union should have a single legal personality and was it agreed to replace the word ‘community’ with the ‘union’ throughout the treaty²⁹⁰. Furthermore, it was also agreed to remove the mention of word ‘constitution’ from the reform treaty, for the reason that for some Member States the constitutional terminology of the constitutional treaty was problematic, therefore, it was decided to be dropped²⁹¹. Similarly the same rationale was applied for the other terminological changes that were brought in the wording of the constitutional treaty whether required or not²⁹², only to give the idea of the EU as a single entity. For instance, the title ‘Union Minister for For-

²⁸⁵ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 73.

²⁸⁶ The Council of the European Union, Presidency Conclusion 21-22 june 2007, Brussles (n 283) para 8.

²⁸⁷ *ibid* para 10.

²⁸⁸ *ibid* para 11.

²⁸⁹ Craig, ‘Development of the EU’ (n 9) 27.

²⁹⁰ The Council of the European Union, Presidency Conclusion 21-22 june 2007, Brussles (n 283) 2, Annex I.

²⁹¹ Craig, ‘Development of the EU’ (n 9) 28.

²⁹² Stefan Griller, ‘Is this a constitution? Remarks on a contested concept’ in Stefan Griller and Jacques Ziller (eds), *The Lisbon Treaty: EU constitutionalism without a constitutional treaty?* (Springer 2008) vol 11.

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Foreign Affairs' was replaced by 'High Representative of the Union for Foreign Affairs and Security Policy', and terms like 'law' and 'framework of law' were given up. Furthermore, the clause regarding supremacy of the EC law was replaced by the declaration. Besides that, there was no flag, anthem and motto²⁹³. Undoubtedly, the conclusion of the treaty of Lisbon was a significant coup²⁹⁴. It required the amendments to all of the articles in TEU and to 216 provisions in the EC treaty²⁹⁵. Besides that, the significant differences between the twenty seven Member States needed to be bridged, each holding its own distinct agenda and constituencies²⁹⁶.

Portugal was holding the presidency during the second half of 2007, and was interested that treaty reforms should be concluded during its term of presidency, so that the new treaty should bear its name²⁹⁷. The rapid developments during the second half of the 2007 towards the adoption of the reform treaty was quite noticeable. There was hardly any time for detailed discussion or input into the draft treaty that come forth from the IGC²⁹⁸. There were two main reasons behind it. First the Lisbon treaty pursued the same objectives as was under the Constitutional treaty that is 'to enhance the efficiency and democratic legitimacy of the Union and to improve the coherence of its action' Secondly the national governments did not want to restart the long drawn process of treaty negotiation that has already been

²⁹³ Craig, 'Development of the EU' (n 9) 28.

²⁹⁴ Chalmers, Davies, and Monti (n 6) 39.

²⁹⁵ *ibid*; See also Statewatch (www.statewatch.org/new/2007/oct/eu-reform-treaty-tec-external-relations-3-5.pdf)

²⁹⁶ Chalmers, Davies, and Monti (n 6) 39.

²⁹⁷ Craig, 'Development of the EU' (n 9) 28.

²⁹⁸ *ibid*.

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concluded under the Constitutional treaty²⁹⁹.

The Member States on 13 December 2007³⁰⁰, signed the document produced by the IGC and the title of the document Reform Treaty was changed to Lisbon Treaty, in recognition of the place where the treaty was signed. Finally, the treaty entered into force on 1st December 2009³⁰¹.

2.6.8 The Composition of the Treaty of Lisbon

The treaty of Lisbon did not repeal the EU's two founding treaties but have made substantial amendments to TEU and EC treaty³⁰². The Lisbon treaty consists of seven articles along with numerous protocols and declarations. Articles 1 and 2 of Lisbon treaty are the most important. Article 1 amended the TEU and incorporated the principles that govern the EU. It also contained the revised provisions regarding CFSP and enhanced cooperation. Article 2 amended the EC treaty and was renamed the Treaty on the Functioning of the European Union (TFEU). The EU is henceforth established on the TEU and TFEU, and both the treaties have the same legal value³⁰³. The EC is replaced and succeeded by the Union³⁰⁴. A consolidated version of the treaty of Lisbon also contains new numbering and references to the

²⁹⁹ Craig, 'The Treaty of Lisbon: Process, architecture and substance' (n 279) 158; Bribosia (n 279) 57

³⁰⁰ Conference of the Representatives of the Governments of the Member States, Treaty of Lisbon Amending the Treaty on European Union and Treaty Establishing the European Union, CIG 14/07 Brussels [2007] OJ C306/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12007L/TXT&from=EN>).

³⁰¹ *ibid*; Craig, 'The Treaty of Lisbon: Process, architecture and substance' (n 279) 137

³⁰² Jean-Claude Piris, *The Lisbon Treaty: a legal and political analysis* (Cambridge University Press 2010).

³⁰³ Art 1(para 3) TFEU (n 175).

³⁰⁴ *ibid*.

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old provisions, where it is required³⁰⁵.

2.6.9 The Substance of the Treaty of Lisbon

In comparison to Constitutional treaty the Lisbon Treaty is less cleared about the constitutional principles which is contained in Part I of the Constitutional treaty for the governing of the Union³⁰⁶. Still the revised TEU contain few constitutional provisions for the EU³⁰⁷. For instance, Title 1 covers Common Provision, Title II covers the democratic principles and Title III covers the provisions on the Institutions. However, there are certain matters not covered in TEU, which had been covered in Part I of the Constitutional treaty. For instance, the main rules concerning the competences are provided in TFEU³⁰⁸, the provisions relating to the hierarchy of the norms³⁰⁹ and provisions relating to the budgetary planning are in the TFEU³¹⁰.

The second treaty in the Treaty of Lisbon, named Treaty on the Functioning of the European Union (TFEU) lay out the detail competence of the Union and the detailed procedure to be used in each policy field, with the exception of the Union external action³¹¹. In legislative style, it matches the existing EC treaty³¹². The TFEU has taken one significant adaptation from the constitutional treaty, that is

³⁰⁵ Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European [2010] OJ C53/1 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2010.083.01.0001.01.ENG&toc=OJ:C:2010:083:TOC#C_2010083EN.01001301)

³⁰⁶ Craig, 'Development of the EU' (n 9) 29.

³⁰⁷ *ibid.*

³⁰⁸ Art 2-6 TFEU (n 175).

³⁰⁹ *ibid* art 288-299.

³¹⁰ *ibid* art 312.

³¹¹ Chalmers, Davies, and Monti (n 6) 40.

³¹² *ibid.*

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the Union's list of competences and their nature are systematically listed in the beginning of the TFEU³¹³. The pillar system introduced through the Maastricht treaty was gone. Overall the Lisbon treaty have improved the architecture of the TFEU³¹⁴. The treaty is divided into seven parts³¹⁵. Part One, encompassing Principles, contains two titles ; one deals with categories of competences and second deals with provisions having general application³¹⁶. Part Two deals with Discrimination and Citizenship of the Union³¹⁷, Part three is the largest part of TFEU with 24 titles and cover policies and Internal Actions of the Union. The third pillar of the old TFEU, concerning provisions on police and Judicial Cooperation in criminal matters, have been moved into the new TFEU³¹⁸. Part Four of the treaty cover provisions concerning Association of Overseas Countries and Territories. Part Five covers the EU external Action, thus dealing with matters having an external dimension. Part Six covers the Institutional and budgetary provisions and Part Seven is dedicated to the General and Final provisions of the treaty.

Although the pillars system under the Lisbon treaty was gone, however the presence of the specific provisions concerning the CFSP showed that there is still something similar to a separate 'pillar' dealing with such matters³¹⁹. The approach adopted towards the CFSP in the Lisbon treaty highly replicates that in the consti-

³¹³ Chalmers, Davies, and Monti (n 6).

³¹⁴ Craig, 'Development of the EU' (n 9) 29.

³¹⁵ Consolidated version of the Treaty on the Functioning of European Union [2012] OJ C326/47 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>).

³¹⁶ *ibid.*

³¹⁷ *ibid.*

³¹⁸ Part Three, Title V *ibid.*

³¹⁹ Craig, 'Development of the EU' (n 9) 29.

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tutional treaty, subject to the modification of the nomenclature. For instance, the ‘Union Minister for Foreign Affairs is changed to ‘High Representative of the Union for Foreign Affairs and Security Policy’³²⁰. Further, the executive authority of the Union continue to reside with the European Council and Council³²¹. The ECJ continue to be largely excluded from the CFSP matters³²². Still under Article 40 of the TEU the ECJ have a jurisdiction, the purpose was to keep a check on the exercise of CFSP powers, so that it does not infringe on the general competence of the EU and vice versa³²³.

Besides the form and substance of the Lisbon treaty, it is important to analyse the principal institutional changes introduced by the treaty of Lisbon.

2.6.10 Principal Institutional Reforms Introduced by the Treaty Of Lisbon

Article 4 TEU defines the Union’s Institutional framework consisting of the following seven institutions ; The European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the EU, the European Central Bank and the court of Auditors³²⁴. In comparison to previous applicable provisions of the EC treaty, the Lisbon Treaty significant change brought a significant change by elevating the positions of the European Central bank (ECB) and the European

³²⁰ Craig, ‘Development of the EU’ (n 9).

³²¹ Arts 22,24 TEU (n 161).

³²² *ibid* art 24; Art 275 TFEU (n 175)

³²³ Art 24 TEU (n 161); Art 275 TFEU (n 175)

³²⁴ Art 4 TEU (n 161).

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Council to the rank of formal union institutions³²⁵. Hence they are now bound by all the Treaties references to ‘the institution’ which means that European Council and European Central Bank are under the obligation to ‘maintain an open, transparent and regular dialogue with representatives associations and civil society’³²⁶. As a consequence, in case of the European Council the court of justice has the jurisdiction to determine the legality of legally binding acts of the European Council³²⁷. The elevation to the rank of the formal Union institutions did not bring a change in their respective role, that have been left substantially unchanged³²⁸. The Article 15(1) TEU reiterates that the ‘European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof’. This article explicitly underlines that the European Council shall not perform any legislative function which is left to the ‘institutional triangle’ to enact the law by translating the European Council’s political direction³²⁹. Thus it would be absurd to reason that the Treaty of Lisbon transformed the European Council into some kind of federal government of a new super-state³³⁰. However it is true that ‘numerous provision of the revised Treaties give the European Council power to take legally binding decisions of a “quasi constitutional” or “high-politics” nature’³³¹. This justified the current formalised position of the European Council

³²⁵ Laurent Pech, ‘The Institutional Development of the EU Post Lisbon: A Case of Plus Ça Change?’ [2012] UCD Dublin European Institute Working Paper, 15.

³²⁶ Art 11(2) TEU (n 161).

³²⁷ Pech (n 325) 15.

³²⁸ *ibid.*

³²⁹ *ibid* 16.

³³⁰ *ibid.*

³³¹ Michael Dougan, ‘The Treaty of Lisbon 2007: Winning minds, not hearts’ (2008) 45(3) *Common market law review* 617, 627.

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which has been progressively evolved as a decisive player in a pre-Lisbon political period when the strategic or controversial decisions ought to be taken³³². The Treaty of Lisbon established a new post of President of the European Council and of High Representatives of the Union for Foreign Affairs and Security Policy (HR for FASP). This significant change naturally explains the amendment of the pre-Lisbon provision on the composition of the European Council. The European Council now consists of the Heads of State or Government of the Member States, along with the President of the Commission and President of the Council³³³. The creation of the function of President of the European Council and of High Representative for Foreign Affairs and Security Policy (HR for FASP) is highlighted the most considerable if not revolutionary institutional change introduced by the Lisbon Treaty³³⁴. The creation of these two posts is justified by a need to guarantee coherence in the work of the institution and strengthen the Union's external unity and representation³³⁵. The responsibilities of the President of the European Council is given in article 15(6) TEU. As per that the President has no real decision-making power rather must perform the functions previously exercised by the Head of State or Government of the rotating Presidency State³³⁶. Its role is mainly to facilitate cohesion and continuity within the European Council, 'to determine the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on basis of the work of the General Affairs Council'³³⁷, besides

³³² Pech (n 325) 16.

³³³ *ibid* 17.

³³⁴ *ibid*.

³³⁵ *ibid*.

³³⁶ *ibid*.

³³⁷ Art 15(6) TEU (n 161).

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that to ensure the external representation Union on Common foreign and security policy (CFSP) issues without influencing the powers of the HR for FASP³³⁸. More importantly the role of the European Council under the Lisbon Treaty remained unchanged³³⁹. Its elevation to the status of the formal institution may be regarded as a symbolic important development but is certainly not a ‘revolutionary change’, as ‘it represents the culmination of process which was set in train by the TEU’³⁴⁰. Similarly the creation of new positions of the full time President and of a new EU ‘Minister for foreign Affairs’ is welcome but the holder of these two offices functions no more than implementing and consensual agents. This outcome was a result of a compromise between the countries which favour a stronger and stable presidency and those fearing the dominance of the European Council by the largest Member States and the marginalisation of the Commission³⁴¹.

In relation to role and functioning of the Council the Lisbon Treaty offered a set of minor amendments except with one major exception regarding a change to a double voting system in the council³⁴². Article 16(1) give a concise and accurate description of the council role and power in comparison to its role previously offered by ex Article 202 TE, ‘The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Treaties’³⁴³. Except this, no significant change can be highlighted.

³³⁸ TEU (n 161).

³³⁹ Pech (n 325) 18.

³⁴⁰ Alan Dashwood and Angus Johnston, ‘The Institutions of the Enlarged EU under the Regime of the Constitutional Treaty’ (2004) 41(6) Common market law review 1481, 1490.

³⁴¹ Jean-Claude Piris, *The constitution for Europe: a legal analysis* (Cambridge University Press 2006) 93.

³⁴² Pech (n 325) 19.

³⁴³ Art 16(1) TEU (n 161).

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The composition of the council, as provided by the previous treaties, shall continue to consist of a ministerial-level representative of each Member State who is authorised to commit the government of the Member state in question and cast the vote on its behalf³⁴⁴. The presidency of the Council shall be held by the pre-established group of three Member States for a duration of 18 months³⁴⁵. This provision codifies only the pre-Lisbon practice³⁴⁶. Similarly the new provision provides that council shall held its meeting while deliberate and votes on a draft legislative acts³⁴⁷.

The principal institutional change introduced through Lisbon Treaty concerns the voting rules in the Council. Unlike the rule of majority voting concerning the council decision as provided by the EC treaty, the Article 16 (3) TEU stipulates that Council shall take its decision through qualified majority voting (QMV) unless where the Treaties provide otherwise³⁴⁸. This established the QMV as a normal voting procedure except unanimous voting is maintained in some politically sensitive areas like defence, foreign policy and taxation³⁴⁹. The regular extension of the QMV to new areas since the SEA of 1986, is justified on the ground of efficiency. It is argued that procedure of unanimous voting procedure results in legislative paralysis

³⁴⁴ Pech (n 325) 19.

³⁴⁵ Declaration on Article 16(9) of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council.

³⁴⁶ Pech (n 325) 19.

³⁴⁷ Art 16(8) TEU (n 161); Council Decision of 22 March 2004 adopting the Council's rules of procedures [2004] OJ L106/22; The Council of the European Union, Presidency Conclusions 15/16 June 2006 Annex I 'An Overall Policy on Transparency' (Brussels, 17 July 2006) (https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/90111.pdf); Council Decision of 15 September 2006 adopting the Council's rules of procedures [2006] OJ L285/47

³⁴⁸ Art 16(3) TEU (n 161).

³⁴⁹ Pech (n 325) 20.

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in a constantly enlarging union³⁵⁰.

Concerning the making of legislation, provisions of the Lisbon Treaty largely replicates those in Constitutional treaty³⁵¹. The Commission retained its right of legislative initiative³⁵². Both the EP and Council participate in the process of legislation on an equal footing³⁵³. The significant change introduced by the Lisbon Treaty was the renaming of the co-decision procedure to ‘ordinary legislative procedure’³⁵⁴ and its extension to wider range of areas such as services³⁵⁵, asylum and immigration³⁵⁶, agriculture³⁵⁷, the structural and cohesion funds³⁵⁸ and the creation of specialized courts³⁵⁹. This co-decision procedure is welcomed by the states as it allows the input from the EP and Council, representing the electorate and state interest respectively³⁶⁰. It provides a framework for deliberations between the EP, Council and Commission³⁶¹. The extension of ordinary legislative procedure to new areas proved uncontroversial, and is gladly accepted by most national governments as such reform tends to enhance the democratic legitimacy of the Union’s institu-

³⁵⁰ Pech (n 325).

³⁵¹ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 74.

³⁵² Art 17(2) TEU (n 161).

³⁵³ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 74.

³⁵⁴ Arts 289,294 TFEU (n 175).

³⁵⁵ *ibid* art 56.

³⁵⁶ *ibid* art 77-80.

³⁵⁷ *ibid* art 43(2).

³⁵⁸ *ibid* art 177.

³⁵⁹ *ibid* art 257.

³⁶⁰ Craig, ‘Institutions, Power and Institutional Balance’ (n 58) 74.

³⁶¹ *ibid*.

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tional structure³⁶². Despite that, the powers of the EP remain limited in many areas. For instance when the Council intends to adopt the EU measures concerning social protection and social security the Parliament performed merely consultative role³⁶³. Hence its legislative function continues to be demarcated in respect of areas considered to be too ‘sensitive’ by the Member States³⁶⁴. Thus the Lisbon Treaty only formalised and consolidated the role of the Parliament as a co-legislator. It hardly extends the power of the Parliament if equated with the reforms introduced by the previous Treaties³⁶⁵.

The Lisbon Treaty has introduced a modest set of changes in respect of role and mode of appointment of the Commission³⁶⁶. Article 17(1) stipulates the tasks and functions of the Commission. As mentioned above the Commission retained its power of initiating legislation except where the Treaties provide otherwise. The Lisbon Treaty brought a change in the method of appointment of its President. Article 14(1) provides that the European Parliament shall elect the President of the Commission. The retention of the state power in the election of the president of the Commission is evident in Article 17(7) TEU. The European Council after proper consultation³⁶⁷ and taking into consideration the results of the election to the European parliament, propose to the European Parliament the European Council’s candidate for the Presidency of the Commission which shall then be elected by its

³⁶² Pech (n 325) 22.

³⁶³ *ibid.*

³⁶⁴ *ibid.*

³⁶⁵ *ibid.*

³⁶⁶ *ibid.*

³⁶⁷ Declaration 11 LT emphasizes consultation between the European Council and European Parliament preceding choice of the candidate for Commission President

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majority vote³⁶⁸. If the candidate could not get the majority vote, the European Council by following the same procedure will propose a new candidate within one month³⁶⁹. The idea of the direct election of the President of the Commission is counter on the ground that direct election of the President would help to foster a European demos, to avoid that the Commission President is indirectly elected³⁷⁰.

In the backdrop of the above mentioned reforms, it can be remarked that the institutional reforms introduced by the Lisbon Treaty introduced by the Lisbon Treaty 'in do far they represent continuity with the past, rather than some radical departure'³⁷¹ further the Lisbon Treaty have confirmed the resilience of the EU's hybrid and interdependent system of government in which the legislative and executive powers are shared between the two inter- governmental institutions, that is the Parliament and the Commission and the European Council and the Council³⁷². These kinds of institutional arrangements manifest the fact that the EU uphold to establish a Union of Member States and of European People 'on which the Member States confer competences to attain objectives they have in common'³⁷³. While devising the Lisbon Treaty the national leaders were motivated by two contradictory impulses that was to build a more democratic and efficient EU while warding off any process of state building³⁷⁴. Therefore it was naïve to expect a radical redesign-

³⁶⁸ Craig, 'Institutions, Power and Institutional Balance' (n 58), In ex Article 214(2) TEC the candidate was 'approved' rather than 'elected' by a majority vote in the European Parliament.

³⁶⁹ *ibid.*

³⁷⁰ *ibid.*

³⁷¹ Craig, 'The Treaty of Lisbon: Process, architecture and substance' (n 279) 158.

³⁷² *ibid.*

³⁷³ Art 1 TEU (n 161); Pech (n 325) 25

³⁷⁴ John Peterson and Michael Shackleton, 'The EU's institutions: an overview' in Dermot Hodson and John Peterson (eds), *The institutions of the European Union* (Oxford University Press 2017)

ing of the institutional arrangement that governs the Union³⁷⁵. This better explain introductions of elements by the Lisbon Treaty that consolidate the most intergovernmental body of the Union, the European Union and a supranational institutions such as European Parliament³⁷⁶. On the whole, Lisbon Treaty furnish a substantive improvement of the pre-Lisbon treaties, it not only enhances the efficiency and improve the functioning of the Union but brought greater democratic accountability to the Union³⁷⁷.

2.7 Brexit

The UK's 2016 referendum for taking an important decision regarding the continuation of its membership with the European Union was not the first referendum of its kind. In 1975 UK have held first referendum on the question of the continuation of its membership in European communities that was two years after the British joined the European Economic Community (EEC)³⁷⁸. The two third majority voted in favour of the continuation of British's membership in European Union³⁷⁹. Despite being the EU member since 1973, its relationship with the organisation has always

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³⁷⁵ Pech (n 325) 25.

³⁷⁶ *ibid.*

³⁷⁷ European Parliament resolution on the Treaty of Lisbon 20 February 2008, (2007/2286(INI)), point 1 (<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-%200055+0+DOC+XML+V0//EN>) accessed 20 November 2018.

³⁷⁸ Jana Bellova, 'The Road to and from Brexit' (2017) 18 *European Studies: the review of European law, economics and politics* 165, 166.

³⁷⁹ David Butler and Uwe Kitzinger, *The 1975 referendum* (London Macmillan Press Ltd 1976) 263; Vaughne Miller, 'The 1974-75 UK Renegotiation of EEC Membership and Referendum No 7253 Research Briefings' [2015] (<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7253#fullreport>)

been sort of an ‘insider-outsider’ that keeps its distance³⁸⁰.

Stephen George have famously described the UK as an ‘awkward partner’ with the rest of the Europe. The UK relationship with Europe has always been considered as ‘one of the conditional and differential engagement’ where the UK is positioned within an ‘outer tier’ of the EU, by the ambivalence of the British policy makers³⁸¹. The reason could be the British dissatisfaction with the EU, as it always felt that it was forced to join the EU, because there has been always a reluctance on its part to be fully interconnected into the EU³⁸². Therefore since beginning its relationship with European union has admittedly been difficult³⁸³. The two important reasons that can be attributed to the British attitude towards the European Union, despite becoming its member in 1973 was mainly because of it previous status of an Empire and its interest in maintaining its political and economic identity in world political affairs and secondly the British foreign policy strategy give special importance on holding a special relationship with the United states, which was born during the world war II whereas the countries on the continental Europe favour a fully integrated EU to rival the United States³⁸⁴. Besides that, British have always considered the EU as a economic union rather than a political union.

Undoubtedly the rise of the populist movements in Europe has contributed to-

³⁸⁰ Bellova (n 378) 166.

³⁸¹ Steve Corbett, ‘The social consequences of Brexit for the UK and Europe: Euroscepticism, populism, nationalism, and societal division’ (2016) 6(1) *The International Journal of Social Quality* 11, 11-13.

³⁸² Bellova (n 378) 168.

³⁸³ *ibid.*

³⁸⁴ *ibid.*; On British-US relationship see also Holger Mölder, ‘British Approach to the European Union: From Tony Blair to David Cameron’ in David Ramiro Troitiño, Tanel Kerikmäe, and Archil Chochia (eds), *Brexit: History, Reasoning and Perspectives* (Springer 2018) 154

wards the ‘Euroscepticism’. During the last few years there has been increasingly noticeable ascension of the right wing parties in the European states i.e. National Front party in France, United Kingdom Independence party in UK and Alternative for Deutschland in Germany. The surfacing of these populist parties in different European states have eventually given rise to Euroscepticism³⁸⁵. In this thought process, the Brexit could be viewed as the most visible evidence that had begun with financial and economic crisis and have grown with every other crisis the Europe have faced³⁸⁶. These crisis gave strong footings to the right wing parties to propagate their nationalists and isolationist agendas and bringing a change in the political status quo³⁸⁷.

2.7.1 The Renaissance of English Nationalism

The first decade of the twenty first century has been characterised by the American and its allies war in Afghanistan and Iraq and later by the global economic crisis, which contributed in the rise of nationalism³⁸⁸. The U. S under the President Bush administration opposed the liberal institutionalism, which dominated the world politics during 1990s. Besides that the American foreign policy which was influenced by the neo-conservative doctrine, called for the heroic vision of national interests and greatness³⁸⁹. Unlike the conservatives views which tend to favour isol-

³⁸⁵ Bellova (n 378); On British-US relationship see also Mölder (n 384) 154

³⁸⁶ Cristina Bogzeanu and others, ‘From the Treaty of Rome (1957) to Forging a New Way Ahead for the EU. Post-Brexit Security and Defence’ (2017) 62(1) *Impact strategic* 18.

³⁸⁷ Bellova (n 378) 168.

³⁸⁸ Mölder (n 384) 162.

³⁸⁹ Michael Williams, *Culture and security: symbolic power and the politics of international security* (Routledge 2007) 106.

ationism in their foreign policy doctrines, the neo-conservatives adopted the interventionist principles and tied them to the principles of American exceptionalism³⁹⁰. The rising trend of American exceptionalism promoted by the Bush administration was opposed by other states through adoption of negative position against the US participation in several international agreements notably, Kyoto protocol on climate change and the International criminal court³⁹¹. Particularly the intervention in Iraq by United states and its allies caused political differences between the United states and Franco-German alliance. These states also hold diverging views on other important matters like Middle East, missile defence, Kyoto protocol and trade policy³⁹².

The rise of nationalist trend which was based on anti-liberal views in domestic policy and opposition to liberal institutionalism in foreign policy received popularity among the conservative groups in Europe³⁹³. Under the influence of this new trend integration dilemma no longer remained within the foreign or security policy ambit rather it become a part of the integrationist-nationalist debates, which appeared in several European societies³⁹⁴. The rise of the populist parties in Europe gave a clear sign of a new trend of nationalism in Europe. For instance the inclusion of the Jorg Haider's right wing Freedom party in the coalition government in Austria after the 1999 parliamentary elections caused the tensions between Austria and the European Union³⁹⁵. Similarly in 2002, the French nationalist party headed by Jean

³⁹⁰ Mölder (n 384) 162.

³⁹¹ *ibid.*

³⁹² B Wright, 'Analysis: Anglo-American special relationship' *BBC News* (6 April 2002) (<http://news.bbc.co.uk/2/hi/americas/1913522.stm>).

³⁹³ Mölder (n 384) 162.

³⁹⁴ *ibid.*

³⁹⁵ *ibid* 163.

Marie Le Pen secured a second position in the presidential elections. And in Poland the rebirth of nationalist ideology appeared under the government of Law and Justice party since 2005 ruled by Kaczynski brothers are the significant developments that corresponds to the rise of populist movements³⁹⁶.

In the United Kingdom the British exceptionalism was established on two fear-based narratives. First, fear was that EU membership will narrow down its choices for free trade and global interest. Second the lack of common consent among the general masses of British society in favour European membership³⁹⁷. The British media and the members of the political establishment played crucial role in promoting the views on Euroscepticism³⁹⁸. Ian Duncan who was Eurosceptic, won the conservative party leadership elections³⁹⁹. Glencross remarked that ‘the pro-EU constituency in Britain cannot count on the unwavering support of established elites’⁴⁰⁰. Similarly Daddow asserts that ‘UK’ politicians have effectively handed over ideational leadership on European matters to a press-dominated UK media which has found since the Maastricht treaty that there are increasing numbers of opportunities to express opposition to the European Project’⁴⁰¹. The British Prime Minister David Cameron, in his speech ‘British and Europe’ had vehemently differentiated between the na-

³⁹⁶ Mölder (n 384).

³⁹⁷ *ibid* 163.

³⁹⁸ *ibid*.

³⁹⁹ *ibid*.

⁴⁰⁰ Andrew Glencross, ‘British Euroscepticism as British Exceptionalism: the forty-year “Neverendum” on the relationship with Europe’ (2014) 67(4) *Studia Diplomatica* 7.

⁴⁰¹ Oliver Daddow, ‘Performing Euroscepticism: the UK press and Cameron’s Bloomberg speech’ in Karine Tournier-Sol (ed), *The UK challenge to Europeanization: the persistence of British Euroscepticism* (Palgrave Macmillan, New York 2015) 152.

tional own and the European other⁴⁰². Such associations were commonly used by the nationalist politicians representing their Eurosceptic circles in Britain and in other parts of Europe. The agenda of harsh criticism towards the integrationist ambition of Brussels has not become widely practiced in British political discourse but has also gained public popularity⁴⁰³. However the narrative of Euroscepticism could not yet be transformed into a strong political party able to victoriously compete in national elections⁴⁰⁴. The conservative party in UK, although represented its distant views on the European integration, but they were never willing to take a strong Eurosceptics lead until the start of the Brexit campaign⁴⁰⁵. Such a role was largely remained to minor political parties notably the United Kingdom Independence Party (UKIP) which serve as a mean to represent the political interests of large section of society that opposed the integrationist policies⁴⁰⁶. The UKIP which was founded in 1993 met its first success in 1999 European Parliament elections after winning three seats. Its support significantly increased, as it managed to win 12 seats in the next 2004 European Parliament election, thus became third U.K political party after the Labourites and Conservatives by the number of representation in the European parliament⁴⁰⁷. The influence of the UKIP gradually increased therefore in 2009 election of the European Parliament it had already 13 seats. In 2104 it took a lead with

⁴⁰² D Cameron, 'The danger is that Europe will fail' *Spiegel Online* (23 January 2013) (<http://www.spiegel.de/international/europe/the-full-text-of-the-david-cameron-speech-on-the-future-of-europe-a-%20879165.html>).

⁴⁰³ Mölder (n 384) 163.

⁴⁰⁴ *ibid.*

⁴⁰⁵ *ibid* 164.

⁴⁰⁶ Chris Gifford, *The making of Eurosceptic Britain: Identity and economy in a post-imperial state* (Routledge 2017) 143.

⁴⁰⁷ Mölder (n 384) 164.

24 seats in 2014 European Parliaments elections followed by the Labour Party that won 20 seats and the ruling conservative party came third on slot by wining 19 seats in the Parliament. The success of the UKIP in European Parliament election also helped in strengthening the Eurosceptic views in the conservative party, which was bearing a moderate Euroscepticism approach that consisted of the Thatcherite economic policy and the rejection of the single currency⁴⁰⁸. However, unlike the success of UKIP in the European Parliament election, its position in the British national elections was less competitive. It could not win any seats in elections of 2005 and 2010. In 2015, the first representative of the UKIP was elected to the house of Common, and it became a third party in total votes that were casted⁴⁰⁹. According to Pauline Schnapper the British Euroscepticism has become less exceptional in the European Union in comparison to its prominence in 1990s, as similar movements have strengthened both in Germany through AFD party and in France through the Front National Party⁴¹⁰. While the rise of anti - European parties in different parts incline to represent the political fringes from left or right, the British Euroscepticism was espoused by the main stream political parties⁴¹¹. The growing wave of the Euroscepticism for the UK to leave the European union has gained momentum and the Conservative government of David Cameron have skilfully made used of this momentum for the Brexit in following years⁴¹². In addition to that a new wave of

⁴⁰⁸ Mölder (n 384).

⁴⁰⁹ *ibid.*

⁴¹⁰ Pauline Schnapper, 'The Dilemma of Pro-European Parties in the UK: The Case of Labour and the Liberal Democrats Since 2010' in Karine Tournier-Sol (ed), *The UK challenge to Europeanization: the persistence of British Euroscepticism* (Palgrave Macmillan, New York 2015) 117-133.

⁴¹¹ Mölder (n 384) 164.

⁴¹² *ibid* 165.

British nationalism have also arisen which gave a major support to the rise United Kingdom Independent Party(UKIP). The Nigel Farage, who lead the UKIP party between 2006-2016, gained the support of the British working class by addressing their concerns regarding the jobs opportunities that they believed were mostly taken by the Eastern European immigrants in Britain. Especially the people from the rural areas in England which have been disappointed by the economic conditions and were greatly influenced by the local nationalism, established a strong pro- Brexit voters in the referendum of 2016⁴¹³.

2.7.2 Political Factors

The failure of the new Labour policy is also considered one of the main factor that has contributed in a movement towards the Brexit. The new labour policy that was based on strong commitment to Atlanticism and security issues, and supported the integrationist policies of the Union. However the Great recession of 2008- 2009 badly hit the economy which started shortly after the Gordon Brown replaced the Tony Blair as the leader of the Party and became the Prime Minister in 2007. The Gordon Brown who was considered the main architect of the economic success of the Blair's Government, failed to handle the economic crisis in a country under his leader as indicated by the polls result that the voters felt the state has been allowed to grow too big⁴¹⁴. This situation turned the political winds against the labour party and gave rise to nationalist and security oriented views among the British society, and

⁴¹³ Mölder (n 384).

⁴¹⁴ R Prince, 'Labour lost election because voters turned against big state' *The Telegraph* (3 August 2010) (<http://www.telegraph.co.uk/news/politics/labour/7922677/Labour-lost-electionbecause-%20voters-turned-against-big-state.html>).

eventually result in a move towards the protectionist policies offered by the Euro critic movements⁴¹⁵. As a result in 2009 European Parliament election the Labour Party lost its position to the conservative and UKIP party and became a third party by votes which signify the growing trend of Eurosceptics and protectionist attitudes in the British society. In 2010, the Labour party lost to the Conservative party led by David Cameron who represented the more liberal side of the Conservative party. Although in the beginning there as nothing which could predict that he will lead the United Kingdom to Brexit. Soon after the signs of crisis appeared, there was a unanimous opinion towards the change of policy in the EU direction, thus the possible withdrawal of the united Kingdom from the European Union appeared on the agenda of the party. David Cameroon made a promised in 2015 election campaign that if his party came to power he will renegotiate the EU membership and later will hold a announce a referendum on the withdrawal of the UK from the European union. In his famous speech of 23 January 2013,in which he introduced the decision to hold the referendum on the UK withdrawal from the Union, he referred to the well-known doctrine of otherness⁴¹⁶. He gave exclusive view of the Europe by referring to‘Europeans as collective neighbours representing entity living outside of Britain, who live near but not in Britain’⁴¹⁷ ‘Britishness as manifestation of island nation, which identity can be characterised by the image of independent and forthright nation, passionate in defence of its sovereignty’. The message given in his speech attracted by large the nationalist voters. As a further step, the draft

⁴¹⁵ Mölder (n 384) 166.

⁴¹⁶ Cameron (n 402).

⁴¹⁷ Menno Spiering, ‘The essential Englishman: the cultural nature and origins of British Euroscepticism’ in Karine Tournier-Sol (ed), *The UK challenge to Europeanization: the persistence of British Euroscepticism* (Palgrave Macmillan, New York 2015).

of EU referendum bill was introduced which was passed by the House of Commons but was rejected by the House of Lords⁴¹⁸. The Conservative Party after coming into power in 2015 election, held UK's referendum on EU membership on 23 June 2016. The recorded result was that UK voted by 51.8 percent voted to leave the EU⁴¹⁹. Consequent upon the referendum result the British Government invoke Article 50 on 29 March 2017 by notifying the EU Council President of the UK's intention to leave the EU⁴²⁰.

Moreover, In the recent European Union Parliament election that was held on 23 May 2019, a newly founded 'Brexit party'⁴²¹ which is a euroseptic political party led by Nigel Farage won the most votes claiming 29 of 72 seats in the European Parliament. This party arise as the largest single national party in the European parliament, being dominant by the choice of those who voted to leave the EU⁴²². The UK referendum result and rise of Brexit party in European parliament elections can be termed the manifestation of the British exceptionalism that have successfully opposed the integrationist policies of Europe.

The Brexit have given rise to very important academic debates regarding the right of the member state as a sovereign entity to withdraw from the Union unilaterally, or does it required the consensus of other Member States for its withdrawal

⁴¹⁸ European Union Referendum Bill 2013-14 (https://publications.parliament.uk/pa/bills/cbill/2013-%202014/0011/cbill_2013-20140011_en_2.htm).

⁴¹⁹ 'EU Referendum Results' *BBC News* (London, 24 June 2016) (https://www.bbc.com/news/politics/eu_referendum/results1).

⁴²⁰ Prime Minister's letter to Donald Tusk Triggering Article 50 (29 March 2017) (<https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50>).

⁴²¹ Brexit party was a split from former UK Independence party (UKIP) founded in February 2019

⁴²² 2019 European election results (2019) (<https://www.election-results.eu/national-results/united-kingdom/2019-2024/>).

from the Union under any specific provisions of the treaty which is analysed below.

2.7.3 Member State's Right to Withdraw from the Union

The pre-Lisbon situation, regarding the right of withdrawal of Member state from the Union was that, neither the EC treaty nor the EU treaty did regulate explicitly the possibility of a Member state to withdraw from its membership of the Union⁴²³. The reason for this silence about the withdrawal, seems to be the intention of the founders to discourage the members states from withdrawal⁴²⁴. Another interpretation that can be given for the 'no withdrawal provision' in the Treaties was that union was considered as indissoluble community, that could not be abandoned by the Member States through the use of international law tools⁴²⁵. Except the treaty that have established the ECSC whose duration was limited to fifty years, the treaties establishing the EEC, Euratom, and EU treaties have been concluded for an unlimited period⁴²⁶.

Here it would be relevant to highlight the right available to the member state to withdraw from any international organization or international treaty under the public international law.

⁴²³ Andrea Circolo, Ondrej Hamul'ák, and Ondrej Blažo, 'Article 50 of the Treaty on European Union: How to Understand the 'Right' of the Member State to Withdraw the European Union?' in David Ramiro Troitiño, Tanel Kerikmäe, and Archil Chochia (eds), *Brexit: History, Reasoning and Perspectives* (Springer 2018) 203.

⁴²⁴ A Wyrozumska, 'Commentary on art. 50 TEU' [2013] *The treaty on European Union. A commentary*. Springer, Heidelberg 1385.

⁴²⁵ Tamara Čapeta, 'Brexit and the EU constitutional order: a three act tragedy' (2016) 12(12) *Croatian yearbook of European law & policy* 1.

⁴²⁶ Art 312 EC (n 39); Consolidated version of the Treaty establishing the European Atomic Energy Community [2012] OJ C327/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012A/TXT&from=EN>), art 208; Art 51 TEU (n 161)

2.7.4 Right of Withdrawal Under the Public International Law

The State's right to withdraw from any international organization is explicitly provided in the founding treaties that establish the international organizations⁴²⁷. As per the *lex specialis* the member state seeking its withdrawal from the organization, can do so unilaterally only by following the procedure that is laid down in the withdrawal clause, which normally contains the fulfilment of the notification requirement⁴²⁸. In this context the important question that can be raised is regarding the right of the member state to lawfully withdraw from the international treaty or organization that does not contain any provision regarding state's right of withdrawal or denunciation⁴²⁹. Similar situation was posed by the European Union and its predecessor communities which does not contain any provision on the right of the withdrawal of the members, until the Article 50 of the Treaty on European Union (TEU) was introduced, which dealt with the withdrawal right of the states. The article was inserted in the treaties by the Treaty of Lisbon⁴³⁰.

According to many scholars, the state's right of withdrawal from the international organization, remains a sovereign prerogative of a state⁴³¹. While some scholars

⁴²⁷ See The Constitution of the United Nations Food and Agriculture Organization [1945] OJ C/238 (FAO) art 19; North Atlantic Treaty [1949], art 13

⁴²⁸ Jan Klabbers, *An introduction to international organizations law* (Cambridge University Press 2015) 109.

⁴²⁹ Egon Schwelb, 'Withdrawal from the United Nations the Indonesian Intermezzo' (1967) 61(3) *American Journal of International Law* 661.

⁴³⁰ Steve Peers and Darren Harvey, 'Brexit: the legal Dimension' in Catherine Barnard and Steve Peers (eds), *European union law* (Oxford University Press 2017) 816.

⁴³¹ T Christakis, 'Article 56: Denunciation of or Withdrawal from a Treaty Containing no Provision Regarding Termination, Denunciation or Withdrawal' in Olivier Corten and Pierre Klein (eds), *The Vienna Conventions on the Law of Treaties: a commentary* (Oxford Commentaries on Interna

suggest that states being sovereign has a unilateral right of withdrawal from international organization under any circumstances⁴³². In contrast to these opinion, other scholars suggest that state have no unilateral right to withdrawal from any International organization which purports to be established in perpetuity like United Nations⁴³³ or from the treaties whose specific characteristics required permanence such as peace agreements or treaties resolving the boundaries disputes or peace agreements between the states⁴³⁴.

Under public international law, the Vienna Convention on law of treaties provide the general position regarding the states right of withdrawal or termination of treaty⁴³⁵. Article 54 of VCLT provides for the consensual withdrawal from the bilateral or multilateral treaties, it read as ‘A state may withdraw from a Treaty in conformity with the provisions of the Treaty or at any time by consent of all the parties after consultation with other contracting states. This unanimous consent rule applies equally to withdrawal from bilateral and multilateral treaties’⁴³⁶. Further, article 56 VCLT provide the general rule in instance where treaty does not provide for the right of withdrawal of denunciation of treaty. It read as : ‘Where a treaty contain no provision regarding its termination and which does not provide

2011) 1275.

⁴³² Grigori Ivanovich Tunkin and William Elliott Butler, *Theory of international law* (Harvard University Press 1974) 349-350.

⁴³³ Nathan Feinberg, ‘Unilateral withdrawal from an international organization’ (1963) 39 Brit. YB Int’l L 189, 215-17.

⁴³⁴ Laurence R Helfer, ‘Exiting treaties’ (2005) 91 Va. L. Rev 1579; James Leslie Brierly, *The law of nations: an introduction to the international law of peace* (Clarendon Press 1930) 331

⁴³⁵ Vienna Convention on the Law of Treaties [1969] United Nations Treaty Series (<https://www.refworld.org/docid/3ae6b3a10.html>).

⁴³⁶ V Chapaux, ‘Article 54: Termination of or Withdrawal from a Treaty under its provisions or Termination by Consent’ in Olivier Corten and Pierre Klein (eds), *The Vienna Conventions on the Law of Treaties: a commentary* (Oxford Commentaries on Interna 2011) 1239.

for denunciation or withdrawal is not subject to denunciation or withdrawal'. But this general rule is subject to two exceptions. First if it is established that the party intended to admit the possibility of denunciation and withdrawal, two, from the nature of the treaty the right of denunciation or withdrawal may be implied⁴³⁷. Article 56(2) further provides that state wishing to withdraw from the treaty that does not contain a withdrawal clause shall give a notice not less than twelve months of to the other parties to the treaty of intention to do so⁴³⁸.

Thus articles 54 and 56 provide the general guidance on the right of the state to withdraw from the foundational treaty of international organization, which does not carry any provision regarding the withdrawal and this will exist only where 1) All existing parties will consent to such withdrawal, or 2) or to draw such a right from the treaty itself either by interpreting the intention of the parties or because such a right of withdrawal is consistent with the nature of the Treaty itself⁴³⁹. These provisions give effect to the explicit and implicit right to consensual withdrawal respectively⁴⁴⁰.

Besides the explicit and implicit consensual right of withdrawal, article 62 VCLT deal with the rights of the state to unilaterally withdraw from the treaties owing to a fundamental change in circumstances since the conclusion of the treaty also known as *rebus sic stantibus*. According to article 62(1) of VCLT the state can exercise its right to withdraw from a treaty where 'this change was not foreseen by the parties' and (a) where 'those circumstances constituted an essential basis of the

⁴³⁷ Art 56 VCLT (n 435).

⁴³⁸ *ibid* art 56(2).

⁴³⁹ Phoebus Athanassiou and Stéphanie Laulhé Shaelou, 'EU accession from within? An introduction' (2014) 33(1) *Yearbook of European Law* 335.

⁴⁴⁰ Peers and Harvey (n 430) 817.

consent of the parties to be bound by the treaty and the change of circumstance (b) ‘radically transform the extent of obligations still to be performed under the treaty’. Thus unlike articles 54 and 56 VCLT, article 62 VCLT governs the withdrawal and termination from the treaty irrespective of the explicit or implicit consent of other Member States. The doctrine of *rebus sic stantibus* is justifiable on the ground that treaties that remain in force for the long period of time, fundamental changes are unavoidable that might take place⁴⁴¹.

Thus under the Public International law, rules provided by the VCLT governs the state’s right of withdrawal from the treaties or denunciation of treaties in exceptional circumstances.

2.7.5 The Member State’s Right to Withdraw from the Union

As already mentioned that there was no rule in the founding Treaties for the withdrawal of its Member States from the Union, until the insertion of Article 50 into the Treaty on European Union (TEU) through the Lisbon treaty. Therefore, the most debated question in the literature was whether the EU member state can withdraw unilaterally or through a negotiation from the EU⁴⁴². The variance of opinion over the existence of the right of withdrawal from the EU also give rise to a long standing debate over the legal nature of the EU in legal academia. The question regarding the Member States’ right of withdrawal can be determined by how is EU perceived. Was the EU a simply advanced form of the International organization then in that

⁴⁴¹ Malcolm N Shaw, *International Law* (8th edn, Cambridge University Press 2017) 688-690.

⁴⁴² Phoebus Athanassiou and Stéphanie Laulhé Shaelou, ‘EU accession from within? An introduction’ (2014) 33(1) *Yearbook of European Law* 335.

case the right of withdrawal of the member state would be governed by the rules of public international law laid down in VCLT as well as in customary rules of international law⁴⁴³. The Member States can then seek the withdrawal from the Union, either with the consent of the Member States or by citing a fundamental change in circumstances under Article 62VCLT⁴⁴⁴. Or unlike the other international organization, the EU was constituted a new and autonomous legal order for the benefit of which the states had in certain fields limited their sovereign right?⁴⁴⁵. As per that view since the community was constituted for the ‘unlimited duration’ that was aimed at pursuing an ever closer union⁴⁴⁶, then in that case the unilateral withdrawal of the member state would be incompatible with the nature of the European integration⁴⁴⁷. Moreover whether the member state could legally satisfy the strict conditions laid down in Article 62 of VCLT and seek the unilateral withdrawal from the Union that was aimed at pursuing ‘an ever closer union’⁴⁴⁸. Besides that the fact that fundamental treaty amendments to the EU legal order such as the treaty changes required the unanimous approval of all the Member States⁴⁴⁹. Thus in practice, withdrawal through a negotiation between a member state wishing to

⁴⁴³ Adam Łazowski, ‘Withdrawal from the European Union and Alternatives to Membership’ (2012) 37 *European Law Review* 523, 525.

⁴⁴⁴ Christophe Alfred Pierre Hillion, ‘Leaving the European Union, the Union way: A legal analysis of Article 50 TEU’ [2016] *Swedish Institute for European Policy Analysis*, 7-8.

⁴⁴⁵ Case 1 *Van Gend en Loos v Nederlands Administratie der Belastingen* [1963] ECR; Case 585 *Costa v ENEL* [1964] ECR

⁴⁴⁶ Art 312 EC (n 39); See now art 356 TFEU (n 175)

⁴⁴⁷ Athanassiou and Shaelou, ‘EU accession from within? An introduction’ (n 442); John A Hill, ‘The European Economic Community: The Right of Member State Withdrawal’ (1982) 12 *Ga. J. Int’l & Comp. L* 335

⁴⁴⁸ Peers and Harvey (n 430) 818.

⁴⁴⁹ *ibid.*

withdraw and remaining Member States was much more plausible, instead of opting for unilateral withdrawal⁴⁵⁰.

2.7.6 Right of Withdrawal of a Member State Under Article 50 TEU

Through insertion of Article 50 into the TEU by the Treaty of Lisbon, the right of a member state to withdraw from the EU has been settled. Article 50 of the TEU provides as follow ;

1. Any member state may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A member state which decides to withdraw shall notify the Union council of its intention to do so. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that state, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in

⁴⁵⁰ Peers and Harvey (n 430).

agreement with the Member State concerned, unanimously decide to extend this period.

4. For the purposes of paragraph 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council in decisions concerning it. A Qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. If a State which has withdrawn from the Union asks to re-join, its request shall be subject to the procedure referred to Article 49.

The article 50 has settled the ambiguity regarding the withdrawal process of the member state from the Union. The effect of this article has been that the process of withdrawal of the member state has now become the subject of the internal rules of the EU rather than being governed by the rules of the public international law⁴⁵¹. As per some suggestions the UK can bypass the Article 50, by invoking the referendum result, if it decides to leave the EU as a ‘fundamental change in circumstances’ that befits the scope of Article 61 (1)(a) VCLT⁴⁵². However this opinion is deemed to misinterpret the scope of Article 62 VCLT, which work as narrowly construed exception to the general rules of Treaty interpretation⁴⁵³. Besides that, the state’s decision to withdraw from the EU membership will often be brought by democratic developments such a referendum or elections. This interpretation which rests on the

⁴⁵¹ Hillion (n 444) 9.

⁴⁵² Art 61(1)(a) VCLT (n 435).

⁴⁵³ Peers and Harvey (n 430) 820; Case 7/1 *Hungary vs Slovakia* [1997] ICJ, para 104, wherein the International court of Justice has held that ‘the stability of treaty relations requires that the plea of fundamental change of circumstances be applied only in exceptional circumstances

member state's decision to withdraw from the EU mainly because of the democratic decision of some sort, also tend to devoid the Article 50 of much of its meaning. Hillion cleared this approach as according to him 'As Article 50 TEU is the *lex specialis*, any withdrawal of the Member State would thence forth have to take place within the framework of the EU law, rather than outside it'⁴⁵⁴. In the context of the UK's to withdraw its membership from the Union, any unilateral action of withdrawal from the Union that outwit the procedure laid out in Article 50 of the TEU, such as by repealing the 1972 European Communities Act which gives the domestic effect to the EU law, would put the UK in breach of international legal obligations⁴⁵⁵.

It is important to highlight that Article 50 which makes provision for the negotiation and conclusion of a withdrawal agreement between the withdrawing Member States and EU, does not intend to place either sides under the legal obligation to conclude such agreement⁴⁵⁶. Although the wording of Article 50(2) TEU evidently favour a 'negotiated session as a optimum solution', Member States nevertheless retain the right to unilaterally withdraw from the EU by notifying the European Council of its intention to do so before opting to simply 'sit out two years before its decision becomes final'⁴⁵⁷. As per another version regarding member state's unilateral right to withdraw, it is that though the 'Member States possess a unilateral

⁴⁵⁴ Hillion (n 444) 9.

⁴⁵⁵ House of Lords European Union Committee and others, 'The process of withdrawing from the European Union' (2015) 138 11th Report of Session 2015–16, HL Paper, para 9.

⁴⁵⁶ Peers and Harvey (n 430) 820.

⁴⁵⁷ Allan F' Tatham, "Don't Mention Divorce at the Wedding, Darling!": EU Accession and Withdrawal after Lisbon' (2012) 152 EU law after lisbon. Oxford University Press, Oxford, 128-154.

right to withdraw, they do not have the immediate right to do so⁴⁵⁸.

The UK withdrawal from the EU, emphasised the fact that the Member States are not only the original holders of the competences and acts as Master of Treaties but in addition to that, they retained their status as an independent units capable to take major decisions about their future directions⁴⁵⁹. The right to withdraw from the Union introduced by the treaty of Lisbon underlines this fact⁴⁶⁰. States are sovereign entities and according to Carl Schmit ‘the sovereign is who decides on the exception’⁴⁶¹, This means stepping outside the ordinary state of thing, or the power to step outside the legal rules. The Schmitt’s exception within the Supranational system legal system, mean to stand outside the EU and withdrawal right of its member state. Thus state being the sovereign can take an extreme position and opt out of The membership of the Union while making use of the exit clause of Article 50 of TEU⁴⁶².

⁴⁵⁸ J Friel Raymond, ‘Providing a constitutional framework for withdrawal from the EU: Article 59 of the draft European constitution’ (2004) 53(2) *International & Comparative Law Quarterly* 407, 409; *Position of the German Court on Ratification of the Treaty of Lisbon BVerfG Judgement of the second senate 2 BvE 2/08*, paras 1-421

⁴⁵⁹ Circolo, Hamul’ák, and Blažo (n 423) 213.

⁴⁶⁰ Ondrej Hamul’ák, *National Sovereignty in the European Union: View from the Czech Perspective* (Springer 2016) 85.

⁴⁶¹ Phedon Nicolaides, ‘Withdrawal from the European Union: a typology of effects’ (2013) 20(2) *Maastricht Journal of European and Comparative Law* 209, 212.

⁴⁶² *ibid.*

3 EU External Action

This Chapter outlines the general framework for the external action of the European Union. It is an essential development to the subject of the thesis because EU external action encompasses the conduct of its relations with the third countries. It overall provides the legal basis for Union external action, and the framework for conducting its relationship with outside world. It will also analyse in detail the Union internal and external competences in its external relations.

3.1 Background

One of the principal objectives of the constitutional process was to render the EU with such tools to enable it to become a global actor both in economic and political sphere¹. This necessitated the establishment of Union's foreign policy on stronger institutional and legal framework and guarantee for a better coherence between the political and economic aspects of its external action.

The Laeken declaration of 2001, which mandated the Convention on the Future of Europe, has deliberated on one of the key challenge faced by the Union in de-

¹ Jan Wouters, Dominic Coppens, and Bart Meester, 'The European Union's external relations after the Lisbon Treaty' in Stefan Griller and Jacques Ziller (eds), *The Lisbon Treaty: EU constitutionalism without a constitutional treaty?* (Springer 2008) vol 11, 146.

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termining and fulfilling its role in the world, that is ‘how to develop the Union into a stabilising factor and a model in the new multipolar world’². This necessitated the overall organisation of EU external action for exerting its influence as an international actor. For realizing that, it offers three parameters which can be used to assess the success of the reform process which culminated in the revised Treaty Text. First, it emphasized the need for a better division and definition of competence within the EU. The better division of competences means greater transparency as to different types of competences (exclusive and shared). It also covered the relationship between EU competence and Member State competence and the level at which they can exercise their respective competences. This also demands the examination of the current organisation of competences, and whether they are enough to fulfil Union’s objectives and evaluating the appropriate balance between the dangers of ‘creeping competence’³. Laeken declaration demands for more democracy, transparency and efficiency of the EU and its institutions. Other than issues concerning the efficiency of the EU institutions such a role of the Presidency, decision making procedures, Laeken declaration raised several questions related to external policy. For instance: ‘How should the coherence of European Foreign policy be enhanced? How is synergy between the High Representatives and Competent Commissioner to be reinforced? Should the external representation of the Union in international fora be extended further?’⁴. These parameters provided a useful insight concerning EU external action that is established by Treaty of Lisbon through major modification

² Laeken Declaration, 14-15 December 2001 (<http://ue.eu.int/en/Info/eurocouncil/index.htm>).

³ Marise Cremona, ‘Defining competence in EU external relations: lessons from the Treaty reform process’ in Marc Maresceau and Alan Dashwood, *Law and practice of EU external relations: salient features of a changing landscape* (Cambridge University Press 2008) 35.

⁴ *ibid.*

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of Union Competences in external action. In an excerpt from the ‘Declaration on Globalisation’, adopted by the European Council on 14th December 2007, the aspiration regarding Lisbon treaty in making the EU as an international actor was expressed in the following words:

*“We aim at shaping globalisation in the interests of all our citizens, based on our common values and principles. For this even the enlarged Union cannot act alone. We must engage our international partners in enhanced strategic cooperation and work together with stronger multilateral organisations. The Lisbon Treaty, in setting a reformed and lasting institutional framework improves our capacity to fulfil our responsibilities, respecting the core principles enshrined in the Berlin declaration. It will bring increased consistency to our external action”*⁵

It is said that the above-mentioned aspiration regarding Treaty of Lisbon seems to be modest in comparison to what was expected from the Union as an external actor in a Treaty establishing a Constitution for Europe⁶. After the failure of the ratification of the Constitutional treaty which had proposed the major substantive and institutional changes to the EU external action, the role of the Lisbon treaty concerning the EU external action ‘appears only to be to bring increased consistency to the external action of the Union’⁷.

The discussion in the next paragraphs analyses the general framework of the EU

⁵ The Council of the European Union, Presidency Conclusions – Annex on ‘EU Declaration on Globalisation’ (14 December 2007) 16616/1/07 REV 1 (<http://data.consilium.europa.eu/doc/document/ST-16616-2007-REV-1/en/pdf>).

⁶ Wouters, Coppens, and Meester (n 1) 144.

⁷ *ibid.*

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external action after the modifications made by the Lisbon treaty in its both parts (Treaty on European Union and Treaty on the functioning of the European Union) in the sphere of the EU external action.

3.2 Conferral of Legal Personality to the Union

The former EC treaty did not provide a general legal basis for the EU external action⁸. The Community was explicitly conferred the status of legal personality under Article 281 EC treaty⁹. But the general capacity derived from that article was not adequate to establish an independent legal basis to conclude international agreements¹⁰. Being imparted with a legal personality, the Community was capable to exercise rights in international legal agreement and enter obligations over the entire area of its objectives¹¹. In contrast to the Community, the pre-Lisbon Union had not been explicitly provided the status of legal personality¹². However, ex Article 24 TEU provided the Union with procedural framework to enter into international

⁸ Consolidated version of the Treaty establishing the European Atomic Energy Community [2016] OJ C203/1, contrast article 101 of the treaty provides ‘The Community may , within the limits of its powers and jurisdiction, enter into obligations by concluding agreements or contracts with third states, an international organization or a national of a third state’.

⁹ Consolidated Version of Treaty Establishing the European Community (EC) [1992] OJ C35/ (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1992:224:FULL&from=EN>), art 281; Consolidated version of the Treaty establishing the European Atomic Energy Community [2012] OJ C327/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012A/TXT&from=EN>), art 184

¹⁰ GDe Baere, ‘EU external action’ in Catherine Barnard and Steve Peers (eds), *European union law* (Oxford University Press 2017) 711.

¹¹ Case 22/70 *Commission of the European Communities v Council of the European Communities* (‘ERTA’) [1974] ECLI:EU:C:1971:32, paras 13,14; Joined Cases 3/76, 4/76, 6/76 *Cornelis Kramer and others* [1976] ECLI:EU:C:1976:114, paras 17,18

¹² Baere (n 10) 711; Piet Eeckhout, *External Relations of the European Union-Legal and Constitutional Foundations* (Oxford University Press 2004) 94

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agreements within the area of former second and third pillars which covers the CFSP and Police and Judicial Cooperation in Criminal Matters (PJCCM), and overall practice in pre-Lisbon period tend to suggest that the Union already had a legal personality, especially since the Treaty of Nice¹³. After the adoption of the Lisbon treaty, Article 47 of TEU established explicitly the legal personality of the EU¹⁴ (by merging with the legal personality of the former Community)¹⁵. This Article can be termed the strongest statement of the European Union's external presence¹⁶. In addition to that, Article 261(1) TFEU confirms the general capacity of the Union to enter into international agreement¹⁷. This provision stipulates that the Union may conclude an agreement with one or more third countries or international organizations;

- a) where the treaties so provide; This covered the Union's external action in area of competences explicitly provided by the treaties¹⁸
- b) where the conclusion of an agreement is 'necessary in order to achieve, within

¹³ Council Decision of 9 April 2001 concerning the conclusion of the Agreement between the European Union and the Federal Republic of Yugoslavia (FRY) on the activities of the European Union Monitoring Mission (EUMM) in the FRY [2001] OJ L125/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001D0352&from=en>); Council Decision 2010/53/CFSP of 30 November 2009 concerning the conclusion of the Agreement between Australia and the European Union on the security of classified information [2010] OJ L26/30 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0053&from=EN>)

¹⁴ Consolidated version of the Treaty on European Union [2008] OJ C5/1, art 47.

¹⁵ Consolidated version of the Treaty on European Union 2009 Consolidated version of the Treaty on the Functioning of the European Union [2010] OJ C53/1, art 1(third para).

¹⁶ Damian Chalmers, Gareth Davies, and Giorgio Monti, *European Union Law: Cases and Materials* (Cambridge University Press 2010) 632.

¹⁷ Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European [2010] OJ C53/1 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2010.083.01.0001.01.ENG&toc=OJ:C:2010:083:TOC#C_2010083EN.01001301), art 261(1).

¹⁸ Geert De Baere, *Constitutional principles of EU external relations* (Oxford Studies in European Law 2008) 10-11; Piet Eeckhout, *EU external relations law* (Oxford University Press 2012) 122

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the framework of the Union's policies, one of the objectives referred to in the treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope'.

This covered the Union external implied competence derived through the case law and was recognized for the first time by the Court of justice in ERTA¹⁹. The facts of the case were as follow. The Commission requested the annulment of the council proceedings of 20th March 1970 on the ground that the Member States of the then Community have no powers to negotiate a European agreement under the auspices of United Nations Economic Commission for Europe (UNECE) regarding the works of crews of vehicles engaged in international road transport Association (ERTA).The Commission raised the point that the Community should have concluded this agreement and not the Member States. As the Community had no given relevant explicit external competences, the case gave the ECJ the opportunity for the first time to establish its views on whether the external competence could be implied from explicitly conferred internal competences.

The conferment of legal personality has endowed the Union with an external independent presence that have placed it on par with the states²⁰. Just like the states, the Union can pursue two forms of external action. Autonomous action that is performed unilaterally. It can be of variant types. For instance, imposition of sanctions on states or individuals²¹, Restrictive trade measures involving Regulations that im-

¹⁹ *Commission of the European Communities v Council of the European Communities ('ERTA')* (n 11) para 14.

²⁰ Chalmers, Davies, and Monti (n 16).

²¹ Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran [2007] OJ L103/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R0423&from=EN>).

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pose anti-dumping duties on goods which are sold in the Union at a price lower than that on the exporter's market²², regulations that put a ban on the imports of certain goods on environmental grounds²³, imposition of safeguard measures against the foreign imports to protect the domestic industries²⁴. Alternatively, these actions could take the form of a general common foreign and security measures²⁵.

The second type of action is the conclusion of international agreements with third States. These can be any undertaking which is binding under the international law²⁶. The procedure for the conclusion of international treaties involved three stages given in detail in the TFEU²⁷.

1. The first step is the opening of negotiations which can begin only with the authorisation granted by the Council of Ministers²⁸. The recommendations

²² for example Regulation 1202/2009/EC imposing a definitive anti-dumping duty on imports of furfuryl alcohol originating in People's Republic of China [2009] OJ L323/48 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1202&from=en>).

²³ Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards [1991] OJ L308/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31991R3254&from=EN>).

²⁴ Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports [2009] OJ L84/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0260&from=EN>).

²⁵ Council Joint Action 2009/854/CFSP of 20 November 2009 amending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah) [2009] OJ L312/73 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009E0854&from=EN>).

²⁶ Case 1/75 *Opinion of the Court of 11 November 1975* [1975] ECLI:EU:C:1975:145; Case 327/91 *French Republic v Commission of the European Communities* [1994] ECLI:EU:C:1994:305

²⁷ In the case of Mixed agreements Member states participate in the negotiations and also sign the agreement separately, although in many cases the Commission acts as a sole negotiator on behalf of the Union and Member states.; Panos Koutrakos, *EU international relations law* (Hart 2006) 160-180

²⁸ Treaty on the Functioning of the European Union [2007] (<https://eur-lex.europa.eu/legal->

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come from the Commission and in instance of Common Foreign and Security Policy (CFSP) measures made by the High Representative²⁹;

2. The second stage covers the process of carrying out of the negotiations by the Commission or the High Representative. The Council usually set out the directives to be followed by these on how to negotiate or it can delegate a committee of national representatives for providing consultation to the negotiator during the negotiations³⁰.
3. The final stage is the signing of agreement. The initial decision is taken by the Council authorising the signing of agreement³¹. It is the Council which concludes the agreement, also the European Union participates in the process in certain circumstances. But the consent of parliament is also required in areas where the internal policy field is governed by either the ordinary or the assent legislative procedure³². In all other areas except CFSP, the council requires only to consult Parliament³³. In respect of CFSP possibly no consultation takes place³⁴.

These new procedures for the conclusion of international agreements have

content/EN/TXT/HTML/?uri=LEGISSUM:4301854&from=EN), art 218(2); The Council acts by QMV throughout the procedure unless the domestic policy field is one where unanimity is required, for accession and association agreements and for accession to ECHR; In these fields, it must act by unanimity.; Art 218(8) TFEU (n 28)

²⁹ *ibid* art 218(3).

³⁰ *ibid* art 218(4).

³¹ *ibid* art 218(5).

³² *ibid* art 218(6)(a)(V); Other fields which required the Parliament consent include association agreements, accession to the ECHR, agreements setting up institutional frameworks for Cooperation and agreements with important budgetary implications for the Union; *ibid* art 218(6)(a)

³³ *ibid* art 218(6)(b).

³⁴ *ibid* art 218(6)(a).

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strengthened the role of the European Parliament³⁵. Besides its power in conclusion of agreement, it is to be informed of all the stages of the procedure³⁶. Whether the specification of the role of the European Parliament in conclusion of international agreements appease those concerned about the democratic deficit in this area, remain to be seen later³⁷. Regarding the international agreements, the court of Justice has a special jurisdiction. As to the legality of the agreement any Member State, the Parliament, the Council of Ministers or the Commission can obtain the Court's opinion. If the Court gives its opinion determining that the agreement conflicts with the EU law, it will not enter into force until the agreement is amended or treaties revised³⁸. This provision serves as a safeguard measure to prevent any legal dispute that may arise once the agreement has been signed. This also helps in not only in protecting the international image of the Union from being damaged, but also protects the interest of the third countries, which have signed the agreement. In uniformity with this policy, the Court has held that once the agreement is signed it will not give any opinion on the legality of the agreement³⁹. However, once the agreement has been signed, the challenges as to the legality of the agreement can be raised before the Court as actions for annulment⁴⁰. The Union's power

³⁵ However, the role of Parliament is more limited for international agreements entered into on the basis of the common commercial policy, for which a separate procedure is established. Also see art 207 TFEU (n 28)

³⁶ *ibid* art 218(10).

³⁷ Ricardo Gosalbo Bono, 'The International Powers of the European Parliament, the Democratic Deficit and the Treaty on European Union' (1992) 12(1) Yearbook of European Law 85.

³⁸ Art 218(11) TFEU (n 28).

³⁹ *Opinion of the Court of 11 November 1975* (n 26); *French Republic v Commission of the European Communities* (n 26)

⁴⁰ Art 263 TFEU (n 28); Joined Cases 317/4, 318/4 *European Parliament v Council of the European*

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accompanied with its legal personality to enter into international agreement, is not the general power like that held by the states. The Union power to enter into international agreement is dependent on the grant of competences to act⁴¹. This was also outlined in Declaration 24 concerning the legal personality of the EU. It read as ‘The Conference confirms that the fact that the European Union has a legal personality which will not in any way authorise the Union to legislate or to act beyond the competences conferred upon it by the Member States in the Treaties’⁴².

Before embarking upon the discussion regarding the competences of the Union its external action, here it would be necessary to discuss the general framework established for the EU external action⁴³.

The Lisbon treaty has devised the general framework for the external relations by formally separating CFSP from the other areas of external relations, unlike the constitutional treaty which has brought together the different aspects of the Union’s external action. Therefore, a new title V ‘General Provisions on the Union’s External Action and Specific Provisions on the Common Foreign and Security Policy’ is added in the TEU, whereas a new part V that is added to the TFEU ‘External Action by the Union’ contains all other aspects of the Union’s external action. Undoubtedly, the formal separation of the CFSP does not yield significant legal consequences as it is clearly mentioned that the TEU and TFEU have the ‘same legal value’⁴⁴. Also,

Union and Commission of the European Communities [2006] ECLI:EU:C:2006:346

⁴¹ Chalmers, Davies, and Monti (n 16) 634.

⁴² Declaration 24 Concerning the legal Personality of the Union [2016] OJ C326/337.

⁴³ Wouters, Coppens, and Meester (n 1) 146.

⁴⁴ Treaty on European Union [1992] (https://europa.eu/european-union/sites/europa.eu/files/docs/body/treaty_on_european_union_en.pdf), art 1(third para).

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because the CFSP is guided by the same set of objectives as outlined for the other aspect of the Union's external action⁴⁵. The EU shall now conduct its CFSP on a new pattern that is by defining general guidelines, by adopting decisions and by strengthening systematic policy Co-operation between the Member States⁴⁶. The Lisbon Treaty takes over the same distinction as given in the constitutional treaty between the legislative acts and implementing⁴⁷ or delegated acts⁴⁸ and substantiate that acts in the domain of CFSP cannot be of legislative nature⁴⁹. The direction of the external action is determined by the European Council, by identifying the 'strategic interests and objectives of the Union'⁵⁰. The European Council act based on unanimity by considering the recommendations made by the Council of Ministers, who in turn may receive proposals from the High Representatives of the Union concerning the CFSP and Commission concerning other policy areas⁵¹.

Article 22(1) read as:

'Decisions of the European Council on the strategic interests and objectives of the Union shall relate to Common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the

⁴⁵ Wouters, Coppens, and Meester (n 1) 146.

⁴⁶ Art 25 TEU (n 44); 'Decisions' comprise the previous 'common strategies', 'common positions' and 'joint actions'

⁴⁷ Art 291 TFEU (n 28).

⁴⁸ *ibid* art 290.

⁴⁹ Arts 24(1), second para TEU (n 44).

⁵⁰ *ibid* art 22(1).

⁵¹ Chalmers, Davies, and Monti (n 16) 635.

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*means to be made available by the Union and the Member States*⁵².

While the European Council decision's impact to establish the policy framework for the European Union's external relations with various countries and regions⁵³, the European Council approach is mainly determined by the objectives of the Union's external action. Article 21 of the TEU elaborates the objectives of the Union, which the Union shall not only 'uphold' but also 'promote'. These objectives are elaborated in Article 21 of TEU which provides,

1. 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.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

⁵² Art 22(1) TEU (n 44).

⁵³ Chalmers, Davies, and Monti (n 16) 635.

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- (a) safeguard its values, fundamental interests, security, independence and integrity;
 - (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
 - (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;
 - (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
 - (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
 - (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
 - (g) assist populations, countries and regions confronting natural or man-made disasters; and
 - (h) promote an international system based on stronger multilateral cooperation and good global governance.
3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five

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of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

The foreign policy is usually premised on military objectives or socio-economic objectives of the states. Article 21 evidences a mix of both conventional foreign policy (premised on military security and management of crisis and conflicts) and structured foreign policy, which is proceeded over a long duration and ‘seeks to influence sustainable political, legal, socio-economic, security and mental structures’⁵⁴ but emphasis on the structured foreign policy objectives is stronger thus reflecting the Union’s institutional capacity in that regard⁵⁵. The Union pursues its structured foreign policy through association and cooperation agreement which contain provisions concerning liberalisation of trade and cooperation agreements with its external partners⁵⁶. For instance, Union relationship with its former colonies in Africa, Caribbean and Pacific (ACP) states. Its relationship with these states is governed by the Cotonou Convention, seventy-seven countries are signatories to this Convention⁵⁷. The objective was to provide economic assistance and ACP States’ access

⁵⁴ Stephan Keukeleire and Tom Delreux, *The foreign policy of the European Union* (Macmillan International Higher Education 2014) 25.

⁵⁵ Chalmers, Davies, and Monti (n 16) 636.

⁵⁶ *ibid.*

⁵⁷ Partnership agreement between the Members of the African, Caribbean and Pacific Group of States

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to EU market. But the scope of the Cotonou agreement is quite wider and encompass. It includes : 1) political reforms through promoting democracy and human rights 2) social reforms through reduction of poverty 3) economic reforms and trade liberalisation 4) financial assistance 5) the involvement of non-state actors⁵⁸.

Article 21(1) aims for the propagation of the Union' political principles worldwide. The Union must establish its cooperation agreements with the third states on the condition that they shared the Unions principles. Since 1995, the European Union has set the practice including certain conditionalities in its partnership agreements with the third states which include respect for human rights, democratic principles and rule of law. These conditionalities underpin the ACP-EU partnership agreements. The infringement of these conditionalities would result in sanctions against the state in breach⁵⁹. These conditionalities are not well perceived on the ground as they are viewed as a tool for the propagation of the European values in the developing states. Also, the effectiveness of this pattern of assistance based on conditionalities has been doubted as it is unclear whether they truly reflect political reforms or whether they are influenced by the interests of the Member states or the Union's geopolitical considerations⁶⁰.

The European Union's propagating its values of democracy and human rights

and the European Community and its Member signed in Cotonou on June 23 2000 [2000] OJ L317/3; revised [2005] OJ L209/27

⁵⁸ Amelia Hadfield, 'Janus advances? An analysis of EC development policy and the 2005 amended Cotonou partnership agreement' (2007) 12(1) *European Foreign Affairs Review* 39, For details on Cotonou agreement between EU and ACP countries see; Stephen R Hurt, 'Co-operation and coercion? The Cotonou Agreement between the European Union and ACP states and the end of the Lomé Convention' (2003) 24(1) *Third World Quarterly* 161

⁵⁹ Partnership agreement between the Members of the African, Caribbean and Pacific Group of States and the European Community and its Member signed in Cotonou on June 23 2000 (n 57) arts 96,97.

⁶⁰ Sabine C Zanger, 'Good governance and European aid: The impact of political conditionality' (2000) 1(3) *European Union Politics* 293.

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should not be perceived as selfless⁶¹. It is the third theme of its foreign policy strategy. The launch of the European Neighbourhood Policy (ENP) in 2004 reflects this theme which applies to its immediate neighbourhood by land or sea such as Algeria, Armenia, Belarus, Azerbaijan, Georgia, Egypt, Jordan, Lebanon, Israel, Moldova, Morocco, Syria, Tunisia, Ukraine and Occupied Palestinian Territory. The objective was to ‘to develop a zone of prosperity and a friendly neighbourhood with whom the EU can enjoy close, peaceful and cooperative relations’⁶². The Policy aims at establishing the market for the EU exports, to provide economic assistance and in turn secure the Europe from mass migration from these states and to aid its partners to fight terrorism⁶³.

A unifying theme which emerges from Article 21(3) is consistency. In EU context, it takes three distinguished dimensions. Horizontal consistency aims at achieving consistency in EU policies. Institutional consistency aims to achieve harmony between different bureaucratic set ups within the Union (the major inconsistencies in this set up are between the measures taken under the TEU and those taken under the TFEU) and vertical consistency between actions taken by the Union and Member States⁶⁴. Article 21 aims for achieving horizontal consistency as it provides for a joined-up policy-making and Article 22 aims for enhancing the institutional consistency. This is achieved by giving the European Council a leading role in defining

⁶¹ Chalmers, Davies, and Monti (n 16) 637.

⁶² European Commission, ‘Wider Europe -Neighbourhood : A New Framework for Relations with our Eastern and Southern Neighbours’ COM(2003) 104 final; Marise Cremona, ‘The European Neighbourhood Policy: More than a Partnership’ in Marise Cremona (ed), *Developments in EU external relations law* (Oxford University Press 2008) vol 17

⁶³ Chalmers, Davies, and Monti (n 16) 637.

⁶⁴ S Nuttall, ‘Coherence and Consistency’ in Christopher Hill, Michael Smith, and Sophie Vanhoonaeker (eds), *International relations and the European Union* (Oxford University Press 2017) 74.

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the Union's international strategy. This bridges the gap between the matters of high politics (military, diplomacy, intervention covered in TEU) and matters of low politics (trade, development covered in TFEU)⁶⁵.

3.2.1 External Competences of the Union

Based on the principle of Conferral, the Union has only those competences, conferred on it by the Member states. Thus, the Union competence in the field of external relations is also governed by the same principle. Article 5 (1) (2) of TEU read as:

1. The limits of Union competences are governed by the principle of conferral
2. Under the principle of conferral, the Union shall act only within the limits of competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain within the Member States.

The principle of conferral incorporates the idea, that the Union has only those competences which the Member states have explicitly or impliedly conferred on the Union in the treaties⁶⁶. Before considering the possibility of taking any action, whether internal or external, the Union must first determine whether it has actually the competence to do so⁶⁷. This process entails two meanings. Firstly, the Union is not capable of extending its own competence⁶⁸, secondly the Union lacks the general

⁶⁵ Chalmers, Davies, and Monti (n 16) 637.

⁶⁶ Baere (n 10) 712.

⁶⁷ *ibid.*

⁶⁸ Paul Craig, *The Lisbon Treaty: law, politics, and treaty reform* (Oxford University Press 2010) 156-157.

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law-making capacity⁶⁹. In other words, every single action of the Union requires one or more legal bases in the Treaties, which must be established on objective factors aim and content and open to judicial review⁷⁰ and these actions must ascertain both the vertical and horizontal division of competences⁷¹. Therefore, the choice of appropriate legal base has a constitutional significance for validating the Union actions. The action is liable to be invalidated, if it is established on an incorrect legal base, especially where the appropriate legal base lays down the procedure for adopting acts and is altogether different from the one that has in fact been followed⁷².

According to G. de Baere, the implication of Article 5 TEU is that ‘unlike most nation states, when considering a response to an international situation, the Union must always give precedence to considerations of competence over considerations of effectiveness in international action’⁷³. The highest concentration of provisions concerning external actions is within Parts IV, V and VI of the TFEU, which provide for five types of explicit external actions⁷⁴.

⁶⁹ Baere (n 10) 712.

⁷⁰ Joined Cases 14/15, 116/15 *European Parliament v Council of the European Union* [2006] ECLI:EU:C:2016:715, para 38.

⁷¹ Case 301/06 *Ireland v European Parliament and Council of the European Union* [2008] ECLI:EU:C:2008:558, para 69.

⁷² Case 263/14 *European Parliament v Council of the European Union* [2016] ECLI:EU:C:2016:435.

⁷³ De Baere (n 18) 10.

⁷⁴ Within the TFEU, the same principles for determining the legal base apply to external measures as apply to internal ones, namely one looks at the predominant aim and content of the measure and determine the base with which it corresponds. Case 2/00 *Opinion of the Court of 6 December 2001 on Cartagena Protocol on Biosafety* [2001] ECLI:EU:C:2001:664

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3.2.2 Common Commercial Policy

This policy is counted the most salient of all the external policies of the Union. It governs the Union's trade relations with the non-EU states. Under this policy, the Union constitutes the custom union and set a common external tariff (tax) for goods entering the Union from the other states⁷⁵. Besides trade in goods and services, the policy also governs the trade related aspects of intellectual property and investment.

3.2.3 Development Co-Operation and Humanitarian Aid

The wide array of policies concerning development cooperation and humanitarian aid to third countries constitute important position in its external relations. It covers development cooperation⁷⁶; economic technical and financial cooperation⁷⁷; and humanitarian aid⁷⁸.

3.2.4 Restrictive Measures

The Union may adopt the restrictive measures against the states or at private parties like companies, natural persons or 'non-state entities' such as Al -Qaeda under its external relations policies⁷⁹. For imposing the restrictive measures, the prior decision must be taken under the CFSP before formal measures can be adopted under the

⁷⁵ Art 206 TFEU (n 28).

⁷⁶ *ibid* art 208-211.

⁷⁷ *ibid* arts 212,213.

⁷⁸ *ibid* art 214.

⁷⁹ Chalmers, Davies, and Monti (n 16) 638; Charlottopinion1/75e Beaucillon, *Les mesures restrictives de l'Union européenne* (Bruylant 2013) 712

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TFEU⁸⁰.

3.2.5 Relations with International Organisation

To cover the establishment of the appropriate forms of cooperation with international organisations like united nations and its agencies, the Council of Europe, the Organisation for security cooperation in Europe and the OECD⁸¹. European Union is a member of few organisations like WTO, the codex Alimentarius Commission within the United Nations and the European Bank for Reconstruction and Development. The Union has no status in international financial institutions like World Bank and IMF. It is only a ‘Full Participant’ or ‘Observer’ in UN Bodies. This can be explained by the Members States’ interests, who want to keep their position in these influential bodies. For instance, in the UN context the Unions energies should be devoted to reconciling the divergent interests of the member states, rather than using diplomacy to articulate the EU stand⁸².

3.2.6 Association of Overseas Countries and Territories

The Union external relations also cover the Association agreements with twenty ‘non–European countries and territories which have special relations with France,

⁸⁰ Art 215 TFEU (n 28).

⁸¹ *ibid* art 220; See Catherine Flaesch-Mougin, ‘Les relations avec les organisations internationales et la participation à celles-ci’ in Commentaire Megret (ed), *Le Droit de la CEE* (relations extérieures, ed Université de Bruxelles 2005) 337-437; Catherine Flaesch-Mougin, ‘La représentation de l’Union européenne post-Lisbonne dans les organisations internationales’ in Catherine Flaesch-Mougin and Lucia Serena Rossi (eds), *La dimension extérieure de l’espace de liberté, de sécurité et de justice de l’Union européenne après le Traité de Lisbonne* (Primento 2013)

⁸² Keukeleire and Delreux (n 54) 202-207.

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Netherlands, Denmark and the United Kingdom⁸³. The association agreements are meant for promoting economic and social development of these territories and to establish close economic relations between the European Union and those states⁸⁴.

In addition to that, the EU has a number of competences, which allows for international agreement and cooperation whilst their central thrust is not externally directed⁸⁵ in areas like immigration⁸⁶, asylum and temporary and subsidiary protection⁸⁷, vocational training⁸⁸, education and sport⁸⁹, culture⁹⁰, public health⁹¹, Research and Development⁹², Trans-European Networks⁹³, environment⁹⁴ and euro⁹⁵. The TEU also provides for Union's external policies in two areas: first is Common Foreign and Security policy (this policy will be covered in upcoming discussion), and second is Union's neighbourhood policy. The ENP made provision for the Union to conclude agreements developing 'special relationships' with neighbouring countries⁹⁶. These agreements cover a wide range of areas and may take the form of

⁸³ Art 198 TFEU (n 28). An exhaustive list is found in Annex II of the TFEU

⁸⁴ 2001/822/EC: Council Decision of 27 November 2001 on the association of the overseas countries and territories with the European Community ("Overseas Association Decision") [2001] OJ L314/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001D0822&from=EN>).

⁸⁵ Chalmers, Davies, and Monti (n 16) 639.

⁸⁶ Provision is made for readmission agreements with non-EU states. Art 78(2)(g) TFEU (n 28)

⁸⁷ *ibid* art 79(3).

⁸⁸ *ibid* art 166(3).

⁸⁹ *ibid* art 165(3).

⁹⁰ *ibid* art 167(3).

⁹¹ *ibid* art 168(3).

⁹² *ibid* arts 180(b), 186.

⁹³ *ibid* art 170(3).

⁹⁴ *ibid* art 191(4).

⁹⁵ *ibid* art 219; Protocol on the Statute of the ESCB, Article 23, first indent

⁹⁶ Art 95 TEU (n 44).

3.3. UNION'S IMPLIED COMPETENCES

commitments for cooperation across a wide range of policy field, preferential trade arrangements or arrangements preparing a country to make a formal accession application⁹⁷.

3.3 Union's Implied Competences

Despite wide-ranging competences, still the Union can do less externally than it can do within its territory⁹⁸. This has caused the problems. For instance, how the Union will respond to the rate of high pollution in Mediterranean, if it could not conclude agreements with the countries in the region? Similarly how the Union will regulate the transport of goods, if the countries through which the goods might pass, do not maintain the same standard?⁹⁹ To tackle this situation, the ECJ in 1971 began a line of case law through its famous decision in AETR, which allowed the Union to develop a viable external action policy, through implied external competences¹⁰⁰. This means where the explicit external dimension is missing, a parallel treaty making power would be implied in many circumstances¹⁰¹. The decision in AETR manifests the political acceptance of the courts approach. The doctrine of implied competences is well known principle of municipal law as well as law of international institutions¹⁰².

⁹⁷ Chalmers, Davies, and Monti (n 16) 640.

⁹⁸ For comparison see Trevor C Hartley and Trevor Clayton Hartley, *European Union law in a global context: text, cases and materials* (Cambridge University Press 2004) Ch12.

⁹⁹ Chalmers, Davies, and Monti (n 16) 640.

¹⁰⁰ Baere (n 10) 718; See on the question of implied competences and interferences in the exercise of external competences of the EU Eleftheria Neframi, *L'action extérieure de l'Union européenne, Fondements, Moyens, Principes* (LGDJ 2010) 58-109

¹⁰¹ This was first developed in *Commission of the European Communities v Council of the European Communities* ('ERTA') (n 11); Koutrakos, *EU international relations law* (n 27) 77-132

¹⁰² Case *M'Culloch v The State of Maryland* 17US 316, 407 [1891] US Reports; Case *Reparation for injuries suffered in the Services of the United Nations* [1949] ICJ

3.3. UNION'S IMPLIED COMPETENCES

The meandering and extensive case law on implied competences of the union is now crystallized in Article 216(1) of TFEU by the Lisbon treaty.

Article 216(1) read as:

The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

The Article 216(1) encompass three important principles which identify three set of circumstances where the union has the power to conclude international agreements although it has no formal external competences¹⁰³.

3.3.1 The Complementarity Principle

The Union may conclude an international agreement where 'it is necessary in order to achieve, within the framework of the Union policies, one of the objectives of the treaty'. This phrase codifies the complementarity principle¹⁰⁴, which was laid out in Opinion 1/76¹⁰⁵. In contrast to AETR, in this case the situation was that no internal Community legislation existed at a moment on laying up of barges the

¹⁰³ Chalmers, Davies, and Monti (n 16) 640.

¹⁰⁴ Alan Dashwood, 'The Attribution of External Relations Competence' in Alan Dashwood and Christophe Hillion (eds), *The General Law of EC: External Relations* (Sweet & Maxwell 2000) 127-232.

¹⁰⁵ Case 1/76 *Opinion of the Court of 26 April 1977 on Draft Agreement establishing a European laying-up fund for inland waterway vessels* (1977); See also *Commission of the European Communities v Council of the European Communities* ('ERTA') (n 11) paras 23-27; *Cornelis Kramer and others* (n 11) paras 30,33

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then Community wanted to conclude an agreement with Switzerland. The objective of the Community through this agreement was the rationalization of the economic situation in the inland water ways sectors in the Moselle and Rhine basins, and throughout all the Dutch inland waterways and German inland waterways linked to the Rhine basin, by elimination of short-term overcapacity of water feet. The vessels from the Switzerland traditionally navigate on these waterways it was hard to imagine how to achieve that objective merely by the establishment of autonomous Community common rules¹⁰⁶. Therefore, it was required to bring Switzerland into this scheme through conclusion of international agreement. Hence, in this case the ECJ established the rule that where the EU law has conferred a domestic competence on the institution for the attainment of specific objective, the Union can conclude international agreement to attain that objective despite the absence of express provision to that effect¹⁰⁷.

3.4 The Principle of Legally Binding Union Acts

The Union shall have an external legal competence to conclude an agreement with one or more third countries or international organisations where the conclusion of the agreement is provided for in a legally binding act⁷; This means regulations, a decision or a directive¹⁰⁸.

¹⁰⁶ Baere (n 10) 57-48.

¹⁰⁷ *Opinion of the Court of 26 April 1977 on Draft Agreement establishing a European laying-up fund for inland waterway vessels* (n 105) para 3; See also Case 2/94 *Opinion of the Court of 28 March 1996 on Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms* [1996] ECLI:EU:C:1996:140, para 26

¹⁰⁸ Art 288 TFEU (n 28).

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3.4.1 ERTA Principle

The Union ‘may conclude international agreement with one or more countries or international organisations where the conclusion of the agreement is likely to affect common rules or alter their scope’. This phrase codifies the ERTA principle¹⁰⁹. The means where the EU measures occupied a field the member states are not allowed to act internationally that would affect the EU measures until they are repealed¹¹⁰. In this situation the Member states competence is excluded which required the existence of EU competences to compensate for the member states inability to act¹¹¹. The resulting competence is exclusive to the Union in accordance to article 3(2) of TFEU¹¹². In each of these mentioned circumstances, it should be determined whether the competence of the Union is exclusive, shared or complementary.

3.4.2 Classification of Union’s Competences

One of the significant novelties introduced by treaty of Lisbon is Title I Part One of the TFEU, which has classified the various domains of Union’s activity into ‘categories and areas of Union competence’ each category being consisted of several ‘areas’. Articles 2 to 6 TFEU set out the different lists of categories of competences which have replaced the list of ‘activities of the Community’ formerly set out in Article 3 EC¹¹³.

¹⁰⁹ Baere (n 10) 718.

¹¹⁰ *ibid.*

¹¹¹ *ibid.*

¹¹² Case 2/15 *Opinion of the Court (Full Court) of 16 May 2017 on free trade agreement between EU and Singapore* [2017] ECLI:EU:C:2017:376, paras 170-172.

¹¹³ Kieran St C Bradley, ‘Legislating in the European Union’ in Catherine Barnard and Steve Peers (eds), *European union law* (Oxford University Press 2017) 108.

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Article 2 of TFEU listed three categories of competences, which are considered most pertinent for the Union's external action. These include exclusive competence¹¹⁴, shared competence¹¹⁵, and competence to define and implement CFSP, including the progressive framing of a CSDP¹¹⁶.

3.4.3 Exclusive Competence

Article 3 of TFEU lists five explicitly attributed or priori exclusive competence of the Unions : a) customs Union, b) 'competition rules necessary for the functioning of the internal market', c) monetary policy for the eurozone, d) 'the conservation of marine biological resources' (which covers the fixing of fishing quotas), e) the Common Commercial policy.

Both the internal and external dimensions of the policies fall within the exclusive competence of the Union¹¹⁷. The distinguishing feature of exclusive competence is that it is the one which the Union is legally obliged to exercise in instances where the Member state action would render Union action ineffective¹¹⁸. Therefore, in such areas 'only the Union may legislate and adopt legally binding acts' and Member states implement those measures in such areas¹¹⁹. The 'exclusive' character of Union competence is not absolute. Nevertheless, the Union may in turn authorise the member states to legislate or adopt measures¹²⁰. For instance, the Regulation

¹¹⁴ Art 2(1) TFEU (n 28).

¹¹⁵ *ibid* art 2(2).

¹¹⁶ *ibid* art 2(4).

¹¹⁷ Baere (n 10) 720.

¹¹⁸ Jean Paul Jacqué, *Droit institutionnel de l'Union européenne* (Dalloz 2018).

¹¹⁹ Bradley, 'Legislating in the European Union' (n 113) 108.

¹²⁰ *ibid*.

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1219/2012 under certain conditions, allows Member states to conclude bilateral investment agreement which had been signed after 1st December 2009, when the treaty of Lisbon brought foreign direct investment within the exclusive competence of the Union, but not yet concluded any agreement¹²¹. Before the Lisbon Treaty, the Court case law had recognized that Member states may be authorised to legislate at the national level in order to avoid the legislative lacuna, in instance where the Union have for some reasons failed to exercise the exclusive competence¹²².

The ‘United Kingdom fisheries quotas’ provide a striking example of this situation. In this case the United Kingdom proceeded to adopt its own unilateral provisions, as the council had been unable to adopt necessary measures due to United Kingdom’s opposition¹²³. The Court affirmed the transfer of competence to the then European Community had been ‘total and definitive’, the Member states could adopt necessary conservative measures in consultation with the Commission, and in such situation, it will act as ‘trustees of common interests’¹²⁴. With the adoption of new provisions on classification of Union’s competences, It is unlikely that court would allow the states to take benefit from the implicit authorization to exercise exclusive Union competence which belongs to the Union, as they might have exercised in certain situation in the past¹²⁵. Through the Courts case law most of these

¹²¹ Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries [2012] OJ L351/40 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1219&from=EN>).

¹²² Bradley, ‘Legislating in the European Union’ (n 113) 108.

¹²³ Case 804/79 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* [1981] ECLI:EU:C:1981:93.

¹²⁴ *ibid* paras 20,30.

¹²⁵ Bradley, ‘Legislating in the European Union’ (n 113) 108; Case 174/84 *Bulk Oil (Zug) AG v Sun International Limited and Sun Oil Trading Company* [1986] ECLI:EU:C:1986:60

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categories of competence had been identified as exclusive or are inherently exclusive¹²⁶. Within that area of Union's shared competence, there are some matters which might appear to be exclusively inherent. The Union's power to adopt measures for the harmonisation of the national rules for the establishment and functioning of the internal market¹²⁷. The Court has rejected this view on the ground that even if only the Union has the power to harmonize the national rules, the member states are not debarred from adopting measures concerning these areas until and unless the Union's measures have completely occupied the field¹²⁸.

Here it would be relevant to discuss the different instances when the Union acquires an exclusive external competence pursuant to article 3(2) TFEU.

3.5 The Exclusive External Competence On The Basis Of Article 3(2) TFEU

3.5.1 ERTA Doctrine or Exclusivity

Article 3(2) of TFEU indicates the exclusive nature of the Union competence and provides that the Union shall have exclusive competence for the conclusion of an international agreement 'insofar as its conclusion may affect common rules or alter their scope'. This demonstrates the possibility for an EU external competence can

¹²⁶ Bradley, 'Legislating in the European Union' (n 113) 109.

¹²⁷ Case 491/01 *The Queen v Secretary of State for Health, ex parte British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd* [2002] ECLI:EU:C:2002:741, para 180; acknowledging and regulating the Member States' right to legislate area which has already been harmonized by internal market legislation arts 114(4),114(10) TFEU (n 28)

¹²⁸ Case 376/98 *Opinion of Mr Advocate General Fennelly on Federal Republic of Germany v European Parliament and Council of the European Union* [2010] ECLI:EU:C:2000:324, para 136.

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become exclusive through exercise of EU internal competence. This eventuality is also known as ‘ERTA exclusivity’ or ‘ERTA doctrine’¹²⁹. This follows the logic of primacy of EU law over Member states law¹³⁰. However, it enforces greater structures on the international actions of the Member States than primacy does internally¹³¹. This mode of acquiring the exclusive external competence was recognized for the first time in ERTA case and later was refined in the open skies case¹³².

In this case the Commission brought eight separate actions under Article 169 EEC (ex-Article 226 and now Article 258 TFEU) against Denmark, UK, Finland, Sweden, Luxembourg, Belgium, Austria and Germany. The case concerned the various breaches of then community law which arise due to the conclusion of bilateral transport agreements by these states with the US. This case gave the opportunity to the ECJ to clarify its case law according to which member states cannot conclude international agreement outside the framework of the Union institutions, if these obligations fall within the scope of common rules, or within an area which is already largely covered by such rules, even if there is no contradictions between those

¹²⁹ Baere (n 10) 721.

¹³⁰ De Baere (n 18) 71-72; Craig, *The Lisbon Treaty: law, politics, and treaty reform* (n 68) 156-157

¹³¹ De Baere (n 18) 71-72.

¹³² Case 466/98 *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* [2002] ECLI:EU:C:2002:624; Case 467/98 *Commission of the European Communities v Kingdom of Denmark* [2002] ECLI:EU:C:2002:625; Case 468/98 *Commission of the European Communities v Kingdom of Sweden* [2002] ECLI:EU:C:2002:626; Case 469/98 *Commission of the European Communities v Kingdom of Finland* [2002] ECLI:EU:C:2002:627; Case 471/98 *Commission of the European Communities v Kingdom of Belgium* [2002] ECLI:EU:C:2002:628; Case 472/98 *Commission of the European Communities v Kingdom of Luxembourg* [2002] ECLI:EU:C:2002:629; Case 475/98 *Commission of the European Communities v Kingdom of Austria* [2002] ECLI:EU:C:2002:630; Case 476/98 *Commission of the European Communities v Kingdom of Austria* [2002] ECLI:EU:C:2002:631; Case 523/04 *Commission of the European Communities v Kingdom of Netherlands* [2007] ECLI:EU:C:2007:244

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commitments and common rules¹³³. The ECJ held that if the Union has achieved complete harmonization in a given area, then it acquires an exclusive external competence in the area despite the absence of any express provision, which authorises its institutions to negotiate with non-Member states¹³⁴. The reason being that the common rules thus adopted could be affected if the Member states are not restrained to negotiate with non-Member States¹³⁵. Through the exercise by the Union of its competences, both the explicit and implied competences can become exclusive¹³⁶.

3.5.2 Exclusive Competence on the Basis of a Legislative Act

Article 3(2) TFEU provides that the Union will have exclusive competence for the conclusion of international agreement ‘when its conclusion is provided for in a legislative act of the Union’¹³⁷. As mentioned above, The Lisbon treaty has codified the ECJ case law in Article 216 TFEU. In comparison to the language used in Article 3(2) ‘legislative act of the Union’ the language used in Article 216 TFEU ‘Provided for in a legally binding Union act’ would then appear to be broader than merely a ‘legislative act of the Union’¹³⁸. If the possibility to conclude international agreement is provided for in a legally binding Union act, the Union acquires competence

¹³³ *Commission of the European Communities v Kingdom of Denmark* (n 132) para 82; *Commission of the European Communities v Kingdom of Austria* (n 132) para 108

¹³⁴ Baere (n 10) 720.

¹³⁵ *Commission of the European Communities v Kingdom of Denmark* (n 132) para 84; *Commission of the European Communities v Kingdom of Austria* (n 132) para 110

¹³⁶ Baere (n 10) 721.

¹³⁷ Art 289(3) TFEU (n 28).

¹³⁸ Wouters, Coppens, and Meester (n 1) 176.

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to conclude agreement based on Article 216(1) TFEU. And if that same possibility is provided for in a legislative act, the Union acquire exclusive competence to conclude that agreement¹³⁹. However, the legislative act cannot grant exclusive competence to Union in those areas for which Article 4 and 4(3) precisely and clearly stated that the Member states cannot be restrained from acting internationally¹⁴⁰.

3.6 Exclusive Competence on the Ground of Necessity for the Exercise of Internal Competence

Article 3(2) provides that the Union will have the exclusive competence for the conclusion of international agreement when this is ‘necessary to enable the Union to exercise its internal competence’. This provision codifies the ECJ case law providing for the possibility of exclusivity to develop out of the fact that both the internal and external aspects of a policy area can only be exercised effectively together.

In the open skies case, the ECJ held that EU Treaty did not prevent the institutions from taking joint action in relation to US through arrangement of internal community rules. Moreover, the EC treaty did not bar the institutions from prescribing the approach the Member States should take in their external relations with the objective to alleviate possible discrimination or distortion resulting from the implementation of open skies agreements entered by some Member States. The ECJ reasoned that it had not been established that the aims of the EC Treaty in the

¹³⁹ Wouters, Coppens, and Meester (n 1); Baere (n 10) 723

¹⁴⁰ Wouters, Coppens, and Meester (n 1).

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area of air transport could not be achieved by establishing autonomous Community rules¹⁴¹. This was confirmed by the fact that in 1992 the council was able to adopt set of measures to achieve harmonisation in internal market without feeling the need to enter into any international agreement with the US.

3.6.1 Consequences of Union Exclusive Competence

When the treaties have conferred on the Union exclusive competence in specific areas, the Union can only exclusively legislate or adopt legally binding acts concerning that specific area¹⁴². Despite the union exclusive competence in certain area the Member states are only able to do so themselves, if they have been authorised by the Union or for carrying out the Union act¹⁴³. From the ECJ case law on the exclusivity of the Union external action, the two main consequences are followed:

Firstly, when the Union has the exclusive competence in certain area, as per the ECJ decision in ERTA case, the Member states ‘*no longer have the right acting individually or even collectively, to undertake obligations with third countries*’¹⁴⁴. The ECJ established its argument on the principle of loyalty and sincere cooperation, which is now incorporated in Article 4(3) of TEU. The Court held that it would be impossible for the Member states to assume responsibilities outside the framework of the Union that would affect or alter the scope of the Union rules which have been

¹⁴¹ *Commission of the European Communities v Kingdom of Austria* (n 132) para 85; *Opinion of the Court of 11 November 1975* (n 26) para 123

¹⁴² Art 2(1) TFEU (n 28).

¹⁴³ Baere (n 10) 725.

¹⁴⁴ *Commission of the European Communities v Council of the European Communities* (‘ERTA’) (n 11) para 17.

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promulgated for the achievement of the treaty objectives¹⁴⁵.

Secondly, ECJ remarked in Ruling 1/78 (Draft IAEA Convention on the Physical Protection of Nuclear Materials, Facilities and Transports) that when external Union competence is exclusive ‘the Member States, whether acting individually or collectively, are no longer able to impose on the Union obligations which impose conditions on the exercise of prerogatives which thenceforth belong to the Union and which no longer fall within the field of national sovereignty’¹⁴⁶.

This ruling well explains the principle of loyal cooperation of member states, who must facilitate the Union in its exercise of exclusive competence rather than to constrain the Union to use its exclusive competence in external action¹⁴⁷.

The Union’ exclusive competence placed an obligation on the member states not to enter into any international agreement that could affect the Union exclusive competences. The exclusivity principle limits the possibility for law making by the Member states¹⁴⁸. There are three main reasons that member states are legally obliged not to enter into certain international agreements:

First, to avoid the adverse consequences for the Member states international liability, in instance where they conclude an international agreement which is not compatible with EU law;

Second, the possibility of autonomous international agreement concluded by the Member states could prejudice the integrity of the ‘coherent system’ of rules estab-

¹⁴⁵ *Commission of the European Communities v Council of the European Communities* (‘ERTA’) (n 11) para 22; See also *Opinion of the Court of 11 November 1975* (n 26)

¹⁴⁶ Case 1/78 *Ruling of the Court of 14 November 1978 on Draft Convention of the International Atomic Energy Agency on the Physical Protection of Nuclear Materials, Facilities and Transports* [1978] ECLI:EU:C:1978:202, para 32.

¹⁴⁷ *ibid* para 32; See also *Cornelis Kramer and others* (n 11) paras 44-45

¹⁴⁸ Baere (n 10) 725.

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lished by the EU law¹⁴⁹;

Third, the possibility that conclusion of autonomous international agreements by Member states might block the evolution of EU law the subject matter of which is covered by common rules. Its effect would be ‘freezing’ the Union law in a state as it is at a moment the agreement is concluded. Even if the intended agreement is consistent with the EU law, the member states are not allowed to conclude if it falls under the exclusive competences of the Union¹⁵⁰. In addition to that, in principle competence issue need to be resolved before the intended agreement is even negotiated, as it is important to establish who will negotiate¹⁵¹. Further, the determination of the competence question is not dependent on the existence of an actual conflict between the EU common rules and agreement¹⁵².

However, the Member states maintained its capacity to conduct international relations both under national laws and international laws. The Union exclusive competences simply require them not to act autonomously. From the Text of Article 2(1) TFEU, the possibility can be drawn that the Union can empower the states to act in the area which belongs to its exclusive competence¹⁵³. The EU law can authorize the states to act jointly on international plane even these areas falls within the exclusive competences of the Union¹⁵⁴. The Union has empowered the member states

¹⁴⁹ Case 1/03 *Opinion of the Court (Full Court) of 7 February 2006 on Competence of the Community to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters* [2006] ECLI:EU:C:2006:81, paras 122-133.

¹⁵⁰ Case 466/98 *Joined opinion of Mr Advocate General Tizzano delivered on 31 January 2002 on Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland* [2002] ECLI:EU:C:2002:63, points 71-74.

¹⁵¹ Baere (n 10) 726.

¹⁵² Eeckhout, *EU external relations law* (n 18) 86.

¹⁵³ Baere (n 10) 726.

¹⁵⁴ De Baere (n 18) 59-61.

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through a number of Regulations where the Union has established the procedure for the negotiation and conclusion of agreement between the member states and third countries concerning jurisdiction, negotiations and enforcement of judgements and decisions in matters of parental responsibility, matters relating to matrimonial matters, matters relating to maintenance obligations, and law applicable to matters relating to maintenance obligations¹⁵⁵. A peculiar issue arises when the agenda item in an international organization belong to the Union exclusive competences, but the Union itself is unable to manage to become the member of the organization¹⁵⁶. In this scenario, the division of the competences must be equally complied with and member states cannot make unilateral proposals, even of non-binding acts. The ECJ emphasised this rule with respect to a proposal submitted by Greece to International Maritime Organization (IMO) Maritime safety committee to examine the creation of check lists or other appropriate tools in order to assist the contracting states of the International Convention for safety of Life at Sea (the SOLAS Convention) in monitoring whether the ships and port facilities complied with certain requirements¹⁵⁷.

¹⁵⁵ Council Regulation (EC) No 664/2009 of 7 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries concerning jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, matters of parental responsibility and matters relating to maintenance obligations, and the law applicable to matters relating to maintenance obligations [2009] OJ L200/46 (<http://data.europa.eu/eli/reg/2009/664/oj>); Regulation (EC) No 662/2009 of the European Parliament and of the Council of 13 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations [2009] OJ L200/25 (<http://data.europa.eu/eli/reg/2009/662/oj>); Eeckhout, *EU external relations law* (n 18) 162

¹⁵⁶ Baere (n 10) 726.

¹⁵⁷ Case 45/07 *Commission of the European Communities v Hellenic Republic* [2009] ECLI:EU:C:2009:81.

3.7 Union Shared Competences

The basic rule regarding shared competences is provided for by Articles 2(2) and 4 TFEU. The Member states can exercise those competences to the extent that the Union has not exercised or has decided to cease exercising¹⁵⁸. Thus, the competences that do not fall within the exclusive or ancillary lists are presumptively shared in character¹⁵⁹. The ‘principal areas’ of shared competences are the internal market, the aspects of social policy identified in the Treaty, environment and consumer protection, fisheries and agriculture (except fishing quotas, measures on agricultural prices, levies, etc) transport, trans-European net-works, the area of freedom, energy, common safety concerns in public health, security and justice. The Member states have a prior established legal framework in many of these areas into which the Union rules may be integrated¹⁶⁰. For instance, the Union directives of 2010 and 2012 on the rights of accused person to interpretation and translation and on information in criminal proceedings lay down the rules in specific areas of criminal procedure, the area which otherwise belongs to the Member states competence¹⁶¹. The term ‘shared’ is replaced by the term ‘concurrent’ as it is considered more appropriate. The term shared implies that the Member states have the competence to legislate in respect of matters which are already under the Union competence, on the other hand this is

¹⁵⁸ Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C202/344 (http://data.europa.eu/eli/treaty/lis_2016/fna_1/dcl_18/oj).

¹⁵⁹ Art 4(1) TFEU (n 28).

¹⁶⁰ Bradley, ‘Legislating in the European Union’ (n 113) 109.

¹⁶¹ Respectively, Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings [2010] OJ L280/1 (<http://data.europa.eu/eli/dir/2010/64/oj>); Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings [2012] OJ L142/1 (<http://data.europa.eu/eli/dir/2012/13/oj>)

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not the case¹⁶². Therefore, the use of the term concurrent is more appropriate. Once the Union adopt rules concerning matter that fall within the concurrent list, the Member state action concerning that matter is said to be pre-empted and Member states can no more legislate¹⁶³. However, pre-emption concerns ‘those elements of the Union action in question and not the whole area of activity being regulated’¹⁶⁴. In any case to avoid pre-emption, articles 4(3) and (4) TFEU provides explicitly that exercise of Union competence in areas of research, technological development and space, and development cooperation and humanitarian aid does not have the effect of pre-empting member states to exercise their competence in these areas¹⁶⁵. In addition to that, the material scope of union is limited to setting minimum standards in small number of areas such as harmonization of criminal procedure for the purpose of achieving the mutual recognition of judgement of criminal courts, the definition of transborder crimes, and social policy thereby allowing the Member states to adopt the higher standards if acceptable to all¹⁶⁶.

3.7.1 Common Foreign and Security Policy (CFSP)

It is evident from Title V TEU ‘General Provisions on the Union’s External action and Specific Provisions on the Common Foreign and Security Policy’ that Lisbon Treaty has subjected the CFSP to the overall constitutional framework of the EU¹⁶⁷.

¹⁶² Bradley, ‘Legislating in the European Union’ (n 113) 109.

¹⁶³ *ibid.*

¹⁶⁴ Protocol 25 on exercise shared competences annex to the TEU and TFEU. [2016] OJ C202/306

¹⁶⁵ Bradley, ‘Legislating in the European Union’ (n 113) 109.

¹⁶⁶ Arts 82(2),83(1),83(2),153(2)(b) TFEU (n 28).

¹⁶⁷ Baere (n 10) 714.

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The CFSP and European Neighbourhood Policy¹⁶⁸ are the only substantive policies dealt in TEU. Previously, the CFFP, which existed in a second pillar, had a limited relationship with activities carried out in the other two pillars. The Lisbon Treaty abolished the pillar structure and made CFSP a part of the Union ‘External Action’¹⁶⁹. Now, the CFSP is guided by the same set of principles as set out in Article 21 TEU, as other EU external policies¹⁷⁰. Therein the CFSP will not only contribute to the goals of Article 21 but shall also coordinate with other EU policies¹⁷¹. While the ordinary Union framework under the TFEU is characterized by specific attribution of competences¹⁷², it remains far from clear what competences the CFSP encompasses under chapter of Title V TEU. Alternatively, Article 24 (1) TEU provides a general grant of competences in the CFSP. It read as:

The Union’s competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union’s security, including the progressive framing of a common defence policy that might lead to a common defence. . . .

In addition to that Article 42(1) TEU provides that the Common Security and Defence Policy (CSDP)

‘shall be an integral part of the common foreign and security policy. It shall provide the union with Operational capacity drawing on civilian and

¹⁶⁸ Art 8 TEU (n 44).

¹⁶⁹ Chalmers, Davies, and Monti (n 16) 660.

¹⁷⁰ Art 23 TEU (n 44).

¹⁷¹ Chalmers, Davies, and Monti (n 16) 660; Baere (n 10) 716

¹⁷² Alan Dashwood, ‘The relationship between the member states and the European Union/European Community’ (2004) 41(2) Common Market Law Review 355.

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military assets'

Article 42(2) TEU read further as:

'This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements'.

The phrase 'will lead to a common defence' appears to contain a much stronger commitment in comparison to the Article 24(1), which simply refers to 'the progressive framing of a common defence policy that might lead to a common defence'¹⁷³

The role of the European Council and the requirement that the states need to satisfy their constitutional requirement before adopting a decision in this regard, make it obvious that not much legal significance should be given to that phrase 'will lead to a common defence' should be taken as an inspirational statement of a purely political nature¹⁷⁴.

The second paragraph of Article 24(1) TEU stated the set of procedures and institutions for governing the CFSP of the Union. It read as:

"The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common

¹⁷³ For an overview of the EU defence see Panos Koutrakos, *The EU common security and defence policy* (Oxford University Press 2013); European Commission, 'Implementation plan on Security and Defence' Council Doc 14392/16

¹⁷⁴ Baere (n 10) 715.

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*foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, except for its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by Article 275(2) of the TFEU*¹⁷⁵.

Concerning the CFSP, important question what competence does CFSP constitute under the Lisbon Treaty? As discussed above, the Lisbon treaty maintained the position of CFSP by the formal separation of CFSP as well as declaration Nos 13 and 14¹⁷⁶. It is also evident from the specific provisions of CFSP that are explicitly given in the treaty. Concerning the Union competences in external action, three categories of competences are listed in Article 2 TFEU, that is exclusive¹⁷⁷, shared¹⁷⁸, supportive or supplementary¹⁷⁹. However, CFSP is mentioned separately¹⁸⁰. Therefore as per some authors analysis the CFSP constitute a form of ‘sui generis’ competence or a ‘non-pre-emptive shared competence’¹⁸¹. While others authors who have analysed the provisions of the Constitution have classified the CFSP under the shared

¹⁷⁵ relates to policing the borderline between CFSP and other EU policies art 40 TEU (n 44); relates to sanctions *ibid* art 275(2)

¹⁷⁶ Wouters, Coppens, and Meester (n 1) 161.

¹⁷⁷ Arts 2(1),3 TFEU (n 28).

¹⁷⁸ *ibid* arts 2(2),4.

¹⁷⁹ *ibid* arts 2(5),6.

¹⁸⁰ *ibid* art 2(4).

¹⁸¹ Marise Cremona, ‘The draft constitutional treaty: external relations and external action’ (2003) 40(6) *Common Market Law Review* 1347.

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competences within the meaning of Article 2(2) because this constitute the residual category¹⁸². The reasoning is established on the basis of Article 4(1) TFEU which provides that ‘the Union shall share competence with the Member states where the constitution confers on it a competence which does not relate to the areas referred to in Articles 3 TFEU exclusive and 6 (supportive , coordinative or supplementary)’¹⁸³. According to these authors view, the principle of pre-emption, which result by bringing CFSP under the residual category of shared competences in the sense of Article 2(2)¹⁸⁴, is tempered by the fact that the Union cannot act by legislative instrument in the field of CFSP¹⁸⁵. This highlights the specific position of the CFSP. The fact that CFSP is listed separately from the shared competence in Article 2(2) reveals the intention of the drafter that CFSP should be treated differently. The Lisbon treaty has reinforced this intention by leaving the CFSP in a modified manner despite the abolition of previous pillars structure due to its distinctive nature¹⁸⁶. Declaration 14 also supports this view that pre-emption is not applicable in the field of CFSP, as member states cannot be restrained in the formulation and conduct of their foreign policy¹⁸⁷. This shows that the CFSP is not a shared competence of the type listed in Art2(2), but some form of sui generis¹⁸⁸, for instance a shared

¹⁸² Koenraad Lenaerts and others, *Constitutional law of the European Union* (Sweet & Maxwell London 2005) 411.

¹⁸³ Wouters, Coppens, and Meester (n 1) 161.

¹⁸⁴ on Shared competences ‘The Member state shall exercise their competence to the extent that the Union has not exercise its competence’ arts 2(2),4 TFEU (n 28).

¹⁸⁵ Art 24 TEU (n 44); Lenaerts and others (n 182) 411

¹⁸⁶ Wouters, Coppens, and Meester (n 1) 162.

¹⁸⁷ [2016] OJ C202/343 Declarations 13 and 14 emphasize the provisions on the CFSP in the TEU do not ‘affect’ the responsibilities, the existing legal basis, and the powers of the Member States for the formulation and conduct of their foreign policy

¹⁸⁸ European Parliament, ‘Committee on Constitutional Affairs, Report on the Treaty of Lisbon’

competence without pre-emption¹⁸⁹.

3.8 The Decision-Making Process in CFSP

3.8.1 Role of Council

The special nature of CFSP is further corroborated by the fact of decision making in CFSP which remains strongly intergovernmental¹⁹⁰. Article (3) TEU set out the rule of Qualified Majority Voting (QMV) and unanimity an exception in decision-making process since the entry into force of the Lisbon treaty. However, Article 31(1) reverse that order within the area of CFSP and provides that decision making in European Council and Council shall be by unanimity rule, except where Chapter 2 of Title V of the TEU provides otherwise¹⁹¹. However TEU provides the mechanism of ‘constructive abstentia’ to enables the Member state not to take part in decision, without preventing the other Member states from adopting the decision unanimously¹⁹². The Member states that has abstained from voting must ‘in spirit of solidarity’ refrain from taking such action which either conflict or impede the Union action based on the decision, which it has refrained to participate¹⁹³. However, if the Member State decides to abstain in decision process represent one-third of the Member states, which comprised one-third of the population of the Union, the decision cannot be

2007/2286(INI), 24.

¹⁸⁹ Wouters, Coppens, and Meester (n 1) 162.

¹⁹⁰ *ibid.*

¹⁹¹ Art 31(1) TEU (n 44).

¹⁹² *ibid* art 31(1) second subpara.

¹⁹³ Baere (n 10) 733.

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adopted¹⁹⁴. The Council decision concerning external action should be supported by the large number of the members of the Council for the credible Union action¹⁹⁵. The Cyprus made use of this mechanism, and abstained from voting on adoption of Joint Action setting up the Rule of Law Mission in Kosovo¹⁹⁶ on the ground that it would have preferred an explicit UN Security Council authorization¹⁹⁷. Derogating from the unanimity rule, the exception where the Council can take decision by QMV¹⁹⁸;

‘When adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative’

This provision can generate a considerable amount of extension of QMV in the CFSP. Obviously, the High Representative cannot at its own open the door of QMV in the council. The starting point remains with the European Council which must take the decision by unanimity¹⁹⁹. However, individual member state preserves the

¹⁹⁴ Baere (n 10).

¹⁹⁵ Ramses A Wessel, *The European Union’s foreign and security policy: a legal institutional perspective* (vol 33, Martinus Nijhoff Publishers 1999) 144.

¹⁹⁶ Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO [2008] OJ L42/92 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0124&from=EN>).

¹⁹⁷ ‘Council Document of February 2008’ CM448/08; See also M Cremona, ‘Enhanced Cooperation and the European Foreign and Security and Defence Policy’ in Jose Beneyto and Maria (eds), *Unity and Flexibility of the European Union: the Challenge of enhanced cooperation* (Fundacion Univeristy San Pablo 2009) 87

¹⁹⁸ Art 31(2) TEU (n 44).

¹⁹⁹ *ibid* art 31(1).

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possibility to block the decision by QMV²⁰⁰. It requires a skilful High representative backed by a well-documented EEAS who can take the initiative demanding the European Council to request him/ her to make the proposal to the Council that can be later adopted by QMV. In practice, this ‘special request’ by the European Council meant to pass an open mandate on the High Representative²⁰¹. However, the states can block the QMV in the council by invoking the ‘national interest’ exception which is left unbridged by the Lisbon treaty²⁰². They say that unanimity is the cause of an obstacle to the development of the CFSP, is not necessarily correct²⁰³. Rather decisions taken on the unanimity is based on wide understanding of the issue and consider the advantages and risks to the Union²⁰⁴. While decision taken through QMV are often taken more speedily but does not automatically lead to a better decision²⁰⁵.

3.8.2 Role of European Parliament

Apart from abiding by principle of unanimity in Council and European Council concerning matters relating to CFSP, the marginal role of other institutions also signifies the intergovernmental nature of CFSP²⁰⁶. As far the role of the European Parliament concerning the decision making in CFSP area is concerned, Article 36

²⁰⁰ Wouters, Coppens, and Meester (n 1) 163.

²⁰¹ *ibid.*

²⁰² Arts 31(2), second subpara TEU (n 44).

²⁰³ Baere (n 10) 733.

²⁰⁴ *ibid.*

²⁰⁵ Eileen Denza, *The intergovernmental pillars of the European Union* (Oxford University Press 2002) 170.

²⁰⁶ Wouters, Coppens, and Meester (n 1) 164.

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list several possibilities of the involvement of the European Parliament in decision making in the CFSP. The Parliament has the right to be regularly ‘informed and consulted’ on the basic choices of CFSP and the CFDP as well as the obligation to take its view into consideration by the High Representative²⁰⁷, previously this task was performed by the Presidency and the Commission²⁰⁸. The Parliament has also the right to ask questions and make recommendations to both the Council and the High Representatives²⁰⁹. The Parliament connection to the CFSP domain is through the High Representative, so it will be in its interest to have influential High Representative²¹⁰. Parliament is required to hold a debate on ‘progress in implementing’ CFSP and CSDP twice a year²¹¹. Overall, the Parliament is kept at a distance from any particular CFSP measure the best it can do is to exert its influence on its general policy objectives²¹². According to Article 218(6) TFEU, Parliament is to be immediately and fully informed at all stages of procedure for negotiating and conclusion of international agreement. The Parliament involvement in the decision-making process is the reflection of the democratic principle of the EU, that people should participate in the exercise of power through the intermediary of the representative Assembly²¹³. The Parliament right to be informed as laid down in Article

²⁰⁷ Art 36(1) TEU (n 44); See also Jan Wouters and others, *The organisation and functioning of the European external action service: Achievements, challenges and opportunities* (European Parliament, Directorate-General for External Policies of the Union 2013) 58-61

²⁰⁸ Compare the older provision of Art 21 TEU (n 44) and Current *ibid* art 36(1)

²⁰⁹ *ibid* art 36(2).

²¹⁰ Art 218(6) TFEU (n 28). The Parliament is excluded from the negotiating and concluding of international agreement exclusively related to CFSP, this overall depicts the limited role of parliament in CFSP

²¹¹ *ibid* arts 36, para 2.

²¹² De Baere (n 18) 161-166.

²¹³ Baere (n 10) 735.

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218(1) applies to any procedure for concluding international agreement, including agreement exclusively relating to CFSP domain²¹⁴. The objective of that right of information is to ascertain that Parliament is in a position to exercise democratic control over the Union's external action and especially to verify that the legal basis for a decision on the conclusion of agreement was made after proper consideration of the powers of the parliament²¹⁵.

3.8.3 Role of the ECJ

The Jurisdiction of the ECJ's remains in principle excluded under Article 25 TEU and 275 TFEU. However, the Court has jurisdiction in two exceptions, that is to monitor compliance with Article 40 which concerns the delineation between CFSP and other fields of the Union's external action and to review the legality of decisions providing for restrictive measures against natural or legal persons²¹⁶.

The Court gave its view in Opinion 2/13 that it had 'not yet had the opportunity to define the extent to which its jurisdiction is limited in CFSP' as a result of Article 24(1) second sub paragraph and first paragraph of Article 275 TFEU²¹⁷. However, in a recent case the Court got this opportunity. The Court held in its judgement that the second sub paragraph of Article 24(1) TEU and first paragraph of Article 275

²¹⁴ Case 658/11 *European Parliament v Council of the European Union* [2006] ECLI:EU:C:2014:2025, paras 81-86; *European Parliament v Council of the European Union* (n 72) paras 68-70

²¹⁵ *European Parliament v Council of the European Union* (n 214) para 79; *European Parliament v Council of the European Union* (n 72) para 71

²¹⁶ Arts 24(1), second subpara TEU (n 44); Arts 275, second para TFEU (n 28)

²¹⁷ Case 2/13 *Opinion of the Court (Full Court) of 18 December 2014 on Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms* [2014] ECLI:EU:C:2014:2454, para 21; Piet Eeckhout, 'Opinion 2/13 on EU accession to the ECHR and judicial dialogue: Autonomy or autarky' (2015) 38 *Fordham International Law Journal* 955

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TFEU has brought out a derogation from the rule of general jurisdiction which Article 19 TEU has allowed the Court to ascertain that law is observed in the interpretation and application of the Treaties, and they must, therefore, be interpreted narrowly²¹⁸. Therefore, the Lisbon Treaty introduced the position of a dual role for the High Representative in order to transcend these complexities. The High Representative has a dual hat as he/she combines the role of the current High Representative for the CFSP (Council) and of the Commissioner for External Relations²¹⁹.

3.9 The High Representative and European External Action Service

The position of the ‘Union Minister for Foreign Affairs’, which was considered by many as most important innovation under the Constitutional treaty, was maintained under the new title of ‘High Representative of the Union for Foreign Affairs and Security Policy’ under the Lisbon Treaty.

The position of the High Representative, as planned under the Lisbon Treaty, should serve to bridge various tensions that *hic et nunc* appear in the Union external action²²⁰. For instance, within the external aspects of the Union’s policies, institutional tension exist between the Commission and the Council as Member States’

²¹⁸ Case 455/14 *H v Council of the European Union, European Commission and European Union Police Mission (EUPM) in Bosnia and Herzegovina* [2016] ECLI:EU:C:2016:569; Case 439/13 *El-italiana SpA v Eulex Kosovo* [2015] ECLI:EU:C:2015:753; Agreement between the European Union and the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer [2011] OJ L254/3, para 70

²¹⁹ Art 18 TEU (n 44).

²²⁰ Wouters, Coppens, and Meester (n 1) 150.

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influence is often tempered by the Qualified Majority Voting (QMV) in decision making²²¹. Second, a tension exists between the Community external policies which focus primarily on economic sphere on one hand, and CFSP, focussing on political areas on other hand²²². This second source of tension also has an institutional dimension of vertical nature, since in CFSP area the Member states remain the main players by means of unanimity requirements in the European Council and the Council²²³. Therefore, to transcend these complexities, the Lisbon treaty has introduced the position of the dual-role High Representative. As it combines the two functions of the current High Representative for the CFSP (Council) with the Commissioner for External Relations (Commission)²²⁴. The dual position and mandate of the High Representative is apparent in its conditions of appointment, the institutional position and range of competences²²⁵.

3.9.1 Appointment of High Representative

The European Council acting by QMV appoints the High Representative with the agreement of the President of the Commission²²⁶. The same procedure can be used in instance of his resignation, compulsory retirement or death²²⁷. However, the

²²¹ Wouters, Coppens, and Meester (n 1).

²²² *ibid.*

²²³ *ibid.*

²²⁴ Pursuant to ex Art 18(3) TEU (n 44), the current High Representative merely assists the Presidency and he does not formally have the right of initiative; *United Kingdom, House of Commons, Foreign Affairs Committee, Foreign Policy Aspects of the Lisbon Treaty (Third Report of session 2007-2008)* (2008)

²²⁵ Wouters, Coppens, and Meester (n 1) 151.

²²⁶ Art 18(1) TEU (n 44).

²²⁷ Art 246 TFEU (n 28).

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European Parliament receives the indirect say in the appointment of the High Representative, since the High Representative is partly a Commission's representative, and Commission as a body is subject to a vote of consent by the European Parliament²²⁸. Similarly, the Parliament may participate in the vote of censure on the Commission which may result in the resignation of the Members of the Commission as a body and the High Representative 'in the duties that he carries out in the Commission'²²⁹. In case this situation arises, the High Representative retains his positions in the Council till the new Commission is appointed²³⁰. In addition to that, the President of the Commission can request the resignation of the High Representative like all other members of the Commission, but in High Representative's case the procedure set out in Article 18(1) TEU shall be followed, which implies the consent of the European Council²³¹.

3.9.2 Institutional Position of High Representative

The institutional position of the High Representative also reflects his/her dual role²³². On one hand the High Representative chaired the Foreign Affairs Council, which is configuration of the Council rather than the Presidency of the Council of the Union. The Affairs Council work out the Union's external action configuration which work out the Union's external action on the footing of strategic guidelines

²²⁸ Arts 17(7), para 3 TEU (n 44).

²²⁹ *ibid* art 17(8).

²³⁰ Wouters, Coppens, and Meester (n 1) 151. This aspect is not clearly mentioned in the Lisbon Treaty

²³¹ Art 17(6) TEU (n 44).

²³² Wouters, Coppens, and Meester (n 1) 152.

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formulated by European Council to ascertain that the Union action is consistent²³³. Moreover, the High Representative, shall participate in the work of the European Council, comprising of the Heads of State, along with its President and the President of the Commission²³⁴. This is a more privileged position in the European Council in comparison to national Ministers or Commissioners, who may assist the European Council on invitation²³⁵. The High Representative not being a ‘member’ of the Council or the European Council, therefore, does not have a voting right²³⁶. While on the other hand, the High Representative is one of the Vice-Presidents of the Commission²³⁷. He or she is a full member of the Commission, thus takes part in its decision-making process.

3.9.3 High Representative Competences and Responsibilities

The competences and responsibilities of the High Representative’s encompass various areas of the Union’s external action.

The High Representative is responsible to put into effect the CFSP along with the Member States, in accordance with the Treaties²³⁸. The scope of his duties covers preparation (through the use of right of initiative), management and implementation

²³³ Arts 18(3),(16(6)) TEU (n 44). As per *ibid* art 16(9). The Presidency of the other Council configurations is held by the Member States representatives in the Council on the basis of equal rotation.

²³⁴ *ibid* art 15(2).

²³⁵ *ibid* art 15(3).

²³⁶ *ibid* arts 15(2),16(2). The President of the European Council and the President of the Commission also does not take part in the vote of the Art 234 TFEU (n 28)

²³⁷ Art 17(4) TEU (n 44).

²³⁸ *ibid* art 17(4).

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(to certain extent to supervise the implementation by the Member States)²³⁹ to the Union's external dialogue with third parties and representation of the Union in the international organisations and International Conferences²⁴⁰. For instance, he/she can be asked by the Members of the Security Council to defend the Union's position therein²⁴¹. This means representing the Common Position of the Union, a European decision that still requires in principle unanimity²⁴². In other words the High Representative's new position does not reduce the powers and competences of the Member States which are the members of the Security Council . Furthermore, the Member States, who are sitting in the Security Council²⁴³, must defend the position and interests of the Union 'without prejudice to their responsibilities under the United Nations Charter'²⁴⁴. This qualification, is the resumption of ex-Article 19 TEU, seems to imply that in instance of urgency which requires a prompt action from the security Council these Member States can deviate from the position of the Union²⁴⁵. Moreover in the domain of CFSP the President of the European Council , who 'at his level and in that capacity' is to ensure the external representation of the Union on issues concerning CFSP 'without prejudice to the powers of the high Representative'²⁴⁶. The description is quite vague, but probably it implies that the President of the European Council is to meet the head of the States and governments

²³⁹ Art 24(3) TEU (n 44).

²⁴⁰ *ibid* arts 27(1), 27(2).

²⁴¹ *ibid* arts 34(2), para 3.

²⁴² *ibid*.

²⁴³ *ibid*.

²⁴⁴ *ibid*.

²⁴⁵ M Eaton, 'Common Foreign and Security Policy' in David O'Keeffe and Patrick M Twomey, *Legal issues of the Maastricht Treaty* (London, 1994) 215-225.

²⁴⁶ Art 15(6) TEU (n 44).

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of the Third States while the High Representative²⁴⁷ represents the Union at the ministerial level, this is on the whole what appears in practice.

The High Representative has a broad range of duties within the Commission. He/she shall be responsible for tasks incumbent on the Commission in external relations and for co-ordination of other aspects of the Union's external policy²⁴⁸. As one of her core tasks is to ensure consistency of the Union's external action²⁴⁹, therefore, he / she is responsible to build bridges between the Commission and the European Council and between the various commissioners responsible for different aspects of the external policies²⁵⁰. One may question to what extent the voice of the High Representative might be lowered within the Commission keeping in view the strengthened role of the President of the Commission and its internal organisation and the resignation of individual Commissioners²⁵¹.

With the new role and responsibilities of the High Representative, it has been expected that a new form of 'troika' would come about on the international scene²⁵². On one side, the High Representative is flanked by the President of the European Council with a vague job description²⁵³, but with a long duration of office, therefore, he has endured his involvement in the field of CFSP. On the other hand, the

²⁴⁷ Baere (n 10) 737; See also Gerrard Quille, 'The Lisbon Treaty and its implications for CFSP/ESDP' [2009] European Parliament, Directorate General for External Policies of the Union

²⁴⁸ Art 18(4) TEU (n 44).

²⁴⁹ *ibid.*

²⁵⁰ David Allen, 'So who will speak for Europe? The constitutional treaty and coherence in EU external relations' (5, 2004) vol 2.

²⁵¹ Art 17(6) TEU (n 44).

²⁵² Antonio Missiroli, 'Introduction: A tale of two pillars—and an arch' in Graham Avery, Antonio Missiroli, and others, *The EU Foreign Service: how to build a more effective common policy* (European Policy Centre, Working Paper 2007).

²⁵³ Art 15(6) TEU (n 44).

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President of the Commission is surely playing the first role in the Commission²⁵⁴. The harmony between these three offices largely depends on the chemistry between their personalities. Besides that, the commentators also pointed to the successive Council Presidencies ‘which will linger on the side-line’ in the external action of the Union²⁵⁵.

The dual function performed by the High Representative calls for the dual royalty. First as member of the Commission and subject to this institution’s collegiate nature, secondly as a President of the Foreign Affairs Council²⁵⁶. Article 18(4) TEU explained this dual royalty, it declares that High Representative, for his responsibilities within the Commission, shall be bound by the procedure of the Commission only for these responsibilities to the extent that this is consistent with his role in CFSP domain and position in the Council. Though in practice it remains to be seen how the High Representative ‘will be able to ride the two horses at once’²⁵⁷. The office of the High Representative is not only institutionally a very delicate assignment, but at the same time practically an extremely demanding job description for one person²⁵⁸. Be that as it may be, the impression regarding the High Representative might become a Trojan Horse for the Commission might have some merit²⁵⁹.

Next the important question is whether in practice one person can fulfil the

²⁵⁴ Wouters, Coppens, and Meester (n 1) 154.

²⁵⁵ Sebastien Kurpas and others, *The Treaty of Lisbon: implementing the institutional innovations* (Centre for European Policy Studies 2008).

²⁵⁶ Wouters, Coppens, and Meester (n 1) 154.

²⁵⁷ Christopher Hill, ‘A Foreign Minister without a Foreign Ministry’ [2003] CFSP Forum.

²⁵⁸ Wouters, Coppens, and Meester (n 1) 155.

²⁵⁹ Jan Wouters, ‘The Union Minister for Foreign Affairs: Europe’s Single Voice or Trojan Horse?’ in Jaap W De Zwaan and others (eds), *The European Union: an ongoing process of integration: liber amicorum Alfred E. Kellermann* (TMC Press 2004) 77-86.

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responsibilities of this job²⁶⁰. An important reason that can be given for not meeting the high expectations that is set for his office is that the Lisbon treaty does not sufficiently neutralise the duality within the Union external policy, to enable him to fulfil dual functions. First the High Representative' position did not change the dividing lines between the Council and the Commission. Second, the CFSP clearly holds a specific intergovernmental position, despite the formal abandonment of the pillar structure under the Lisbon Treaty. The High Representative is not equipped with strong instrument within the CFSP, necessary for bringing the coherence in different areas of the Union external action. Third, the Member States are reluctant to diminish its influence in the field of CFSP. The Member States hold a different political view concerning High Representative's 'bridging' 'and 'autonomous' role, which it will be able to play.

3.10 European External Action Service

European External Action Service ('EEAS') was introduced by Article 27(3) of TEU in the Lisbon Treaty :

“In Fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in Cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and the Commission as well as staff seconded from national diplomatic services of Member States”

²⁶⁰ See the discussion on Treaty of Lisbon *United Kingdom, House of Commons, Foreign Affairs Committee, Foreign Policy Aspects of the Lisbon Treaty (Third Report of session 2007-2008)* (n 224) 55-56.

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The EEAS was established by a Council decision on the basis of unanimity²⁶¹ as a ‘functionally autonomous body’ of the EU, separate from the General Secretariat of the Council and from the Commission’ and ‘with the legal capacity necessary to perform its tasks and attain its objectives’²⁶². The intermediate status of the EEAS was the result of the compromise between those who preferred it to be close to or part of the Commission and those who wanted EEAS to be essentially intermediate close to or part of the Council²⁶³. Therefore, EEAS was set up as a ‘sui generis’ body ‘equidistant’ from the Commission and the Council²⁶⁴. The inherent structural complexities of the EEAS are reflected from the list of its tasks in the decision setting up the service²⁶⁵. First, it must provide support to the High Representative in fulfilling his/her mandate²⁶⁶ which covers conducting the CFSP and CSDP, ensuring consistency of the EU’s external action, presiding over the Foreign Affairs Council²⁶⁷, and acting as Vice - President of the Commission. The capacity to act as a Vice -President of the Commission includes’ ‘responsibilities incumbent on the Commission in external relations’ as well as ‘co-ordinating other aspects of

²⁶¹ Arts 27(3),31 TEU (n 44).

²⁶² Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service [2010] OJ L201/30 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0427&from=EN>), art 1(2).

²⁶³ Baere (n 10) 737.

²⁶⁴ Bart Van Vooren, ‘A legal-institutional perspective on the European External Action Service’ (2011) 48(2) *Common Market Law Review* 475.

²⁶⁵ Wouters and others (n 207) 46-57.

²⁶⁶ Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service [2010] OJ L201/30 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0427&from=EN>) (n 262) art 2(1).

²⁶⁷ Configuration of the Council of Ministers where EU external action is discussed. Arts 16(6), third para TEU (n 44) , it is to elaborate the Union’s external action on the basis of the strategic guidelines laid down by the European Council and to ensure that the Union action is consistent’

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the Union's external action'²⁶⁸. Secondly, the EEAS must 'assist President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations'²⁶⁹. Thirdly, the EEAS is to 'support and work in cooperation with the diplomatic services of the Member States as well as General Secretariat of the Council and the services of the Commission, in order to ensure consistency between different areas of the Union's external action and between those areas and its other policies'²⁷⁰. Fourthly it must 'extend appropriate support and cooperation to the other institutions and bodies of the Union, in particular to the European Parliament'²⁷¹.

Adding to this complexity, Article 3 of the Decision enlisted the numerous cooperative duties of the EEAS. First, the EEAS must work in cooperation with the diplomatic services of the Member states. Secondly, the EEAS and the services of the Commission are to 'consult each other on all matters relating to external action of the Union in the exercise of their respective functions, except matter covered by CSDP' and the EEAS is to 'take part in preparatory work and procedures relating to acts to be prepared by the Commission in this area'²⁷². Thirdly, the Union delegations²⁷³ that is Union diplomatic representations and EEAS are 'to work in close cooperation and share information with the diplomatic services of the Member

²⁶⁸ Art 18(4) TEU (n 44).

²⁶⁹ Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service [2010] OJ L201/30 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0427&from=EN>) (n 262) art 2(2).

²⁷⁰ *ibid* art 3(1); Arts 21(3), second para TEU (n 44)

²⁷¹ Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service [2010] OJ L201/30 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0427&from=EN>) (n 262) art 3(4).

²⁷² *ibid* art 3(2).

²⁷³ Art 221 TEU (n 44).

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States'²⁷⁴. The coherence and visibility of the external action by this ad hoc service has been questioned²⁷⁵, but is globally seen as a progress²⁷⁶.

3.11 External Representation of the Union In External Relation

For ascertaining the external representation of the Union in its external action a distinction must be made between EU internal decision-making on one hand, especially between the institution and external representation on the other hand, especially between the institution that decides the policy line and institution responsible for representing the Union in external matters²⁷⁷. Under Article 16, the Council must work out the policy of the Union, and Under Article 17 TEU, which provides that the Commission must ensure the external representation of the Union with the exception in CFSP and other cases provided for in the Treaties. However, that does not mean that the Commission necessarily decides on the content of the position to be represented²⁷⁸. Moreover, the external representation of the Union in CFSP domain is ensured by the High Representative²⁷⁹, along with the President of the

²⁷⁴ Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service [2010] OJ L201/30 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0427&from=EN>) (n 262) art 5(9).

²⁷⁵ Catherine Schneider, 'Le service européen d'action extérieure (SEAE), évolutionnisme ou illusionnisme du système d'action extérieure de l'Union?' [2014] .

²⁷⁶ Marc Blanquet, *Droit général de l'Union européenne* (Sirey 2018) para 515.

²⁷⁷ Esa Paasivirta, 'The EU's External Representation After Lisbon: New Rules, A New Era?' in Panos Koutrakos (ed), *The European Union's external relations a year after Lisbon* (Centre for the Law of EU External Relations 2011) 7-11.

²⁷⁸ Baere (n 10) 739.

²⁷⁹ Arts 18(2),15(6) TEU (n 44).

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European Council who ‘at his level and in that capacity’ is to ensure the external representation of the Union in matters pertaining to CFSP without prejudice to the powers of the High Representative.

It must be recalled that before entry into force of Lisbon Treaty, the Commission represented the EU position concerning the first pillar, while the Council Presidency represented the Union in other areas, mostly matters pertaining to CFSP. The Lisbon Treaty explicitly removed all the previous references in the Treaties concerning the role of the Council Presidency in the external representation of the Union and set a new framework concerning the external representation of the Union through Articles 17 and 27(2) TEU.

Although the Council Presidency is left without a formal role in external representation of the Union, the Member States retain their sovereignty to conduct their foreign policy, subject to the Treaty rules²⁸⁰. Being free to choose their external representation in the conduct of their foreign policy outside the Union institutional framework, they are subject to respect the principle of sincere cooperation²⁸¹.

Question concerning the representation of the Union in International dispute settlement, or of which institution is to represent the Union in such for a no specific reference can be found in the Treaties. However, the Agreement to which the Union is a party, may provide the mechanism for the settlement of a dispute. For instance, the Dispute Settlement Understanding in Annex 2 of the World Trade Organization (WTO) Agreement²⁸². In practice, the Union is represented by the Commission Legal Service in international litigation. The ECJ led that Article 335 TEFU, provides

²⁸⁰ Baere (n 10) 739.

²⁸¹ *ibid.*

²⁸² Agreement establishing the World Trade Organization, 1867 UNTS 33 ILM 1144 (1994)

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the basis of the general expression that the Union has legal capacity and is to be represented by the Commission. The Commission represented the Union before the International Tribunal for the Law of the Sea in ('ITLOS')²⁸³.

3.11.1 International Agreement

The Lisbon Treaty provides one single procedure for the conclusion of international agreements over the entire field of Union competences in Article 218 TFEU. Article 218 TFEU is largely based on the old Community treaty-making procedure in ex-Article 300 EC, duly adapted with specific exceptions to be applicable for CFSP agreements. The stages of procedure and role of the respective Union actors in the conclusion of international agreements is discussed below.

3.11.2 Negotiation

As under ex-Article 300 EC, the right of initiative also lies with the Commission who shall make recommendation to the Council under Article 218 (3) TFEU. Although in practice this is often preceded by exploratory talks between the Commission and potential third-country treaty partners²⁸⁴. Similarly, when the international agreement relates exclusively or principally in domain of CFSP, the right of initiative lies with the High Representative²⁸⁵. This contrasts with procedure under ex-Article 24 TEU for conclusion of international agreement in field of CFSP and PJCCM, which was set in motion by Council which could authorize the Presidency, with the

²⁸³ Case 73/14 *Council of the European Union v European Commission* [2015] ECLI:EU:C:2015:663, paras 58-59.

²⁸⁴ De Baere (n 18) 79.

²⁸⁵ Art 218(3) TEU (n 44).

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assistance of the Commission if necessary, to begin the negotiations²⁸⁶. With the evolution from ex-Article 24 TEU to Article 218 TFEU, the Council Presidency lost out its role in external representation of the Union. The Council, which had quite an important role in negotiating international agreement in CFSP sphere, is now taken over by the High Representative²⁸⁷.

The Council after considering that the negotiations of the proposed international agreement in question is appropriate, authorises the opening of negotiations, and depending about the envisaged agreement, nominates the Union negotiator or the head of the Union negotiating team²⁸⁸. Article 218(3) seems to give the Council a choice regarding the appointment of the negotiator²⁸⁹, depending upon the subject of the envisaged agreement. The Council will most likely appoint the Commission as Union negotiator when exclusively a non-CFSP external competence is at stake²⁹⁰. When the Council deems it be a CFSP matter, the negotiator will be High Representative²⁹¹. In cases of mixed agreements, the Council will appoint the head of the negotiating team. The Council may address directives to the negotiator²⁹², and designate a special committee with which the negotiator must consult during the negotiation process. The special Committee is often a Council working committee,

²⁸⁶ Art 24 TEU (n 44).

²⁸⁷ Baere (n 10) 740.

²⁸⁸ Art 218(3) TFEU (n 28), explicitly state who is to submit recommendation under what circumstances but does not explicitly determine who is to be the negotiator

²⁸⁹ *ibid* art 218(3), however, *ibid* art 270(3)(the Commission is the only possible negotiator in the field of CCP) and according to *ibid* art 219(3)(THE Commission is to be merely ‘fully associated with negotiation’s concerning monetary or foreign exchange regime matters)

²⁹⁰ Wouters, Coppens, and Meester (n 1) 181.

²⁹¹ *ibid*.

²⁹² The term ‘mandate’ though used in daily practice, is therefore in appropriate. These directives do not constitute delegated powers from the Council to the Commission.

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i.e. a Council preparatory committee²⁹³ that performs the ‘groundwork’ in one of the EU’s diverse policies, and function under the aegis of the Committee of Permanent Representatives of the Governments of the Member States (Coreper) or another senior preparatory committee in consultation with which the negotiations must be conducted. The negotiator must consult with the special committee appointed by the Council and abide by the negotiating directives given to it by the Council²⁹⁴.

3.11.3 Signing of the Agreement

The signing stage starts, when the negotiations are finalised, and the negotiator appointed by the Council makes a proposal to that effect²⁹⁵. The Council is capable of approving or disapproving the negotiators’ proposal and to take a decision on the signing of the agreement, acting by QMV or by unanimity in the same circumstances as regarding the conclusion of the agreement²⁹⁶.

3.11.4 Conclusion

Acting on the proposal of the Union’s negotiator, the Council will finally adopt a decision concluding the international agreement²⁹⁷. The Council is to act by QMV throughout the procedure which includes authorising the opening of the negoti-

²⁹³ De Baere (n 18) 131.

²⁹⁴ Art 218(4) TFEU (n 28); In a Case 114/12 *European Commission v Council of the European Union* [2014] ECLI:EU:C:2014:2151, the Court has confirmed that a decision adopted on the basis of Arts 218(3),218(4) TFEU (n 28) ‘produce legal effects as regards relations between the European Union and ITS Member States and between the EU institutions’ para 40; Case 425/13 *European Commission v Council of the European Union* [2015] ECLI:EU:C:2015:483, para 28

²⁹⁵ Art 218(5) TFEU (n 28).

²⁹⁶ *ibid* art 218(8).

²⁹⁷ *ibid* art 218(6).

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ations, appointing the negotiator, authorising signature and concluding the agreement²⁹⁸. However, Council acts by unanimity in several exceptions given in second sub-paragraph of Article 218 (8) :

First, where the subject matter of the agreement covers the area where unanimity is required to adopt a Union act (principle of *in foro interno, in foro externo*)²⁹⁹. Thus, in principle Unanimity will be required for the conclusion of agreements in the CFSP domain. Secondly, for the conclusion of association agreements³⁰⁰;

Thirdly, unanimity is required for the conclusion of agreements establishing economic, financial and technical cooperation³⁰¹ with candidate Member States.

Similarly, Article 207 (4) contains important specifications concerning negotiation and conclusion of agreements within the sphere of CCP, add up more exceptions. This clause will be particularly useful to post-Brexit trade relationship between EU and UK³⁰². The Council should adopt unanimous decision concerning negotiations and conclusions of international agreements in field of trade in services, commercial aspects of intellectual property and of foreign direct investment, where such agreements include provisions for which unanimity is required for the adoption of internal rules³⁰³. In addition to that, Council is to act unanimously as regards

²⁹⁸ Art 218(8) TFEU (n 28).

²⁹⁹ In the field of the EU external environmental law, unanimity is required for the limited sets of environmental matters listed in *ibid* art 192(2) '(a)provisions primarily of a fiscal nature; (b)measures affecting such as town and country planning, quantitative management of water resources or affecting, directly or indirectly, the availability of those resources, land use, with exception of waste management, measures significantly affecting a Member States' choice between different energy sources and the general structure of its energy supply'; See also Jan H Jans and Hans Vedder, *European environmental law: after Lisbon* (Europa law Publishing 2012) 59-63

³⁰⁰ Art 217 TFEU (n 28).

³⁰¹ *ibid* art 212.

³⁰² Baere (n 10) 742.

³⁰³ Arts 207(4), para 2 TFEU (n 28).

3.12. EUROPEAN PARLIAMENT ROLE IN CONCLUSION OF INTERNATIONAL AGREEMENT

agreements in the field of trade in cultural, and audio visual services, where these agreements risks prejudicing the Union's linguistic and cultural diversity³⁰⁴, and in the field of trade in social, educational and health services where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of the Member States to deliver them³⁰⁵.

Finally, unanimity is also required for the accession of the Union to the ECHR³⁰⁶; furthermore, the decision concluding this agreement will enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements³⁰⁷.

3.12 European Parliament Role in Conclusion of International Agreement

Before the adoption of Lisbon treaty the European Parliament had no formal role during the negotiations on an international agreement³⁰⁸. However, a framework agreement was concluded between the Parliament and Commission that provided for the exchange of information between them³⁰⁹. Article 218(10) TFEU now explicitly provides the 'Parliament shall be immediately and fully informed at all the stages of procedure'. The involvement of the European Parliament in the conclusion of

³⁰⁴ Arts 207(4), para 3(a) TFEU (n 28).

³⁰⁵ *ibid* arts 207(4), para 3(b).

³⁰⁶ Art 6(2) TEU (n 44).

³⁰⁷ Art 218(8) TFEU (n 28).

³⁰⁸ Wouters, Coppens, and Meester (n 1) 183.

³⁰⁹ Framework Agreement on relations between the European Parliament and the Commission Annex III (ii) [2001] OJ C121/122.

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international agreement is now the rule, except regarding agreements that exclusively fall in CFSP area³¹⁰. In practice most international agreements concluded by the Union are deemed to fall in one of the categories listed in Article 218(6)(a) TFEU and are subject to Parliament's consent to Council decision for the conclusion of international agreements³¹¹ they are:

i) Association agreements, ii) the agreements on the Union accession to EHCR iii) agreements establishing a specific institutional framework by organising cooperation procedures³¹², iv) agreements with important budgetary implications for the Union³¹³ v) agreements covering fields to which either ordinary legislative procedure applies³¹⁴ or the special legislative procedure, where consent by the European parliament is required³¹⁵. Provided that now parliament's consent is required every time, ordinary legislative procedure applies and given the fact that the scope of ordinary legislative procedure has been significantly expanded in comparison to the co-decision procedure hence Article 218(6) (a) (v) implies the substantial extension

³¹⁰ Agreements under Art 218 TFEU (n 28) may include both issues falling under the ordinary EU framework and falling under the CFSP; e.g Council Decision 2012/308/CFSP of 26 April 2012 on the accession of the European Union to the Treaty of Amity and Cooperation in Southeast Asia [2012] OJ L154/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012D0308&from=EN>) which is based on a joint legal base of Arts 3(1),37 TEU (n 44) and Arts 209,212,218(6)(a), 218(8) second subpara TFEU (n 28)

³¹¹ Baere (n 10) 743.

³¹² Given that most agreements involving a cooperation procedure establish some sort of institutional framework, the latter can hardly be distinguishing feature of this type of agreement. This category therefore probably refers to international agreements setting up an institutional structure attaining a certain level of complexity , but nonetheless concluded under the legal basis for association agreements (Art 217 TFEU (n 28)) e.g Council Decision of 5 October 2006 on the accession of the Community to the Hague Conference on Private International Law [2006] OJ L297/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006D0719&from=en>)

³¹³ Case 189/97 *European Parliament v Council of the European Union* [1999] ECLI:EU:C:1999:366, 20-32 for the relevant criteria.

³¹⁴ Art 294 TFEU (n 28).

³¹⁵ *ibid* art 289(2).

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of the European Parliament's power³¹⁶.

Under the second paragraph of ex-Article 300 (3) EC category v contained 'agreements entailing amendments of an act adopted under the co-decision procedure.

The change is most striking concerning agreements that belong to CCP. Before the Lisbon Treaty, the Parliament has no formal role in internal decision making and did not even need to be consulted concerning international trade agreements³¹⁷. However, the position is changed after the entry into force of Lisbon treaty which required the consent of the European Parliament's for agreements in CCP; This is also evident from the recent example of the Parliament's refusal to give its consent to the highly controversial Anti-Counterfeiting Trade Agreement (ACTA)³¹⁸ Apart from area in external trade, the European Parliament has been keen to demonstrate its increased power in all those areas in which its consent is mandatory. For instance, in recent case the parliament withhold its consent to the agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of Terrorist finance Tracking Program (SWIFT)³¹⁹.

Article 218(6)(b) TEFU provides for the consultation of the European Parliament in all cases except those where its consent is required in accordance to Article 218(6)(a) TFEU.

It is to be noted that though the Parliament consent is required in conclusion of international agreement, the parliament consent is not required to open the negoti-

³¹⁶ Baere (n 10) 743.

³¹⁷ De Baere (n 18) 75,85.

³¹⁸ European Parliament legislative resolution of 11 February of 4 July 2010 [2010] OJ C341E/100.

³¹⁹ European Parliament Legislative Resolution of 8 July 2010 [2010] OJ C351E/453.

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ations or for defining the negotiation mandate of the Union negotiator. Therefore, in many cases the Parliament is left with no choice than to approve the agreement that results from the negotiations³²⁰.

On this background of the EU external action, the successive chapters will analyse and examine in detail the ‘EU external relation with Pakistan’ in specific areas of cooperation.

³²⁰ Wouters, Coppens, and Meester (n 1) 186.

4 Pakistan and European Union

Historical Account of Relationship

This chapter analyse the development of Pakistan-European Union relations over the period of last fifty years. The EU external relations with Pakistan was mainly founded in area of trade, economic and development cooperation. For Pakistan EU has been one of its largest leading trade and development partner. While EU external policy towards Pakistan was established on the link between its trade and development policy and democracy and human rights. Afterwards, Pakistan's link with security in Afghanistan has played an important role in changing the dynamic of relations between the two. This factor has played a dominant role in transcending the bilateral relations from the sphere of trade and development into a strong political and security ties which has recently been culminated into a strategic partnership.

4.1 Introduction

The development of relationship between European Union, hereinafter as “EU”, and Pakistan was quite slow in the beginning. Pakistan lagged behind in establishing its relations with EU, when several countries had already established its relations with EU since its prominence as a global economic and political bloc in the same league as America and China. The importance of EU as a crucial economic-political partner could not be grasped by the government of Pakistan, its media and civil society for several good years. Pakistan’s relationship with the external states is always dominated by its foreign policy objectives, which have prioritized the country’s security and balance of power in the region. Among many external states, Pakistan enjoyed close ties with United Kingdom, America and China. Relationship with these states is based on its traditional partnership necessities by its foreign policy objectives. There are certain good reasons that Pakistan enjoyed privileged relations with these states. Pakistan remained the former colony of United Kingdom. Their shared colonial history is the foundation of cordial relationship between both the countries. United Kingdom was Pakistan’s former colonial master which is currently also hosting one million Pakistani diasporas as well¹. Similarly, Pakistan’s close ties with America is the result of its sense of insecurity caused by economically superior India, bordering its eastern side. The two states have a shared history of animosity towards each other since their partition, as evident by the three wars they have fought during the years 1947-48, 1965, and 1971. The two countries once again came

¹ Gareth Chappell, ‘Pakistan: What Role for the European Union’ [2009] Stiftung Wissenschaft und Politik German institute for International and Security Affairs (SWP) Working Paper (http://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/chappell%5C_Pakista%20n%5C_format%5C_ks.%20pdf), 1.

close to war in the year 2002 on Kargil issue. The unresolved dispute of Kashmir, which is the bone of contention between the two states, have made it imperative for Pakistan to maintain close ties with America due to latera's pre-eminent position as a world super power for keeping balance in the region against the larger and economically superior India². As far American interest was concerned, Pakistan holds a position of strategic importance in the region of South Asia. This position has made Pakistan an important ally and a front-line state of America during the period of cold war against Soviet Union and later its war against terrorism after 9/11, 2001 terrorist attacks on America. However, the relations between the allies is marked by a trust deficit throughout these years. For instance, the flow of American aid is relative to America's strategic interest in the region, which has caused a negative perception about America in the government ranks of Pakistan that she is not a reliable partner because of change in its policies towards Pakistan with a change of its strategic interest in the region. This has even given rise to negative perception among the general masses that America is not a sincere partner who has callously exploited the region for its own political interest, thus resulting in an anti-Americanization on the ground³.

As far as Pakistan's relations with China is concerned, the two enjoys close ties. Since the beginning, China has been Pakistan's big investment partner. The recent illustration is (China Pakistan Economic Corridor), which is the establishment of a new energy and trade route between both the partners⁴. Both the states have pri-

² Chappell (n 1).

³ Eva Gross, 'Afghanistan: the view from the US' (2014) 25 European Union Institute for Security Studies, 2.

⁴ A Stanzel, 'After 'AFPAK' reframing Europe's Pakistan Policy' [2014] European Council on Foreign Relations (www.ecfr.eu), 3.

oritized cooperation in the areas of security, military and counter terrorism. China is Pakistan's largest supplier of military hardware and related technology. Pakistan takes its strong ties with china as an edge against India. Similar, China used its strong engagement with Pakistan as a balance against its competitors in the South Asia particularly India⁵. Thus, it can say that Pakistan's relations with American and China is necessitated by its regional politics along with its economics and development needs.

The EU emergence as the world's largest trader aspired to a corresponding role as Global political player. Therefore, it sought to expand its engagements with the emerging powers considered as a crucial partner for 'effective multilateralism' beyond its traditional focus on transatlantic ties and its eastern and southern neighbourhood⁶. This call for, effectively engaging both China and India which were considered vital⁷. China remained for quite some time on topped of EU' Asian agenda while India coming second on the list , both in terms of political and economic importance⁸. Pakistan was hitherto on EU South Asia Policy Agenda rather its relations with Pakistan was dominated by only trade, aid and development perspectives⁹.

However, attention was initially focused mainly on Pakistan- India traditional arch rivalry in the context of Kashmir issue. Later in 1990s when Pakistan con-

⁵ Stanzel (n 4).

⁶ B von Muenchow-Pohl, *EU Relations with China and India: Courting the dragon, wooing the elephant* (Carnegie Endowment for International Peace 2012).

⁷ ibid; For details on EU first Strategy towards South Asia Commission of the European Communities, 'Towards a New Strategy towards Asia, Brussels' COM(94) 314 final (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51994DC0314&from=EN>)

⁸ Muenchow-Pohl (n 6).

⁹ Shada Islam, 'EU-Pakistan Relations: The Challenge of Dealing with a Fragile State' in Thomas Christiansen, Emil Kirchner, and Philomena B Murray (eds), *The Palgrave Handbook of EU-Asia Relations* (Palgrave Macmillan 2013) 587.

ducted the nuclear tests in response to India's nuclear tests has aroused the EU's security concern on the conventional and nuclear arm race in the South Asia region¹⁰. Moreover, rise of home grown terrorism and creeping militancy in Pakistan, which possessed an estimated 100 nuclear weapons were the main factors that have brought a change in EU outlook towards Pakistan¹¹. In the first European security strategy 2003 terrorism and proliferation of weapons of mass destruction were identified as a key threat to Europe. It stated 'the most 'frightening scenario' is one in which terrorist groups acquire weapons of mass destruction'¹². It was exclusively after the 9/11 terrorists attack on America in 2001 and subsequent military and civilian engagement of European states in Afghanistan with the prime objective of curbing terrorism make it imperative to define its policy towards Pakistan bordering Afghanistan. In addition to that, the evolution and dynamics of the changes in EU–Pakistan relations have also been brought by other phenomena and processes such as shaping of the European Identity and development of the Common Foreign and Security Policy (CFSP) within the EU framework¹³.

Pakistan has viewed EU as its largest trading and investor partner only. The EU could not exert much political influence against the civilian and military establishment in Pakistan, the reason being the lack of the military support coming from

¹⁰ Jakub Zajczkowski and Siegfried O Wolf, 'EU-Pakistan relations: European perspectives at the turn of the twenty-first century' in Siegfried O Wolf and others (eds), *The Merits of Regional Cooperation: The Case of South Asia* (Springer 2014) 132.

¹¹ Chappell (n 1) 1.

¹² Council of the European Union, A Secure Europe in a Better World, European Security Strategy, Brussels [2003] (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:r00004>), para 3.

¹³ Zajczkowski and Wolf (n 10) 132.

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EU. This made EU a marginal political player in the country¹⁴. Thus, despite a strong economic power, EU was considered a ‘political Dwarf’ as far its political influence in the country was concerned¹⁵. This is the reason that EU relations with Pakistan remained merely technical and low Key prioritizing development aid rather than meeting country’s governance challenges and insurgency issues¹⁶. EU has, to a large extent, relied on its soft power approach for bringing a socio-economic reforms, stressing human rights and extending its support in strengthening the democratic institutions in a country¹⁷. Hence the relations between the two partners for most of the period remained dominated by trade and socio-economic development.

4.2 Beginning of EU - Pakistan Diplomatic Relationship: Background

Before embarking upon the historical details concerning the development of the EU–Pakistan relations it is important to highlight that the objectives of the EC-Pakistan Co-operation are governed by Article 177 of the EU Treaty which specified the three broad overarching objectives for Community Cooperation with developing countries

¹⁴ Islam, ‘EU-Pakistan Relations: The Challenge of Dealing with a Fragile State’ (n 9) 587; Shada Islam, ‘Moving EU-Pakistan Relations Beyond Words’ [2011] The German Marshall Fund of the United States (<http://www.gmfus.org/publications/moving-eu-pakistan-relations-beyond-words>), 1

¹⁵ Shada Islam, ‘Pakistan on the brink: How the EU can bolster reform and fight extremism’ in Gustaaf Geeraerts (ed), *Perspectives for a European Security Strategy Towards Asia: Views from Asia, Europe and the US* (Academic and Scientific Publishers 2011) vol 18.

¹⁶ Islam, ‘EU-Pakistan Relations: The Challenge of Dealing with a Fragile State’ (n 9) 588; Daniel Korski, ‘Europe needs to look again at Pakistan’ *European Voice* (2009) (<https://www.ecfr.eu/article/europe-needs-to-look-again-at-pakistan-korski>)

¹⁷ Muhammad Riaz Shad, ‘An Assessment of Opportunities for the EU’s Enhanced Engagement with Pakistan’ (2014) 30(2) *Journal of European Studies*, 124; Islam, ‘Moving EU-Pakistan Relations Beyond Words’ (n 14) 3,4

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which are fostering of sustainable economic and social development , the smooth and gradual integration of developing countries into the world economy and campaign against poverty¹⁸.

The initial terms of engagement between EU and Pakistan was mainly trade and development cooperation which have traditionally occupied a central place in EU–Pakistan relationship. However, over the period of years the economic, trade and development co-operation have evolved into a political cooperation between the two partners which have recently been culminated into a strategic partnership.

Pakistan showed a keen interest to establish its ties with EC after realizing its growing economic importance. The main purpose was to gain access to the duty-free market of EU to promote its industrialization and development¹⁹. On 2 August 1962 the six European Common Market countries during their Ministerial meeting in Brussels proposed the signing of trade agreements with Pakistan, India and Sri Lanka subject to the condition of Britain’s joining the Common Market²⁰. Pakistan had expressed its disappointment over the condition of Britain’s joining the Common Market. As Britain had agreed to abolish Commonwealth trade preferences enjoyed by it and other Commonwealth members. However, Pakistan started negotiations with the EEC members and tried to conclude trade agreements with it. Consequently, the first Commercial Cooperation Agreement was signed between EEC and Pakistan on 1 June 1976 and entered into force on 1 July 1976²¹. This was

¹⁸ Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C202/143 (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E214&from=EN>).

¹⁹ Anatol Lieven, ‘The pressures on Pakistan’ (2002) 81(1) Foreign Affairs, 115.

²⁰ *The Dawn* (Karachi, 3 August 1962).

²¹ AZ Hilali, *US-Pakistan relationship* (Burlington Ashgate 2005) 244; Council Regulation (EEC) No 1503/76 of 21 June 1976 concluding the commercial cooperation Agreement between the European

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followed by a 2nd generation five-year EC-Pakistan Co-operation Agreement signed on 23 July 1985 and entered into force on 1 May 1986²². While being satisfied with the progress achieved during the operation of first agreement in the development of commercial and economic relations between Pakistan and the Community, both the partners believed that it is a time to give new impetus to the mutual relationship. Through this agreement both the parties reaffirm their determination expand mutual trade while recognizing that trade is not an end itself but a means of achieving wider economic and social objectives and an important instrument for furthering international economic cooperation²³. The main areas covered by the agreement were commercial cooperation, economic cooperation and development cooperation between the parties²⁴.

In the year 1985, contacts between the two were further enhanced, when European Commission showed its physical presence by setting up its office in Islamabad. After three years, the office was upgraded to delegation level in the year 1988 with full diplomatic status to monitor cooperation in trade and development²⁵. Similarly, in the year 1992 European Commission opened up its Humanitarian aid and civil protection department in Islamabad²⁶. European Commission, during 1990's, remained focused on the development of social sectors through its policy-

Economic Community and the Islamic Republic of Pakistan [1976] OJ L168/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31976R1503&from=GA>)

²² Agreement for commercial, economic and development cooperation between the European Economic Community and the Islamic Republic of Pakistan [1986] OJ L108/2.

²³ *ibid.*

²⁴ *ibid* arts 2,3,4; Mehrunnisa Iqbal, 'Pakistan and Western Europe (1975-86)' (1986) 39(2) *Pakistan Horizon* 45

²⁵ Siegfried Wolf, 'Just Another Carte Blanche? EU GSP Plus Status and Human Rights in Pakistan' [2014] Briefing Paper No 69, Pakistan Security Research Unit (PSRU), Durham University, 3.

²⁶ *ibid.*

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based investment programmes. The emphasis was more on human development and environmental management²⁷.

The third-generation cooperation agreement between EU and Pakistan, which was scheduled to be signed in the year 1996, was postponed due to disagreement over certain clauses in the agreement. Since early 1990s, EU has intensified its efforts in promoting democracy, human rights by introducing the democracy, human rights and rule of law clauses in its development policy and cooperation agreements with third countries²⁸. The EU preferential trade relations and development aid to third countries was subject to the condition of compliance and implementation of human rights conventions and promotion of democratic values²⁹. Through this it promoted the processes of economic, political and social transformation in third countries. Similarly, in the Third-Generation cooperation agreement, EU wanted to include clauses related to unrestricted access to maritime services, intellectual property rights and adherence to the conventions of International Labour Organization (ILO). However, on the other hand Pakistan was reluctant to include the labour clause in the agreement³⁰. The third-Generation agreement though was initialled in April 1998, but it could not be approved due to the three major events which took place subsequently. First was successful nuclear tests conducted by Pakistan in May 1998. Second event was the 1999 Kargil issue between India and Pakistan, which

²⁷ Sanam Noor, 'EU – Pakistan Relations' (2008) 61(3) Pakistan Horizon, 21.

²⁸ Tanja A Börzel and Thomas Risse, 'One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy and the Rule of Law, paper prepared for the Workshop on Democracy Promotion, Oct. 4-5, 2004' [2004] Center for Development, Democracy and the Rule of Law, Stanford University, 3.

²⁹ Tasneem Sultana, 'An overview of EU-Pakistan relations; Focus on democratization of Pakistan' (2013) 29(1) Journal of European Studies, 27.

³⁰ *ibid.*

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brought the two near to war thus greatly impacted the security of the region. And last one was the October 1999 military coup in Pakistan, derailing the democratic system in the country. All these three major events have impinged the three prime policy objectives of EU in South Asia namely nuclear non-proliferation, regional Security and promotion of democracy³¹. These developments caused a brief set back to the relationship between EU and Pakistan.

The 9/ 11 terrorist attacks on America in 2001 has not only brought a major change in world politics, but it has also proved to be watershed in reviving EU - Pakistan ties. The Pakistan participation in international coalition against terrorism has once again increased its regional and global significance. This has not only resulted in the rejuvenation of relations between Brussels and Islamabad but has also brought a change in the EU outlook towards Pakistan which, for most of the years, has remained on the periphery on the EU policy in Asia³². Two main factors contributed in developing EU's interest in Pakistan. First, Pakistan was a 'pivot' around which revolves the success of the European involvement bordering Afghanistan along with the safety and supply to 33,000 European troops taken from the 25 EU member states who were the part of International Security Assistance Force (ISAF) in Afghanistan. In addition to that, committing 8 billion euros in aid for the period 2002-2010 in Afganistan. Second by recognizing the important fact that security and stability in Afghanistan and in the entire region is directly linked to a secure and stable Pakistan, which has, over the period of years, become a hub of home grown terrorism and extremist forces as well as its established links with the Taliban forces

³¹ Noor (n 27) 21.

³² A Ballesteros-Peiró, 'The EU-Pakistan relationship: looking beyond the trading partnership' [2015] Strategic and International Studies, Madrid: Elcano Royal Institute.

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in Afghanistan³³. Therefore, stability and peace in Afghanistan cannot be achieved without Pakistan's involvement and cooperation. Therefore, according to the EU's policy makers, strong political engagement with Pakistan was not only necessary for the attainment of stable and secure Pakistan free from emanating terrorism. Otherwise incapacitated and fractured Pakistan under the impact of terrorism may not only sabotage the European security interests in Afghanistan but can be threat for the entire region as well as for the European continent³⁴. Apart, there was an immense political insistence from the British and US seeking EU engagement with Pakistan for achieving stability. In the backdrop of these developments, the EU took the initiative to upgrade its relations with Pakistan. This was evident by the much awaited EU–Pakistan third generation Co-operation Agreement on Partnership and Development signed on 24 November 2001 and entered into force after the it was ratified by the European parliament on 1 September 2004³⁵. One of the major difference of this cooperation agreement with the previous Co-operation agreements was that it defines respect for human rights and democratic principles as laid down in the Universal Declaration on Human Rights underpins the domestic and international policies of the Community and Islamic Republic of Pakistan as its basis under Article1³⁶. Pakistan also reiterate its commitment to return to a democratic rule in a joint statement issued on the occasion of signing the cooperation agreement.

As already mentioned above that EU policy of promoting democracy, human

³³ Islam, 'EU-Pakistan Relations: The Challenge of Dealing with a Fragile State' (n 9) 591; Chappell (n 1) 1; Stanzel (n 4) 1

³⁴ Islam, 'EU-Pakistan Relations: The Challenge of Dealing with a Fragile State' (n 9) 591,592.

³⁵ Cooperation Agreement between the European Community and the Islamic Republic of Pakistan on partnership and development fields [2004] OJ L378/23.

³⁶ *ibid* art 1; Börzel and Risse (n 28) 14

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rights and rule of law is important component of its partnership agreements linked to fostering socio economic development and peace in third states. In October 2009 the European Parliament adopted a resolution in October 2009 called ‘Democracy building in external’ relations’. The resolution formally called for the co-ordination of the EU external relations with the promotion of democratic values, human rights, and development policy instruments³⁷. Amongst other principles the resolution endorsed the UN definition of democracy³⁸. The basis of agreements between EU and Pakistan is democracy and its underpinning values such as respect for human rights rule of law and good governance³⁹. Therefore, the promotion of democracy has become a key component of the EU’s development cooperation with Pakistan not only because of its added value but also because of its security concerns. The EU has repeatedly mentioned that only a democratic government could fight terrorism and militancy effectively⁴⁰. As EU emphasized on the promotion of democracy, human rights and rule of law in its external relations with the third countries here it would be necessary to determine the level of cooperation between EU and Pakistan during later’s military rule and more particularly to assessed to what extent EU has influenced the political process in Pakistan for restoring the democratic rule is analysed as follow;

³⁷ European Parliament resolution of 22 October 2009 on democracy building in the EU’s external relations [2010] OJ C265E/3.

³⁸ *ibid* G.

³⁹ Ballesteros-Peiró (n 32) 2.

⁴⁰ Shada Islam, ‘Building democracy and fighting extremism in Pakistan: a role for the EU’ [2008] Policy Brief, European Policy Centre, Brussels.

4.3 Relations Between EU–Pakistan During its Military Rule

Pakistan has been struggling hard with its democratic system since it attained its independence. The political history of Pakistan has witnessed the frequent transitions during which the regime has periodically changed from military to weak civilian governments. The reason being the presence of strong army institution which has throughout played an important role in Pakistan's politics. The imposition of emergency rule in Pakistan on 3 of November 2007 by the President Musharraf after sacking of the Chief Justice of Pakistan was strongly condemned by the EU. It keeps on reminding Pakistan to revive its democratic system after the imposition of military rule. The European Parliament passed a resolution against the imposition of emergency rule in Pakistan on 15 of November 2007 which demanded 'unequivocally that an end be put to the state of emergency'⁴¹. The resolution expressed solidarity with the legitimate protests by thousands of lawyers, civil society representatives and human rights activists, eminent political leaders' community and expressed its concerns over the large scale-arrests without charge and under terrorism charges without any factual basis⁴².

As mentioned above the third-generation agreement between EU–Pakistan 2004 also stipulated respect for human rights and democratic principles. The EU also took a cautious stance regarding offering of any concessions to Pakistan on the ground that the country has not taken by far any tangible steps for ensuring the demo-

⁴¹ European Parliament Resolution of 15 November 2007 on Pakistan [2007].

⁴² *ibid* para 2.

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cratic process⁴³. For reviving democratic process, the EU has stressed the active involvement of the civil society organizations, human rights activists, lawyers, women groups in the political process in Pakistan and has extended its support all these groups who are committed to democracy and can play their part in building strong institutions that can lead the country to development and stabilization⁴⁴. The EU has built up its political credit among these groups by calling for free and fair elections, restoration of independence of judiciary and rule of law⁴⁵. The EU has made use of Election Observation Mission (EOM) and European initiative for democracy and human rights (EIDHR) for facilitating smooth transition of electoral governments in its partner countries. These instruments are mainly used for providing financial and technical support for strengthening democratic process, human rights, good governance and strengthening of electoral frameworks⁴⁶. The EOM is considered one of the EU's best-known instrument in Pakistan. It has been deployed to monitor October 2002, February 2008 and May 2013 elections in Pakistan. Based on the recommendations given by EOM led by Micheal MEP, in 2008 election the Pakistan government with the technical and financial support of EU has brought much needed electoral reforms⁴⁷. The details of these electoral reforms are covered in chapter 5 of the thesis.

In the same year, another tragic event was the assassination of Benazir Bhutto, a political leader of a mainstream political party in Pakistan. Her assassination was

⁴³ European Parliament Resolution of 15 November 2007 on Pakistan (n 41).

⁴⁴ Islam, 'Building democracy and fighting extremism in Pakistan: a role for the EU' (n 40) 1.

⁴⁵ *ibid* 1,2.

⁴⁶ *ibid* 1,2; Ballesteros-Peiró (n 32) 2

⁴⁷ Islam, 'Building democracy and fighting extremism in Pakistan: a role for the EU' (n 40) 1.

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condemned at the international level. EU also expressed its grave concern over the assassination of Benazir Bhutto and all those people who were killed and injured along with her convoy. The European Parliament adopted a resolution in condemnation of the assassination of the political leader and concerning the grave security situation in Pakistan, which could undermine the upcoming election scheduled in April 2008⁴⁸. The security situation was also a cause of great concern in the international community. However, the EU kept demanding Pakistan's government not to delay the scheduled election⁴⁹. In January 2008, President Musharraf, in a bid to gather support for the country following a long spate of political violence and chaos which has not only effected the security of the country but has also crippled its economy, embarked on four nations European tour to United Kingdom, Belgium, Switzerland and France⁵⁰. However, over the years, the EU has become much tougher and forceful in its demand. That was evident by remarks of the EU High Representative for Common Foreign and Security Policy Javier Solana in a meeting with President Musharraf held on 21 January 2008. He said, 'The country must have a government according to the will of people to move forward on the path of reforms and on the path of the rule of law'⁵¹. He made it clear that the future engagements of EU with Pakistan would be dependent on holding of free and fair election⁵².

⁴⁸ European Parliament Resolution on Pakistan 23 October 2007 [2007].

⁴⁹ *ibid.*

⁵⁰ David Brunnstorm, 'Pervez Musharraf to seek backing in Europe' *Reuters* (Brussels, 21 January 2008) (<https://www.reuters.com/article/us-pakistan-europe/pervez-musharraf-to-seek-backing-in-europe-idUSL2048736720080120>).

⁵¹ Council of the European Union, Javier Solana EU High Representative for the CFSP, met President Musharraf of Pakistan, Brussels (21 January 2008) S018/08 (https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/discours/98245.pdf).

⁵² *ibid.*

4.4. VISIT OF EUROPEAN UNION PRESIDENT AFTER THE SET UP OF DEMOCRATIC GOVERNMENT

The election of February 18, 2008 was largely welcomed by the EU, which have radically transformed the country's political landscape, ushering in a new era of democratic rule after almost nine years of military rule⁵³. Further, the deployment of Election Observation Mission (EOM) in election added credibility to the February 2008 election⁵⁴. The European Council also welcome the progress made in the democratic process in Pakistan and pointed out that these elections provided both Pakistan and the EU with new opportunities to improve and deepen the existing relations. It further added that EU will work jointly with Pakistani Government to explore ways for strengthening the democratic institutions, electoral framework with particular focus on institution building, legislative reforms and voter participation. The council remarked that progress in that sector is essential to the security and long-term stability of Pakistan⁵⁵.

4.4 Visit of European Union President After the Set Up of Democratic Government

Following Pakistan's transition to the democratic set up, the visit of the EU president Javier Solana to Pakistan on 22 April 2008 was considered an important step towards a renewed relationship between EU and Pakistan. The EU president Javier

⁵³ Islam, 'Building democracy and fighting extremism in Pakistan: a role for the EU' (n 40) 1.

⁵⁴ European Union External Action, EU Election Observation mission to Pakistan in 2008 (19 February 2008) (https://eeas.europa.eu/topics/election-observation-missions-eueoms_en/26030/EU%20election%20observation%20mission%20to%20Pakistan%20in%202008); EU Election Observation Mission, Final Report National and Provincial Assembly Elections (18 February 2008) (http://eeas.europa.eu/archives/eueom/pdf/missions/eu_eom_pakistan_final_report.pdf)

⁵⁵ The Council of the European Union, 2864th and 2865th Council meetings General Affairs and External Relations, Luxembourg (29 April 2008) 8619/08 (Presse 105) (http://europa.eu/rapid/press-release_PRES-08-105_en.htm?locale=en).

4.4. VISIT OF EUROPEAN UNION PRESIDENT AFTER THE SET UP OF DEMOCRATIC GOVERNMENT

Solana two days visit after the end of military rule in fact marked the European Union approval and support of the new democratic government. Javier Solana held important meetings with the President Musharraf, the newly elected Prime Minister and with leaders of mainstream political parties. During the meetings, important issues relating to trade, rise of militancy in tribal areas, situation in Afghanistan and a peace process with India were discussed⁵⁶.

He emphasized the need for taking necessary reforms for strengthening the rule of law⁵⁷. He further said that EU wants to develop a stronger and more comprehensive relationship with Pakistan to 'promote regional and domestic stability, encourage democracy and help consolidate its position as a moderate Muslim State'⁵⁸. The EU's sustained action for building democracy in Pakistan has been commendable. Undoubtedly EU's support for democracy is the main area of engagement between the two partners while keeping in view Pakistan's chequered record of democracy. The EU ministers on 10 March 2008 also stressed that union was committed to supporting Pakistan in building a prosperous and stable society based on the principles of democracy, rule of law and human rights⁵⁹. During the military rule, EU cautiously balanced its approach towards promotion of democracy and pursuit of its security interest in Pakistan⁶⁰. It enhanced its engagement with the newly elected government and has make use of political dialogue, trade and economic assistance

⁵⁶ Noor (n 27) 26.

⁵⁷ Shada Islam, 'EU seeks stronger ties with the New Govt, Says Solana' *Dawn* (Karachi, 22 April 2008).

⁵⁸ *ibid.*

⁵⁹ Islam, 'Building democracy and fighting extremism in Pakistan: a role for the EU' (n 40) 2.

⁶⁰ Shad (n 17) 122.

4.5. INSTITUTIONALISATION OF EU–PAKISTAN RELATIONS

as tools to ensure stability in the country⁶¹. The EU has a strong interest in seeing democratic consolidation in Pakistan essential not only for stability within the country but also for a security cooperation in the region⁶².

While availing the opportunity of European Union president's visit, Pakistan government sought to gain the maximum support in trade and socio-economic sectors. The Prime Minister of Pakistan discussed the importance of gaining duty free access to the European markets while expressing its concerns on the duty-free regime granted to Bangladesh as well as EU interest of establishing FTA with India. As war on terror has severely dented the development in Pakistan the Prime Minister of Pakistan demanded the EU support in socio-economic sectors to curb the extremism in a society which results from socio-economic deprivation of various segments in a society⁶³. The cost of 'war on terror' to Pakistan was around 484 billion rupees during year 2007-08. The cost was projected to increase to 678 billion rupees during 2008-09⁶⁴.

4.5 Institutionalisation of EU–Pakistan Relations

Undoubtedly, the war on terror proved to be instrumental in forging a closer relation between EU and Pakistan. The Perceived importance of Pakistan for the EU increased after the terrorist attacks of 9/11 on America in 2001. Because of the importance of the issues related to Pakistan, it became a priority on the agendas

⁶¹ Shad (n 17).

⁶² G Stang, 'The EU and Pakistan's turbulent democratisation' [2012] *Agora Asia-Europe*, 1.

⁶³ Noor (n 27).

⁶⁴ Cost of 'war on terror' to Pakistan, Source/Finance Division, Government of Pakistan (2008) (<http://www.finance.gov.pk/poverty/PRSP-II.pdf>).

4.5. INSTITUTIONALISATION OF EU–PAKISTAN RELATIONS

of not only European leaders but also of European Defence and foreign ministers⁶⁵. Apart from that, certain important developments also took place on EU side, such as the setup of European Defence and Security Policy (EDSP) which established the EU's political and defence identity, the appointment of EU Counter Terrorism Coordinator and dispatch of EU's first police and military mission⁶⁶. All these developments enhanced the need for Pakistan engagement not only because of its campaign against terrorism, but also for achieving the EU's policy goals in the region⁶⁷. Secondly, with the elected civilian government after the elections of 2008, the EU found itself in a comfortable position to deal with it⁶⁸. With these developments in the background, EU made an effort to institutionalise its policy in relation to Pakistan as per its own needs more explicitly⁶⁹. At the initiative of EU, several important cooperation agreements and political dialogues took place between EU and Pakistan which has the effect of consolidating EU and Pakistan relations. This set the beginning of institutional rapprochement between the two partners. Here is important to highlight the assistance provided by the EU's through its development programmes in socio-economic areas as well increased level of diplomatic contacts and consultations that took place on important issues between EU and Pakistan to analyse the nature of coordination between the two.

⁶⁵ Zajczkowski and Wolf (n 10) 139,140.

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ Ballesteros-Peiró (n 32) 6.

⁶⁹ *ibid.*

4.6 Country Strategy Programme 2002-2006

The EU adopted its first five-year Country Strategy Paper (CSP) on Pakistan in 2002-2006. The strategy paper identified human development and trade development as two priority areas for European Commission cooperation with Pakistan. Besides these two priority areas other than areas for intervention includes child labour, good governance, rural development and drugs. The total budget allocation for the EC co-operation priority areas and interventions was 90 million euros under the multi-Asia budget⁷⁰. Pakistan being the 7th largest population in the world and due to its bleak social indicators, Human development in the education sector with focus on poverty reduction was targeted for priority attention in accordance with the overarching objectives for Community cooperation explicitly laid down in Article 177 of the EU Treaty in addition to the guidelines included in Council regulation 443/92 on financial and technical assistance and economic cooperation with developing countries in Asia and Latin America. Total 80% of available resources was allocated to this area⁷¹.

Pakistan is an important trading partner of the EU despite that its current economic and commercial relations with the EU are below potential. Trade development and promotion of business and institutional links was identified as a second priority area in order to strengthen the economic institutions and commercial links to enhance Pakistan's capability to interact more effectively with EU. Approximately

⁷⁰ Pakistan Country Strategy Paper (2002-2006) (<http://eeas.europa.eu/archives/docs/pakistan/csp/02.06.en.pdf>), 6,7; EU-Pakistan: Commission propose increase in assistance (<http://europa.eu/rapid/press-release.IP-07-115.en.htm>)

⁷¹ Pakistan Country Strategy Paper (2002-2006) (n 70) 36.

4.6. COUNTRY STRATEGY PROGRAMME 2002-2006

8% of the resources was earmarked for activities under this head⁷².

The remaining 12% of the total resources were allocated to other areas which were considered important in the current context of the country. This includes eradication of child labour, poverty alleviation projects, the fight against drugs abuse measures with focus on good governance and measures of conflict prevention⁷³.

In addition to the allocation of resources under the Asia budget earmarked for the targeted areas mentioned above other budget lines which included (European initiative for democracy and human rights , NGO co-financing , HIV and population related operations, Co-operation with third countries in area of Migration) allocated total 165 million euros for addressing issues such as promotion of democracy and human rights, HIV and population-related operations, NGO co-financing , aid to uprooted people (afghan refugees) and curbing illegal migration⁷⁴.

The second CSP was adopted by EU on Pakistan in 2007 for the period 2007-2013. Under the development Cooperation Instrument (DCI)an indicative allocation of 398 million euros had been earmarked for the whole period of CSP. This strategy focused on alleviation of poverty and helping Pakistan follow a sustainable growth path. This strategy paper underline that the ‘long standing conflict in neighbouring Afghanistan has deep impact on economic and social development in the less developed and less secure provinces of Pakistan’⁷⁵. Therefore, the CSP identified rural development and natural resources management in the provinces of Khyber Pakhtunkhwa and Baluchistan as the first focal areas for the allocation of resources.

⁷² Pakistan Country Strategy Paper (2002-2006) (n 70) 26.

⁷³ *ibid* 6.

⁷⁴ *ibid*.

⁷⁵ Pakistan Country Strategy Paper (2007- 2013) (https://eeas.europa.eu/sites/eeas/files/csp-pakistan-2007-2013_en_0.pdf).

4.6. COUNTRY STRATEGY PROGRAMME 2002-2006

Through investment in the rural areas of these provinces the objective was to support these provinces to move ahead towards the Millennium development goals (MDGs) to ensure the cohesion and stability of the country as a whole and to prevent the conflicts from recurring in these areas bordering Afghanistan. These efforts would supplement the EC'S substantial engagement in Afghanistan⁷⁶. Therefore the objective of rural development and natural resource management in these provinces placed particular emphasis on degenerating state of environment and declining water resources to achieve improvement of livelihood, income generation and creation of employment opportunities for the locals communities including refugee-impacted areas.

Secondly the Strategy paper emphasized that Education and Human resources development play a strategic role in the government's long term plan thus were listed as focal area 2 for European Commission cooperation with Pakistan over the reference period⁷⁷. The objective was to increase access to basic education and to support measures to improve the quality of education and human resource development with the objective to prepare Pakistan's transition to knowledge-based economy⁷⁸. In addition to that, trade development with a view to further integrate Pakistan into world economy together with human right and democratization constituted non focal areas of the European Commission support⁷⁹.

Other areas identified for EU's support and cooperation was human rights, combating child labour to address child protection issues in broader sense such as viol-

⁷⁶ Pakistan Country Strategy Paper (2007- 2013) (n 75) 19.

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ *ibid* 20.

4.7. EU-PAKISTAN MULTI-ANNUAL INDICATIVE PROGRAMME (2014-2020)

ence, trafficking and discrimination with special emphasis on juvenile justice, human and social development in order to support the government of Pakistan to implement its policies and international commitment towards the human rights, fair globalization and decent work⁸⁰.

4.7 EU-Pakistan Multi-Annual Indicative Programme (2014-2020)

This multi annual-indicative programme was adopted in response to Pakistan national development agenda and was based on two documents, Pakistan vision 2025 and Poverty reduction strategy paper (PRSP-II 2010). Vision 2025 was adopted in May 2014 by a new government elected in 2013. This vision contains the country's long-term development blueprint which aims to create a globally competitive and prosperous country providing a high quality of life for all of its citizens. It aims to transform Pakistan into an industrialized, technology intensive, globalized and knowledge based inclusive upper middle country by 2025. The Poverty reduction strategy paper provide an assessment of poverty and 'details of the macroeconomic, structural and social policies and programmes that a country will pursue over several years to promote growth and reduce poverty as well as external financing needs and associated sources of finances'⁸¹. The World bank and International Monetary fund (IMF) require it from countries which applied for debt relief or before receiving aid from donors. This indicative programme was adopted to assist Pakistan in improving

⁸⁰ Pakistan Country Strategy Paper (2007- 2013) (n 75) 24.

⁸¹ Government of Pakistan (Finance Division), Poverty Reduction Strategy Paper (PRSP)-II (<http://www.finance.gov.pk/poverty/PRSP-II.pdf>).

4.8. EU'S NEW FINANCIAL SUPPORT TO EDUCATION RURAL DEVELOPMENT AND DEMOCRATIC INSTITUTIONS IN PAKISTAN

its poverty level which have not decreased since 2008 due to persistent stagnation of economy and successive humanitarian crisis and to provide support in achieving its targets of Vision 2025. EU through multi annual indicative programme aim to accelerate the abysmal national performance through its financials interventions in three main areas such as rural development (allocated 340 million euros), education (210 million euros) and good governance, human rights and rule of law (97 million euros)⁸². The total budget allocated under this programme was 653 million euros⁸³.

4.8 EU's New Financial Support to Education Rural Development and Democratic Institutions in Pakistan

Recently, EU has awarded a financial grant of 150 million Euros to Pakistan to support education, rural development and democratic institutions in Pakistan. This bespeaks of EU commitment to support Pakistan in its inclusive, sustainable and democratic development. To improve universal access to quality education ,50 million euros is earmarked for the project 'Development through Enhanced Education Programme (DEEP)' in the Province of Sindh. This project will support the young people to engage in productive employment or higher/vocational training. This project will also work on issues such as reduction of drop outs, higher enrolment rate, and better quality education in a context of persistent demographic pressure.

⁸² European Commission, EU-Pakistan multi annual indicative programme (MIP) (2014-2020) (<https://ec.europa.eu/europeaid/sites/devco/files/mip20142020-programming-pakistan-20140811.en.pdf>), 8,9.

⁸³ *ibid.*

4.9. FORGING OF POLITICAL PARTNERSHIP

For rural development in the Province of Sindh and Baluchistan, 50 million euros is earmarked for the project ‘Growth for Rural Advancement and sustainable programme (GRASP)’. This programme will aim to contribute to the reduction of poverty through development of rural SMEs thereby creating inclusive employment and income opportunities in the rural areas of Pakistan. The programme will have a specific focus on women in these areas. Similarly 45 million Euros is dedicated to a project to support parliamentary democracy in Pakistan especially in the frame of the 18th amendment of the constitution. This project will be additional part of the on-going EU assistance to Provincial Assemblies and recently completed EU assistance to the Federal Parliament.

4.9 Forging of Political Partnership

Several important developments took place which have transformed the EU–Pakistan relations traditionally centred around trade and development cooperation since its inception into the political partnership. In this regard, Joint declaration of EU–Pakistan ministerial troika is notable that took place in Berlin on 8 February 2007⁸⁴. Both the sides undertake to develop broad formalized political dialogues on important issues such as counter terrorism, non- proliferation, counter-narcotics, inter-faith dialogue, human rights and good governance through regular ministerial and expert level meetings and to cooperate in the promotion of regional peace, stability and security. Both the sides agreed to exchange experience in the fields of political and economic governance in addition to human rights and rule of law. Both

⁸⁴ Council of the European Union, EU-Pakistan joint declaration, Brussels (8 February 2007) 6174/07 (Press 21) (https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/92681.pdf).

4.10. FIRST EU–PAKISTAN SUMMIT 2009

the sides showed their commitment to the elimination of poverty in Pakistan, in accordance with the Millennium Development goals⁸⁵. After a year, in April 2008 the EU foreign ministers made a list of priority actions in Pakistan. First, they agreed to support and provide assistance related to Pakistan’s governance, rule of law and democracy issues⁸⁶. Second, regarding the recommendation of the Election Observer Mission (EOM) 2008 for bringing electoral reforms in Pakistan, they said that ‘The European Union stands ready to support the government of Pakistan in the implementation of these recommendations to assist reforms to strengthen Pakistan’s democratic institutions’⁸⁷. The ministers showed interest for initiating dialogue with Pakistan by pointing to the future areas of cooperation such as trade and development, non -proliferation, intercultural exchange, human rights, education counter terrorism and radicalization⁸⁸. Most importantly, Pakistan’s request for initiating negotiations on EU–Pakistan free trade agreement and for promoting trade liberalization in South Asia, specifically with Afghanistan and India was taken into consideration⁸⁹.

4.10 First EU–Pakistan Summit 2009

The first EU–Pakistan summit took place in Brussels on 17 June 2009. The summit was held to mark the successful transition of democratic system in Pakistan. In

⁸⁵ Islam, ‘EU-Pakistan Relations: The Challenge of Dealing with a Fragile State’ (n 9) 592.

⁸⁶ The Council of the European Union, 2864th and 2865th Council meetings General Affairs and External Relations, Luxembourg (n 55).

⁸⁷ *ibid.*

⁸⁸ *ibid.*

⁸⁹ Islam, ‘EU-Pakistan Relations: The Challenge of Dealing with a Fragile State’ (n 9) 592.

4.10. FIRST EU–PAKISTAN SUMMIT 2009

that Summit both sides showed their commitment to engage in a strategic dialogue. However, EU pointed out that ‘terrorism, extremism and militancy represents serious threat to international peace and should be eliminated’⁹⁰. Both sides emphasised the need to work together on integrated long-term strategy including civilian law enforcement structures, rule of law as well as socio-economic development⁹¹. EU also offered its assistance in improving Pakistan’s law enforcement system through Police reforms and criminal justice. EU also offered its help to improve Pakistan’s counter terrorism capabilities⁹². Regarding energy crisis issue in Pakistan, they emphasised the need to attain sustainable and safe energy supplies⁹³. The deteriorating security situation of the Khyber Pakhtunkhwa province and tribal areas, which were largely hit by the acts of terrorism, was discussed⁹⁴. The demand, made by the government of Pakistan interested in seeking increased access to European market for its exports especially textiles, did not receive positive response. However, EU gave assurance that it would work with Pakistan towards further liberalization of trade in goods and services with aim to mutually enhance market access and convergence on regulatory matters⁹⁵.

⁹⁰ Eu-Pakistan summit Brussels (17 June 2009) (www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/declarations/108562.pdf).

⁹¹ *ibid.*

⁹² *ibid.*

⁹³ *ibid.*; Ballesteros-Peiró (n 32) 7

⁹⁴ Eu-Pakistan summit Brussels (n 90).

⁹⁵ *ibid.*; Islam, ‘EU-Pakistan Relations: The Challenge of Dealing with a Fragile State’ (n 9) 594

4.11 Second EU–Pakistan Summit 2010

The second EU–Pakistan summit was held on 4 June 2010 in Brussels. The leaders showed their interest to build up a ‘partnership for peace and development’⁹⁶. While taking up the dialogue a step further, the leaders re-affirmed their commitment to jointly address the issues related to regional and global security, economic and trade cooperation, respect for human rights and provision of humanitarian assistance. In addition to that, the EU expressed to continue to extend its cooperation with Pakistan for strengthening Pakistan’s democratic government and institutions⁹⁷. Leaders from both sides also assured to work on a five-year engagement plan for Pakistan, which would outline the specific targets for their joint actions. For consultations at the ministerial or official level, it was agreed that under the new Lisbon treaty rules, regular meetings between the High Representative of the Union for foreign and security policy and Pakistan foreign minister will continue⁹⁸. EU President van Rompuy in his statement stated, that over one million Pakistanis are living in EU which establish a good link between EU and Pakistan and necessity of working together on serious issues faced by Pakistan. He further said that, ‘Moreover the EU is Pakistan’s most important trading partner and one of the largest partners in development cooperation. The development in Pakistan do have a direct influence in Europe, and in the whole world. Therefore, it is in our interest to be constructively engaged with Pakistan after a period of lower intensity. We are discussing a broad

⁹⁶ Second EU – Pakistan Summit Brussels, Joint Statement (4 June 2010) (<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST106922010INIT>).

⁹⁷ *ibid.*

⁹⁸ *ibid.*

4.11. SECOND EU–PAKISTAN SUMMIT 2010

range of issues that are important to us'⁹⁹.

While streamlining the future course of action, EU at the same time expressed its dissatisfaction on Pakistan's leadership ill performance on the issues it committed previously to address. Thus, in the summit EU firmly made a demand that Pakistan must take some concrete actions on regional and global security issues as well as for strengthen its democratic institutions and human rights conditions in the country¹⁰⁰. EU continued to express its concerns on Pakistan's performance on major issues that required substantive action for fulfilling its commitment under the various cooperation agreements. After the Summit, similar concern was once again raised in a statement issued by the EU foreign ministers meeting on 18 July 2011. They warned that 'As the EU's Partnership with Pakistan mature, it should increasingly balance the interests and concerns of both the partners'¹⁰¹.

Further the statement reads, 'Thus, while EU is ready to pursue cooperation in number of areas, we also count on react to EU concerns, in particular in the field of security and of human rights, including the protection of minorities and freedom of religion and speech. Moreover, without far reaching structural, economic and fiscal reforms, EU assistance cannot be fully effective'¹⁰². While accounting the necessary cooperation which EU is extending to strengthen its law enforcement system and for bringing necessary reforms in functioning of police and judiciary, it encouraged the Pakistan to take necessary steps for combating terrorism which is affecting the

⁹⁹ European Council the President, Remarks by HermanVan Rompuy, President of the European Council, at the press conference after the EU -Pakistan Summit. PCE 115/10 Brussels (4 June 2010) (http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/114929.pdf).

¹⁰⁰ *ibid*; Islam, 'EU-Pakistan Relations: The Challenge of Dealing with a Fragile State' (n 9) 595

¹⁰¹ European Council the President, Remarks by HermanVan Rompuy, President of the European Council, at the press conference after the EU -Pakistan Summit. PCE 115/10 Brussels (n 99).

¹⁰² *ibid*.

4.12. GRANT OF GSP+STATUS OF PAKISTAN

security of the region¹⁰³.

4.12 Grant of GSP+Status of Pakistan

As discussed above areas of trade, economic cooperation and development remained significant in EU–Pakistan relations. EU has been Pakistan largest trading partner accounting for 12.8% of Pakistan total trade and borrowing 23.7% of Pakistan total exports¹⁰⁴. In May 2007, a subgroup on trade was set up in order to further promote the development of two-way trade between EU and Pakistan under the EU–Pakistan Joint Commission. To give boost to Pakistan trade following heavy monsoon rains and devastating floods which have affected 20 percent of Pakistan land and 20 million people, the EU has not only given 423million in emergency aid but have also adopted emergency autonomous trade preferences for Pakistan to give improved access to the European market through reduction of duties on key imports from Pakistan following a WTO waiver¹⁰⁵. This EU has provided trade related technical assistance to Pakistan through Trade Related Technical Assistance projects namely (TRATA I)which contributed in improvement of sanitary and phytosanitary measures, trade capacity and protection of intellectual property rights , (TRTA II) covered three components which included Trade policy capacity building , export development through improvement of the quality infrastructure and strengthening of intellectual

¹⁰³ European Council the President, Remarks by HermanVan Rompuy, President of the European Council, at the press conference after the EU -Pakistan Summit. PCE 115/10 Brussels (n 99).

¹⁰⁴ EU-Pakistan trade facts (<http://ec.europa.eu/trade/policy/countries-and-regions/countries/pakistan/>).

¹⁰⁵ Regulation (EU) No 1029/2012 of the European Parliament and of the Council of 25 October 2012 introducing emergency autonomous trade preferences for Pakistan [2012] OJ L316/43 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1029&from=EN>).

4.12. GRANT OF GSP+STATUS OF PAKISTAN

property rights and TRATA III which focussed on Private sectors development¹⁰⁶.

For the improvement of Pakistan's socio-economic situation in Pakistan, EU considered awarding the Generalized system of preference (GSP) plus status to Pakistan. It was estimated that with grant of this status Pakistan's textile and leather industries would benefit enormously from unrestricted access to EU's single market. According to analysts this trade concession would help Pakistan to earn additional USD 550-700 million per year with an increase in exports of USD 2 billion¹⁰⁷. A significant step in the direction of granting GSP plus status to Pakistan was made on taken on 5 November 2013, as the International Trade Committee of the European Parliament (INTA) voted against a Resolution of Southern European Countries opposing the grant of the GSP plus to a batch of ten newly selected members , including Pakistan¹⁰⁸. The final decision of the European Parliament on 12 December 2013 was in favour of awarding Pakistan the GSP Plus status until 2017. The grant of GSP Plus status was subject to a condition upon Pakistan's effective implementation of 27 UN Conventions covering human rights, labour rights, environmental protection and good governance. These conventions are within the scope of GSP+ regulation. This economic incentive is link to improvement of overall human rights, labour standards and protection of environment and good governance in Pakistan. For Pakistan, the ward of GSP Plus status was a matter of prestige, as it was hopeful that it will help in improving the country's tattered international

¹⁰⁶ Pakistan Institute of trade and development, EU funded Trade related technical assistance projects (<http://www.pitad.org.pk/indexP.php?type=TRTA-III>).

¹⁰⁷ Muhammad Javed, 'Government can earn \$700m through GSPplus status: experts' *The News International* (Islamabad, 15 October 2013).

¹⁰⁸ According to media reports 406 members of the European Parliament for awarding Pakistan GSP status while 186 European members voted against the initiative. MZ Khan, 'Ways open for grant of GSP+' *The Dawn* (Karachi, 7 November 2013)

4.12. GRANT OF GSP+STATUS OF PAKISTAN

standing. Its reputation has greatly suffered from its image of being one of the world's greatest hubs for international terrorism, extremism, a source of all kinds of instability leading to suppression of religious and ethnic minorities and strained relations with its neighbours¹⁰⁹. However, Pakistan's lobbying and diplomatic efforts have convinced the most important decision makers with the EU of following things. First, Pakistan has ensured that it has the political will and capacities to deal with the prerequisites for getting the GSP Plus status. Second, to improve the coordination and cooperation between its institutional structure in order to be able to accomplish the entire GSP Plus programme¹¹⁰.

As per the EU–Pakistan trade facts, EU 28 imports from Pakistan during the period from 2006 to 2016 have almost doubled from 3,319 million euros to 6,273 million euros¹¹¹. The increase in growth of imports from Pakistan has been recorded since the award of Generalised System of Preference (GSP) plus to Pakistan in January 2014. Overall GSP Plus has been an instrument in providing a boost to Pakistan's textiles and leather and domestic industries of Pakistan by giving them a duty-free access to European markets and business clientele. The assessment of Pakistan's compliance with the EU obligations concerning the compliance of 27 UN Convention which are within the scope of GSP+ conditionality will be analysed in detail in chapter 4 of the thesis.

¹⁰⁹ Wolf (n 25) 5.

¹¹⁰ *ibid* 6.

¹¹¹ EU-Pakistan trade facts (n 104).

4.13. EU-PAKISTAN FIVE YEAR ENGAGEMENT PLAN (2012-2017)

4.13 EU-Pakistan Five Year Engagement Plan (2012-2017)

The five-year engagement plan between EU and Pakistan was adopted on 2 March 2012 which set up a new political framework for EU–Pakistan relations¹¹². Besides that, a bi-annual ‘strategic-dialogue’ was also launched based on EU -Pakistan engagement plan by the EU High Representative of the Union for Foreign Affairs and Security Policy with her meeting with Pakistan Foreign Minister on 5 June 2012¹¹³. This engagement plan was guided by the EU–Pakistan Summit of joint statements of 17 June 2009 and 04 June 2010. The aim of five-year engagement plan was to ‘build a strategic relationship by forging a partnership for peace and development rooted in shared values, principles and commitments’¹¹⁴. This engagement plan aim to promote partnership and expand cooperation on a wide range of issues. The targeted areas of cooperation in five-year engagement plan were regular strategic/political dialogues between the two sides, security, democracy, governance issues, human rights, socio-economic development, trade and investment, energy issues and cooperation in various social sectors¹¹⁵. With this engagement plan the EU and Pakistan relations graduates to a new level with shifting what has been traditional more trade oriented to the one that is political. Under this engagement plan the two sides have been engaged on important areas such as security, counter terrorism and counter-

¹¹² EU-Pakistan five years engagement plan 2012 (http://eeas.europa.eu/archives/docs/pakistan/docs/2012_feb_eu_pakistan_5_year_engagement_plan.en.pdf).

¹¹³ European Commission, Catherine Ashton Visits Pakistan, (Presse release) Brussels (4 June 2012) (http://europa.eu/rapid/press-release_IP-12-560.en.htm).

¹¹⁴ EU-Pakistan five years engagement plan 2012 (n 112).

¹¹⁵ *ibid.*

4.13. EU-PAKISTAN FIVE YEAR ENGAGEMENT PLAN (2012-2017)

proliferation. The five-year engagement plan successfully culminated in 2017. Before its expiration the negotiations on the adoption of EU–Pakistan strategic engagement plan had begun on the direction of the Council¹¹⁶. On 14 September 2018 a proposal for an EU–Pakistan strategic Engagement was transmitted to the Council by European External Action Service (EEAS) to be signed by the High Representative of the European Union for Foreign Affairs and Security Policy. In the text of the EU–Pakistan strategic Engagement plan both the sides have committed to reinforced the cooperation in area of counter terrorism , preventing and countering violent extremism and tackling their root causes , as well as in the field of organized crime, money laundering , cyber security and anti-piracy¹¹⁷.

The new strategic engagement plan between EU–Pakistan was signed in Brussels on 25 June 2019¹¹⁸. This strategic engagement plan set the beginning of new chapter in EU–Pakistan relations. Now the bilateral relations between the two partners would be guided by the EU -Pakistan Strategic Engagement Plan and by the 2004 Cooperation agreement on partnership and development. The Strategic engagement plan provides a comprehensive political framework for development of broad-based partnership in areas of peace and security, trade and investment, the rule of law, good governance and human rights, education and culture, sustainable development migration and mobility, and science and technology¹¹⁹. Engagement in area of peace

¹¹⁶ [xxx]

¹¹⁷ Council of the European Union, EU-Pakistan Strategic Engagement Plan-Signature authorization, Brussels [2019] (<https://data.consilium.europa.eu/doc/document/ST-7857-2019-INIT/en/pdf>), 2,4.

¹¹⁸ EU-Pakistan Strategic Engagement Plan (<https://eeas.europa.eu/sites/eeas/files/eu-pakistan-strategic-engagement-plan.pdf>).

¹¹⁹ EU-Pakistan Relations, European external action service, Brussels [2019] (https://eeas.europa.eu/headquarters/headquarters-homepage/64582/eu-pakistan-relations_en).

and security through structured security dialogues is important component of this plan. The new security dialogues under Strategic engagement plan has replaced the earlier series of annual counter terrorism and non-proliferation dialogues between the two partners.

The new Strategic engagement plan will not only further bilateral relations between the two partners, but it will also set the agenda for enhanced cooperation. The strategic engagement plan substantiated the fact that Pakistan has slowly climbed the EU's foreign and security Policy agenda and it no more lies at the periphery of the EU's Asia policy rather it has been able to established itself as a new important strategic partner of EU in South Asia along with China, India and Japan.

4.14 Conclusion

EU-Pakistan relations have been profoundly developed in various areas of cooperation over the period of fifty years. Trade, investment and development cooperation have remained the main area of cooperation since the start of relations till present. EU has been Pakistan not only one of its leading trade and investment partner but has also been its important development partner as evident from its immense financial aid and support in areas of health, education, rural development and poverty reduction. EU has played an eminent role in providing its continuous support to consolidation of democracy, rule of law and promotion and protection of human rights in a country. Due to this very reason EU has been well received in Pakistani media, civil society, women groups, human rights activists and organization as well as pro-democracy groups and parties. EU involvement in American war on terror in Afghanistan after 9/11 terrorists attacks on America brought a change in its

4.14. CONCLUSION

approach towards Pakistan which was mainly viewed from trade and development perspectives. Security issue make it imperative for EU to define its policy towards Pakistan. European believe that a secure and stable Pakistan can only contribute in achieving peace and stability in the region. The 2004 cooperation and development agreement between EU-Pakistan have reinforced the relationship between the two. However, it was five years engagement plan concluded in 2012 which have broadened the scope of their terms of engagement to entirely new areas notably security, counterterrorism, energy, trade, democracy and good governance. The currently concluded new Strategic engagement partnership between EU and Pakistan is an offshoot of the five-year engagement plan 2012 which ended in 2017. The new strategic engagement partnership is considered an immense achievement for both the Partners. It is ambitious new political framework which have set the foundation of political ties between EU and Pakistan and have transformed the relations between them from mere trade partners to policy partners. It bespeaks that both EU and Pakistan value their mutual relations and are committed to enhance the level of there bilateral engagement and to further strengthen the long term, forward looking and broad based partnership for peace , development and prosperity.

5 Analyzing The Status of Implementation of Human Rights, Labour Rights, Environmental Protection and Good Governance Conventions in Pakistan

Pakistan has been granted the GSP+status on 1st of January 2014. One of the important condition relevant to GSP+status is that the beneficiary State is required to ratify and ensure the effective implementation of the 27 core international Conventions within its State. This chapter will make an in-depth analysis of the status of the implementation of those conventions through adoption of national and provincial legislation in Pakistan.

5.1 Introduction

Since 1971, the EU has created a Generalized System of Preferences (‘GSP’) scheme to assist the developing countries in their efforts to reduce poverty, promote good governance and sustainable development. Under this scheme, the countries are provided preferential access to the EU market, which helps them to generate additional revenue through international trade¹. The European Parliament Regulation (EU) No 978/2012 and the Council Regulation of 25 October 2012 on applying a scheme of generalized tariff preferences (‘the GSP Regulation’) is the legal framework for the GSP². The scheme has been introduced under the ‘Enabling Clause’ which permits an exception to the WTO ‘Most Favoured Nation’ principle³.

GSP has three different preference arrangements to accommodate developing countries trade, development and financial needs effectively. GSP+ is the Special incentive arrangement for sustainable development and good governance for countries especially vulnerable in terms of their economies diversification and import volumes. GSP+ grants duty suspension for 66% tariff lines to its beneficiaries⁴.

¹ EU Generalized System of Preference (GSP) (<http://ec.europa.eu/trade/policy/countries-and-regions/development/generalise>).

² Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [2012] OJ L303/1 ([link%20https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2012.303.01.0001.01.ENG&toc=OJ:L:2012:303:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2012.303.01.0001.01.ENG&toc=OJ:L:2012:303:TOC)).

³ EU Generalized System of Preference (GSP) (n 1).

⁴ *ibid.*

5.2 Conditions Linked with GSP+Status

The grant of GSP+status is linked with three important conditionalities. The country applying for the GSP+ is required to have already ratified the 27 core international conventions on human and labour rights, environmental protection and good governance⁵. These Conventions are listed in Annex VIII of the GSP Regulation. Secondly, countries must ratify those Conventions without formulating any reservations which are prohibited by those conventions or are incompatible with the purposes of the Conventions. Thirdly, the recent conclusions and recommendations of the monitoring bodies must not have identified any serious difficulty in the implementation of those conventions in a beneficiary State⁶.

The countries must not only commit to reporting and monitoring requirement of the Conventions, but shall also commit to cooperate with EU GSP+ monitoring led by European Commission for assessing the beneficiary's state compliance with their undertakings under the GSP+⁷.

Pakistan has been granted the GSP+status on 1st January 2014⁸. As a require-

⁵ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf).

⁶ *ibid.*

⁷ *ibid.*; See also Commission Delegated Regulation (EU) No 155/2013 of 18 December 2012 establishing rules related to the procedure for granting the special incentive arrangement for sustainable development and good governance under Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences [2013] OJ L48/5 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0155&from=EN>), para 8

⁸ Commission Delegated Regulation (EU) No 1/2014 of 28 August 2013 establishing Annex III to Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences [2004] OJ L1/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0001&from=GA>), para 1.

5.2. CONDITIONS LINKED WITH GSP+STATUS

ment, Pakistan must maintain ratification of 27 Conventions which includes seven UN conventions on human rights, eight fundamental ILO conventions on labour rights, eight UN conventions on environment protection and four UN conventions on good governance without any reservations. As a mandatory requirement, Pakistan must bring necessary changes in its current laws or adopt new national or provincial legislations to ensure compliance with these core international conventions. Secondly, Pakistan should not demonstrate any serious difficulties regarding implementation of these conventions. Moreover, Pakistan must commit to the reporting and monitoring requirement of these conventions as well as with the EU GSP+monitoring of the European Commission for the assessment of effective implementation of these conventions through necessary legislations.

The Pakistan's Government has introduced a number of important divisions and units associated with the GSP+programme. Before the grant of the GSP+status, the government has set up a GSP+force to ensure that it has fulfilled EU's formal criteria⁹. Pursuant to the grant of GSP+status, the Government has established a 'Treaty Implementation Cells (TICs) at the national and provincial levels. These cells are tasked to monitor and ensure implementation of treaty obligations, coordinate information between federal and provincial level and between different ministries and departments and update data collection for the country report¹⁰. At the provincial level, provincial treaty cells were also set up. In 2016, a reform was introduced for the purpose of enhancing coordination with departments and agencies and to enable

⁹ M Ghumman, 'Procedural EU formalities for GSP-Plus: Prime Minister forms inter-ministerial task force' *Business Recorder* (Karachi, 5 December 2012) (<http://fp.brecorder.com/2012/12/201212051264410/>).

¹⁰ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels [2018], 2.

5.2. CONDITIONS LINKED WITH GSP+STATUS

cooperation with International partners¹¹. The Government has also announced to establish GSP+ support Mechanism Unit to cooperate with private sectors and NGOs to improve human rights conditions in Pakistan¹².

Monitoring of human rights is the main challenge due to lack of reliable nationwide data on human rights situation in the country. The data is usually provided by NGOs and based on media reporting. For improving the data collection on human rights situation in the country, the Government has indicated to establish a Human Rights Management Information System, which will be central to the National Institute of Human Rights in Pakistan. The National Institute of Human Rights will conduct research on human rights, training, capacity building of the Provincial Human rights departments, collection and dissemination of information, review policy and legal reforms, advocacy and awareness of human rights through media campaigns and other ways¹³.

The next part of this chapter will review the status of implementation of the UN conventions on Human rights in Pakistan required for the maintenance of the EU GSP+status through adoption of national and provincial legislations during the period between 2014-2018 and through the observations of the UN committees on the periodic reports submitted by Pakistan concerning each human right Convention.

¹¹ ‘PM Restructures TIC to improve compliance on International obligations’ *Associated Press of Pakistan* (Islamabad, 24 June 2016) (<https://www.app.com.pk/pm-restructures-tic-to-improve-compliance-on-international-obligations-ashtar>).

¹² ‘GSP Plus review:Support mechanism unit to be established’ *The Tribune* (Karachi, 4 August 2015) (<https://tribune.com.pk/story/931751/gsp-plus-review-support-mechanism-unit-to-be-established/>).

¹³ The National Institute for human rights, Islamabad was established under the National Action Plan for Human Rights which was approved on 13th February 2016 (<http://www.mohr.gov.pk/index.php/home/pps.page/15>).

5.3. STATUS OF THE IMPLEMENTATION OF THE UN HUMAN RIGHT CONVENTIONS

5.3 Status of the Implementation of the UN Human Right Conventions

5.3.1 International Convention on the Elimination of all Forms of Racial Discrimination (CERD)

International Convention on the elimination of all form of racial discrimination (CERD) entered into force on 4 January 1969¹⁴. Pakistan ratified the convention in year 1966¹⁵. Racial discrimination is defined as any ‘distinction, exclusion, restriction or preference based on race, descent, or national or ethnic origin which has the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life’¹⁶.

The State parties are required to undertake the policy of eliminating racial discrimination in all its forms and shall promote understanding among all the races to achieve that end¹⁷. Further the state party shall not undertake to sponsor, defend or support racial discrimination by any persons or organizations. The state party shall review its governmental, national or local policies and amend or nullify any laws or regulations which have the effect of creating or perpetuating racial discrimination. The state party shall prohibit and bring to an end through appropriate measures including legislation as necessitated by circumstances racial discrimination by any

¹⁴ International Convention on the Elimination of all forms of Racial Discrimination [1965].

¹⁵ Pakistan Ratification status (<http://indicators.ohchr.org/>).

¹⁶ International Convention on the Elimination of all forms of Racial Discrimination (n 14) art 1.

¹⁷ *ibid* art 2.

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person, group or organization. The state party shall encourage and promote integrationist multiracial organizations and movements or other means to eliminate racial discrimination. The state party shall take measures for the development and protection of certain racial group or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms¹⁸.

Pakistan has fully complied with the reporting obligations under the Convention. Government of Pakistan submitted the latest report encapsulating three periodic reports, i.e 21st, 22nd and 23rd reports. The previous two reports were not submitted by Pakistan hence the assessment covers the six years period (2005-2015)¹⁹. The UN Committee on CERD reviewed the compliance of Pakistan with the human rights standards set in the convention.

Pakistan has adopted certain important legislative measures for ensuring compliance with the CERD Convention ²⁰

These includes increase in quotas allocated for minorities, women and persons with disabilities in national parliament, provincial assemblies and in local government to increase their participation in public employment. Adoption of Human Rights Commission Act 2012²¹ and operationalization of the Human Rights Commission of Pakistan 2015²². Another important legislative measure was promulgation

¹⁸ International Convention on the Elimination of all forms of Racial Discrimination (n 14).

¹⁹ UN Committee on the Elimination of Racial Discrimination (CERD), Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination (3 April 2012) CERD/C/ISR/CO/14-16 (<https://www.refworld.org/docid/506189622.html>).

²⁰ GSP11

²¹ National Commission for Human Rights Commission Act 2012.

²² National Commission for Human Rights 2015.

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of the National Commission of Minorities Act 2015²³. The Commission, established under the Act, is headed by chairperson and vice chairperson who are from amongst the Minorities communities. The function of the commission is to evaluate the progress of development of the Minorities in the country and to monitor the safeguards provided for the minorities in the Constitution and in national and provincial laws. The commission can investigate the complaints brought before it concerning deprivation of rights and safeguards of minorities and take up the matter with appropriate authorities. It is required to conduct research studies, and analysis concerning socio-economic and educational development of the Minorities in Pakistan and suggest appropriate measures in respect of any Minority to be undertaken by the federal or provincial governments²⁴. Another positive measure taken by the government was the inclusion of human rights education in school curriculum. Protection of minority rights is one of the priority area under the National Action plan adopted by the Government in 2016 the promotion of Human rights in Pakistan. It is a remarkable effort on the part of the Government for promotion of human rights in the country which is required for maintaining the GSP+status. Free legal assistance programme is provided under the National Action Plan for Human Rights 2016. Minorities can equally avail this free legal assistance when required. In 2015 the National Commission on Human Rights was constituted. The Commission is playing a very active role in dealing with Human rights issues in the country and publishes annual reports, observations on Human rights conditions in the country. The Commission can also entertain individual complaints of violations. In addition to that, Government has also adopted the National Policy on Interfaith Harmony. The provincial government

²³ National Commission for Minorities Act 2015.

²⁴ *ibid* s 7.

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has also developed plan to protect rights of minorities as well as their places of worship²⁵.

However there are specific challenges to the effective implementation of the convention. For instance, lack of application of the state constitution, national and provincial laws over the entire territory of the country, particularly the Federally Administered Tribal Area (FATA). As a result, Article 2 of the convention is not fulfilled, which requires the application and implementation of the convention over the federal, provincial and territorial levels. The latest merger of FATA in Khyber Pakhtunkhwa fulfilled the requirement of Article 2 of the Convention. Further the domestic legal definition of 'racial discrimination' is not in conformity with the Convention which showed narrow understanding and interpretation of racial discrimination in the country²⁶. The Government has not adopted any comprehensive anti-discrimination legislation yet²⁷. Hate speech and acts of discrimination harassment, violent mobs, and killing of persons belonging to religious and ethnic minorities specifically Hazaras, Christian Dalits, Ahmadis and Hindu Dalits and absences of investigations and prosecutions in those cases have been (something is missing here) UN reported²⁸.

The UN Committee on CERD has also raised its concerns on reports of hate speech against ethnic and religious minorities and refugees by the political parties,

²⁵ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 3.

²⁶ UN Committee on the Elimination of Racial Discrimination (CERD), Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination (n 19) 2.

²⁷ *ibid* 3.

²⁸ *ibid* 4.

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public officials in media, social networks and religious gatherings²⁹. Acts of violence against minorities groups specifically Ahmadis, Hazaras and Dalits led to their de facto segregation in isolated areas without fair access to health care, education, employment and basic services³⁰. Minorities are often prosecuted on charge of false accusation of Blasphemy laws and judges who hear these cases faced intimidation and death threats along with the accused. Though the Government has adopted certain legislative measures to prevent the misuse of the Blasphemy laws against minorities. However, the broad and vague definitions of religious offences provided in section 295,295-A, 295-B,295-C, 298-A,298-B and 298-C of the Pakistan Penal Code 1860 and disproportionate use of these laws against the religious and ethnic minorities need to be amended. Similarly acts of violence against women from ethnic and religious minorities despite Country's efforts to combat violence against women through various legislative measures occurred quite often. Offences against women in the name of honour persists despite the presence of laws that criminalizes offences committed in the name of honour such as Criminal Law (Amendment Act) 2004 as well as Criminal Laws (Amendment) Bill 2015. The reason is that penalties provided for these acts in Criminal Law (Amendment) Act 2004 lack deterrence. Moreover, due to the application of qisas and diyat ordinances in these cases result in perpetrators being pardoned without being prosecuted and punished³¹. The practice of bonded labour specifically brick kiln and textile industries among the scheduled castes (Dalits) continue despite the adoption of the Bonded Labour System (Aboli-

²⁹ UN Committee on the Elimination of Racial Discrimination (CERD), Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination (n 19) 4.

³⁰ *ibid* 4.

³¹ *ibid* 5.

5.3. STATUS OF THE IMPLEMENTATION OF THE UN HUMAN RIGHT CONVENTIONS

tion) Act of 1992. This showed the lack of implementation of the Act and its general awareness among the people, who work as bonded labour under the debt-bondage and among the law enforcement authorities³².

For ensuring compliance with the CERD Convention, the Government needs to broaden its understanding and interpretation of term ‘racial discrimination’. The term shall be defined in conformity with articles 1 and 2 of the Convention³³. Furthermore, the Government should take steps to ensure that the definitions of racial discrimination is incorporated in its domestic legislation. To combat racist hate speech, the Government should adopt Comprehensive anti-discrimination law that criminalizes all acts of racial discrimination in accordance with Article 4 of the Convention³⁴. To end segregation of minority groups the Government should take effective measures and should ensure that those who live in segregated areas have access to health care, employment, education and other basic services as stipulated in article 5 of the convention.

As recommended by UN Committee on CERD, the Government should take effective measures to eradicate violence and acts of crimes against women including rape, acid crimes, killing of women in the name of honour. Moreover, the Government should work on strengthening its existing legislative framework, enhancing the enforcement of the current laws and conducting awareness campaign to raise the awareness against these criminal practices³⁵. To end bonded labour, the Government

³² UN Committee on the Elimination of Racial Discrimination (CERD), Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination (n 19) 6.

³³ *ibid* 2.

³⁴ *ibid* 3.

³⁵ *ibid* 5.

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should intensify labour inspections into workplaces where there is a high risk of bonded or forced labour specially in the informal economy sector, and should investigate cases of labour discrimination and exploitation³⁶. The government should also take effective measures to end discrimination of Dalits and ensure their equal access to education and employment. To combat practice of forced conversion and marriage of Hindu and Christian women, the Government needs to adopt strict laws and prosecute and punish the culprits³⁷. To avoid the misuse of Blasphemy law against minorities, the Government should repeal the Blasphemy laws to the extent that go against freedom of religion and expression, as established in Pakistani constitution³⁸. The establishment of the human rights Commission by the Government is a very important development for promotion of human rights in the country. The Government needs to take effective measures to strengthen its functional and budgetary autonomy to ensure compliance with the Paris principles. The Commission is still not able to appear before the UN Committees³⁹. To strengthen the autonomy of the Commission, the Government should allocate enough resources to the commission and strengthen its powers and jurisdiction to probe all cases of human rights violations including racial discrimination committed by any public official⁴⁰.

³⁶ UN Committee on the Elimination of Racial Discrimination (CERD), Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination (n 19) 6.

³⁷ *ibid* 6,7.

³⁸ *ibid* 5.

³⁹ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 3.

⁴⁰ UN Committee on the Elimination of Racial Discrimination (CERD), Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination (n 19) 3.

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5.3.2 Status of the Implementation of International Covenant on Civil and Political Rights (ICCPR)

International Covenant on civil and political rights entered into force on 23 March 1976⁴¹. Pakistan ratified the convention on 23 June 2008⁴². In 2011, Pakistan withdrew its reservations against Articles 6, 7, 12, 13, 18, 19 and 40 of ICCPR. These reservations were withdrawn to improve its eligibility for acquiring GSP plus status⁴³. Pakistan submitted its initial report, which was due in 2011 for the consideration of the Human rights Committee on 19 October 2015⁴⁴. After Pakistan submitted its response to the list of issues raised by the Committee on the initial report⁴⁵, the committee gave its concluding observations on Pakistan's compliance with the convention⁴⁶. The Committee appreciated various legislative, administrative and policy measures adopted by the Government of Pakistan required for implementation of

⁴¹ International Covenant on civil and political rights entered into force on 23 March 1976 (<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>).

⁴² Pakistan Ratification status (https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=PAK&Lang=EN).

⁴³ Pakistan decides to withdraw most of the reservations on ICCPR and UNCAT (23 June 2011) (<http://nation.com.pk/national/23-Jun-2011/Pakistan-decides-to-withdraw-most-of-reservations-on-ICCPR-UNCAT>).

⁴⁴ UN Human Rights Committee (HRC), Consideration of reports submitted by States parties under article 40 of the Covenant, Initial reports of States parties due in 2011: Pakistan (24 November 2015) CCPR/C/PAK/1 (<https://www.refworld.org/docid/588f3a234.html>).

⁴⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), List of issues in relation to the initial report of Pakistan (7 November 2016) E/C.12/PAK/Q/1 (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fPAK%2fQ%2f1&Lang=en); UN Committee on Economic, Social and Cultural Rights (CESCR), Replies of Pakistan to the list of issues (23 March 2017) CCPR/C/PAK/Q/1/Add.1 (https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%5C%2fC%5C%2fPAK%5C%2fQ%5C%2f1%5C%2fAdd.1%5C&Lang=en)

⁴⁶ Concluding observations on the initial report of Pakistan (https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fPAK%2f1&Lang=en).

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the convention. These legislations include:

- The Criminal Law (Amendment) (offences in the name or on pretext of Honour) 2016
- The Criminal Law (Amendment) (Offences relating to Rape) 2016
- The National Action Plan on Human Right 2016
- The National Commission for Human Rights Act adopted in 2012 and under the Act establishment of the National Commission for Human Rights 2015

The Human Rights committee has expressed its concerns on a number of important issues mentioned in detail below which hinder the effective implementation of the civil liberties and political rights enshrined in the convention.

5.3.2.1 Death Penalty

Pakistan imposed a moratorium on death penalty in 2008. The government announced its decision to lift a moratorium in terrorism cases as part of national policy to fight terrorism soon after the terrorist attack on Army public School Peshawar on 17 December 2014, which caused death of 132 children and nine others. After Government's this decision, a number of executions were carried out in the country throughout these years; for instance 7 in 2014, 326 in 2015, 87 in 2016, 60 in 2017⁴⁷. In 2018, the number of executions was dropped to 18⁴⁸. One of the serious concerns raised against the capital punishment is that it is awarded in those cases

⁴⁷ Amnesty International, Death sentences and executions in 2016 (11 April 2017) (<https://www.amnesty.org/en/documents/act50/5740/2017/en/>).

⁴⁸ Amnesty International, Death penalty in 2018/ Facts and figures (10 April 2019) (<https://www.amnesty.org/en/latest/news/2019/04/death-penalty-facts-and-figures-2018/>).

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which do not fall under the category of ‘most serious crimes’ within the meaning of article 6(2) of the Convention, such as blasphemy and drug trafficking. Further there were reports that persons with psychological and intellectual disabilities and juveniles were reportedly sentenced to death and executed⁴⁹. The moratorium was initially lifted for terrorism offences, but later it was also lifted for all those offences punishable with capital punishment. According to the official figures, 6,000 people were on death row in 2015⁵⁰. According to the latest figures reported by Justice project, Pakistan death row population stands at 4,688⁵¹. This figure makes Pakistan world’s second largest death row population⁵². Pakistan claimed that death penalty could not be imposed on individuals who are below 18 years of age under the Juvenile Justice System Ordinance (JJSO 2000). Secondly, death penalty is in line with its constitution and national laws and are not in violation of ICCPR. Award of death penalty in narcotics offences does not contradict Article 6(2) of ICCPR. Article 6(2) provides the imposition of death penalty in ‘most serious crimes’ in accordance with laws enforced. The interpretation of ‘most serious crime’ varies from country to country as per their local situations and religious particularities. Thirdly, due process of law and fair trial standards are followed in all the cases⁵³. The imposition of death penalty contravenes Pakistan’s commitment to abide by EU Obligations

⁴⁹ Concluding observations on the initial report of Pakistan (n 46).

⁵⁰ Minister of State for the Interior, Mr Baleeghur Rahman, in his speech to Senate on 6 October 2015 gave the figure of 6,016 death row prisoners nationwide. Other sources have quoted figures as high as 8,536.

⁵¹ Justice Project Pakistan, Counting the condemned: Data analysis of Pakistan use of death penalty (<https://www.jpp.org.pk/wp-content/uploads/2018/10/2018.10.04-Counting-the-Condemned-Final.pdf>).

⁵² *ibid* 2.

⁵³ UN Committee on Economic, Social and Cultural Rights (CESCR), Replies of Pakistan to the list of issues (n 45)

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for the promotion of human rights after acquiring the GSP+status.

5.3.2.2 Anti-Terrorism Measures

Establishment of the Military Courts

The Government of Pakistan through 21st amendment Bill⁵⁴ to the Constitution and the Pakistan Army (Amendment) Bill 2015⁵⁵ to Military Courts Act 1952, set up the Military Courts for two years to conduct trial of persons involved in offences relating to terrorism, waging of war against Pakistan and prevention of Acts threatening the security of Pakistan by any terrorist or terrorist group, wing or militia or their member using the name of religion or sect⁵⁶. The Military courts were set up as a responsive measure to combat terrorism and to ensure speedy trial of the terrorism offences. These Courts started working in February 2015. Certain legal objections were raised on setting up of those courts and its proceedings. First, the definition of the term ‘terrorism related offences’ to be tried by these courts was quite vague. Secondly, whether the persons tried by the military courts are guaranteed the right of fair trial. Thirdly, the criteria for the transfer of cases from the criminal courts to military courts for speedy trial. In addition to that, trial of these cases was neither held in-camera nor were the decisions given in public which have raised a serious doubt on the compatibility of the 21st amendment with the

⁵⁴ Constitution (Twenty-First Amendment) Act 2015.

⁵⁵ ‘National Assembly passes 21st Amendment, Army Act unopposed’ *The News* (6 January 2015) <<https://www.thenews.com.pk/latest/147-na-passes-21st-amendment-army-act-amendment-unopposed>>; Pakistan Army(Amendment) Act 2015

⁵⁶ Constitution (Twenty-First Amendment) Act 2015, s 3.

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right of fair trial required under Article 14 of ICCPR⁵⁷. Fourthly, award of death sentence by military courts to civilians, including juveniles, is in contravention with Article 14 of the ICCPR⁵⁸.

The 21st amendment was also challenged before the Supreme Court of Pakistan, but the petition was dismissed by the Supreme Court on 5 August 2015, thus 21st amendment to the constitution was maintained⁵⁹. The Supreme Court in its decision held that the trial of the suspected terrorists and civilians by the military courts is within the constitutional framework of the country and it fully meets the principles of criminal justice⁶⁰. The issue, whether the legal safeguard is provided to the defendant in the military courts, the Supreme Court in its decision held that the whole procedure of the military courts, selections of persons for trial and its verdict should be subject to appeal before the High Courts and Supreme Court⁶¹.

The duration of military courts, which were established for two years, came to an end on 6 January 2017. During its two years term, a total number of 274 individuals were convicted by these Courts out of which 161 individuals were sentenced

⁵⁷ According to the General Comment 32 (by the Human Rights Committee) to Article 14 of ICCPR, this article also applies to military courts

⁵⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), List of issues in relation to the initial report of Pakistan (n 45) 3.

⁵⁹ Nasir Iqbal, 'Military Courts gets Supreme Court Nod' *The Dawn* (Karachi, 5 August 2015) (<https://www.dawn.com/news/1198533>).

⁶⁰ *ibid* and Pakistan: Supreme Court decision upholding 21st Amendment a blow to human rights and judicial independence, International Commission of Jurists (ICJ) (7 August 2015) (<https://www.icj.org/pakistan-supreme-court-decision-upholding-21st-amendment-is-a-blow-to-human-rights-and-judicial-independence/>)

⁶¹ <https://www.icj.org/pakistan-supreme-court-decision-upholding-21st-amendment-is-a-blow-to-human-rights-and-judicial-independence/> European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission_2016_report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 192

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to death⁶². The notable convictions were of the perpetrators of terrorist attack on Army Public School Peshawar and Bacha Khan University Charsadda⁶³. The military courts have functioned entirely in secrecy and the information of trial and of pending cases were revealed through Inter-Services Public Relations (ISPR). These Courts do not meet fully the criteria of fair trials such as free and fair hearing, right of appeal to the civil courts and above all convictions came at the cost of procedural propriety⁶⁴. However, the Government claimed that establishment of the military courts should be considered the product of the extraordinary circumstances which demanded quick disposal of cases and necessary for combating terrorism in the country.

The government adopted the 23rd constitutional amendment to re-establish the military courts for further two years by extending the jurisdiction of the military courts to civilians in terrorism related cases till 6 January 2019⁶⁵. The institution of military courts deemed to violate the right to fair trial of the defendant. The Human rights committee recommended to review the legislation with a view to revoke its jurisdiction over the civilians and its power to impose death penalty. The military courts procedure needs to be reformed so that it conforms with the requirements of the right of fair trial under the convention

⁶² 'The end of Military courts' *The Nation* (Lahore, 8 January 2018) (<http://nation.com.pk/editorials/08-Jan-2017/the-end-of-military-courts>).

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ Constitution (Twenty-third Amendment) Act 2017.

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Pakistan Protection Act 2014

This bill was adopted by the Parliament on 2 July 2014 (replacing the Protection of Pakistan Ordinance)⁶⁶ for two years. The bill was in fact another effort on part of the government to fight terrorism and lawlessness in the country. The bill gives preventive detention powers to the security forces and law enforcing agencies, and authorize them to detain a suspect up to 90 days without trial and to keep them in secret detention facilities without informing their families and providing access to legal representation⁶⁷. This counter terrorism bill in fact curtailed the basic rights embodied in ICCPR such as freedom of speech, peaceful assembly, privacy and due process protection⁶⁸. It was argued that the law could be used as a tool against the political opponents or human rights activist in the country for suppressing any criticism of government policy and peaceful political opposition⁶⁹. The bill was also criticized to facilitate enforced disappearance. Here it would be important to highlight some of the provisions of the bill which contravene the basic articles of ICCPR;

Under the law, the police has the power to make arrest of persons under certain circumstances without a warrant. The bill authorized the armed forces and the civil armed forces to make arrest without warrant. Section 3, Sub section2 (b) and (c) of the ordinance empowers armed forces and civil armed forces to “enter and search without warrant any premises to make any arrest or to take possession of any

⁶⁶ The Protection of Pakistan Act 2014.

⁶⁷ European Commission, ‘The EU Special Incentive Arrangement for Sustainable Development and Good Governance (‘GSP+’) covering the period 2014-2015’ SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 193.

⁶⁸ Human Rights Watch, Pakistan Withdraw Repressive Counterterrorism Law (3 July 2014) (<https://www.hrw.org/news/2014/07/03/pakistan-withdraw-repressive-counterterrorism-law>).

⁶⁹ *ibid.*

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firearm, explosive, weapon, vehicle, instrument, or article used or likely to be used in the commission of any scheduled offense.”⁷⁰ This expansion of power from the police to military forces and civil armed forces to arrest without warrant is a serious violation of article 9 against arbitrary arrest without judicial control and violation of right to privacy and right to security of home under article 17 of ICCPR⁷¹.

Section 3 of the ordinance attempts to provide effective immunity to all the actions of the armed forces and civil armed forces, if performed in good faith such as ‘for the acts done in good faith during the performance of their duties’⁷². The protection of effective immunity against all the actions of the armed forces is a sheer violation of article 2(3) of the ICCPR, which required the respective governments ‘to ensure the effective remedy to the person whose right has been violated notwithstanding that the violation has been committed by person acting in official capacity’⁷³. Under Section 9 of the Ordinance, on recommendation of the prosecuting agency the government can determine the place of custody, inquiry, investigation and trial. It means that detention and prosecution of accused can take place even outside the established judicial system. Section 9 is in sheer violation of article 9 and article 14 of ICCPR which gives the right to ‘fair trial ‘by the independent and impartial tribunal’⁷⁴.

The Pakistan Protection Act 2014 lapsed in 2016. During this period, only 30 individuals have been tried under this Act. This demonstrates that the Act was

⁷⁰ The Protection of Pakistan Act 2014, s 3.

⁷¹ International Covenant on Civil and Political Rights [1966], arts 9,17.

⁷² The Protection of Pakistan Act 2014, s 3.

⁷³ International Covenant on Civil and Political Rights (n 71) 2(3).

⁷⁴ The Protection of Pakistan Act 2014, s 9; International Covenant on Civil and Political Rights (n 71) arts 9,14

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used only in extra ordinary circumstances against terrorists who have carried out terrorist activities and have committed serious crimes⁷⁵.

Enforced Disappearances

Enforced disappearance is one of the very serious human right issues in Pakistan. Earlier the cases of enforced disappearance were limited to provinces of Baluchistan and Khyber Pakhtunkhwa, but now such cases are occurring across the country⁷⁶. In August 2015, a Pakistani female journalist went missing which is one of a rare case of female alleged disappearance⁷⁷. The intelligence and security agencies are highly accused in instances of enforced disappearance. Also, involvement of the criminal's groups and nationalist militants in Baluchistan and Khyber Pakhtunkhwa province is also reported⁷⁸. The government linked the phenomenon of enforced disappearance to its fight against terrorism. In April 2010, the government has constituted a Commission of Inquiry on Enforce Disappearances (COIED) under the Pakistan Commission of Inquiry Act 1956. The Commission is headed by former Supreme Court Judge and has two members, i.e. Former judge of High Court and retired Inspector General of Police. The Commission has been given broad powers which include the power to register a First Information Report (FIR) against whom evidence

⁷⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), Replies of Pakistan to the list of issues (n 45) 7.

⁷⁶ Oral Statement of the International Commission of Jurists, supported by Human Rights Commission of Pakistan, in the interactive Dialogue with the working Group on Enforced or Involuntary Disappearance (15 September 2016) (<https://www.icj.org/wp-content/uploads/2016/09/HRC33-OralStatement-Disappearances-Pakistan-15092016.pdf>).

⁷⁷ *ibid.*

⁷⁸ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 192.

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of involvement in disappearance of the person is found. The Commission has also the power to order the production of person suspected to be held in illegal detention by law enforcement or intelligence agency. The Commission can receive complaint directly from the families of a disappeared person, civil society organizations, Ministry of Interior and Human Rights Cell of the Supreme Court of Pakistan. In cases of missing person, the Commission at its own or on the direction of the Supreme court of Pakistan can file a FIR in the Police Station concerned. The Commission can then order the Home Secretary of the respective Province to Constitute a Joint investigation Team (JIT) composed of representatives from law enforcement and intelligence agencies. Standard operating procedures have been provided by Commission for the protection of witnesses, especially women. After recording of statements of the witnesses, a direction in writing is issued by the commission that witness shall not be arrested. The Commission has been provided with a staff and necessary financial resources under a separate head from the Ministry of Finance.

From March 2011 to 30 November 2016 the Commission has disposed 2,416 cases, out of 3,692⁷⁹. The inefficiency of the Commission and law enforcing agencies is explicit from the fact that no one is brought to justice in any single case of enforced disappearance even in cases where the victims have reappeared⁸⁰. There are certain

⁷⁹ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 6; See also UN Committee on Economic, Social and Cultural Rights (CESCR), Replies of Pakistan to the list of issues (n 45) 7; IA Rehman, 'Disappearance still a major issue' *The Dawn* (Karachi, 25 August 2016) (<http://www.dawn.com/news/1279694>)

⁸⁰ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 6; European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 192

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important issues of concerns relating to the functioning of the commission that need to be highlighted. First, the findings of the commission on the cases of enforced disappearance are never made public. Secondly, the commission with its weak authority and meager resources cannot enforce its will on the government agencies and departments to effectively deal with these cases⁸¹. The Human rights Commission of Pakistan has recommended the criminalisation of enforced disappearance cases and to strengthen the authority and resources of the Commission of Inquiry⁸². The Human rights Committee also suggested the same recommendation. The government needs to adopt extra measures to check this gross violation of human rights in the country.

Pakistan's track record regarding Freedom of religion and minority's rights is unfortunately very deplorable. Although the Constitution of Pakistan fully guarantees the freedom of religion, but religious extremism has greatly intensified in the country over the period of years. Minorities are often subjected to victimization, discrimination and murder. The freedom of religion and protection of minorities in Pakistan has become a serious issue which revealed the rise of religious extremism and intolerance in the society.

Article 20 of the Constitution of Pakistan reads as "Freedom to profess religion and to manage religious institutions" and that "(a) every citizen shall have the right to profess, practice and propagate his religion"; and "(b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage

⁸¹ Rehman (n 79).

⁸² European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 6.

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its religious institutions”⁸³. Furthermore, “adequate provisions shall be made for minorities to profess and practice their religious beliefs freely”⁸⁴. The Constitution gives the minorities the right of public representation by reserving the seats for the minorities at the National and provincial level. Similarly, minimum quotas in public employment at the provincial and Federal level is reserved for the minorities. Despite this, minorities in Pakistan cannot live their lives free from fear. The issue of hate speech hurled against the minorities usually in Friday sermons, attack on their worship places, forcible conversion to Islam, non-Muslim women are kidnapped to marry Muslim man, inter-sectarian violence and the representation of minorities as non-Muslims even in school text books revealed the negative stereotype that exists against the minorities in Pakistan⁸⁵. The derogatory reports are published in dailies against the religious minorities e.g. Ahmadiya sects, Christians, Jews, Hindus and Muslim minority sects. The objective is to marginalize them in the society and to subjugate them based on religious and faith differences⁸⁶. In many instances, the clergy and devout Muslims misuse Blasphemy laws for extraneous purposes such as to target the non-Muslims and provoke the Muslims mob to attack non-Muslims worship places and their houses⁸⁷. The violence against the religious minorities are quite recurrent in Pakistan and their places of worships are usually the direct target

⁸³ Constitution of Islamic Republic of Pakistan 2012, art 20.

⁸⁴ *ibid.*

⁸⁵ European Commission, ‘The EU Special Incentive Arrangement for Sustainable Development and Good Governance (‘GSP+’) covering the period 2014-2015’ SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 193; Farahnaz Ispahani, *Purifying the Land of the Pure: A History of Pakistan’s Religious Minorities* (Harper Collins 2015)

⁸⁶ Siegfried Wolf, ‘Just Another Carte Blanche? EU GSP Plus Status and Human Rights in Pakistan’ [2014] Briefing Paper No 69, Pakistan Security Research Unit (PSRU), Durham University, 8.

⁸⁷ Ispahani (n 85).

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of large scale terrorist attacks. For instance, on 15 March 2015 terrorists attacked two churches in Lahore that caused death of 14 Christians, who were attending the Sunday mass at those churches. Another incident happened in Lahore at Gulshan-e-Iqbal Park on 27 March 2016 where Christian community had gathered to celebrate the eve of Easter. For ensuring minorities rights, the government has taken some positive steps such as to curb hate speech. The government has put a ban on religious sermons by loudspeaker. Prosecution of religious clerics that disseminate animosity against minorities. The law enforcement agencies are actively involved now to protect religious places of minorities against terrorist attack or mob violence. The Government has adopted protective legislations such as Hindu Marriage Act and Draft of Christian Marriage and Divorce Act is being finalized⁸⁸. More important administrative and legislative measures need to be taken by the Government concerning Protection of minorities rights in the country and make them an important part of the society. An important step, which the Government should take in this regard, would be to review Schools books and curricula with a view to removing all religiously biased content, introducing human rights education at all the level and regulate madrassas and its syllabus. Protection of minorities rights is one of the essential commitment on part of the Pakistan's Government with the EU linked with the maintenance of GSP+ status which Pakistan needs to fulfill with sincere commitment.

⁸⁸ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 6.

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Blasphemy Laws

The Blasphemy Laws in Pakistan are often used as a tool to victimize the minorities. Pakistan Penal Code Section 295 (B) to 298 (C) relates to the offense of Blasphemy. These laws are often used against the religious minorities such as Hindus and Christian for settling personal animosities or to incite hatred against them⁸⁹. It is reported that use of these laws against the religious minorities specially Christians and Hindus have increased during the last five years⁹⁰. The persecution of Ahmadiyya's community continued with these laws which are also refereed as 'anti-Ahmadis laws'⁹¹. The law has often been used for social and legal discrimination of the minorities and thus have had grave implications for them. Any private person or public officer can bring a case against any person through a complaint under these laws and with the proof of few witnesses and can get the conviction⁹². Even persons accused of Blasphemy are sometimes extra judicially killed rather than standing trial in a court of law. Since 1990, 60 persons have been extra judicially killed merely on the implication of the offense of Blasphemy. At present 17 persons are convicted of Blasphemy and are awaiting execution while 19 persons are serving life sentences⁹³. Person accused of Blasphemy usually must wait for a long period of time for his/her trial. In most of the cases, defense counsel is not available and reluctant to defend

⁸⁹ Amnesty International, Pakistan must do more to protect religious minorities, Press Release (1 March 2012) (<http://www.amnesty.org/en/for-media/press-releases/pakistan-authorities-must-do-more-protect-religious-minorities-2012-03-01>).

⁹⁰ Wolf (n 86) 6.

⁹¹ Shaun Gregory and Simon R Valentine, 'Pakistan: The situation of religious minorities' [2009] United Nations High Commissioner for Refugees' report, 28.

⁹² Amnesty International, Pakistan must do more to protect religious minorities, Press Release (n 89).

⁹³ Human Rights Watch, World Report 2015: Pakistan (<https://www.hrw.org/world-report/2015/country-chapters/pakistan>).

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due to fear of persecution⁹⁴.

However, the Supreme Court in its recent judgments in Blasphemy cases strongly warned against the misuse of Blasphemy laws and false prosecution of religious minorities in the Country.

The Supreme court in its landmark judgment in case of ‘Malik Mumtaz Qadri vs The State’⁹⁵ delivered on October 7, 2015 maintained the death sentence of Mumtaz Qadri, who was tried for the murder of the former Governor of Punjab for allegedly committing Blasphemy. The court in its decision held that the responsibility fell on the State that no innocent person merely based on false allegations face the investigation and trial for the commission of the offense. The court also ruled that mere opinion to introduce legal safeguards in law and criticism regarding the misuse of the Blasphemy laws do not constitute blasphemy. The court in its decision says ‘any call for reform of the law regarding the offense of blasphemy ought not to be understood as a call for doing away with that law and it ought to be understood as a call for introducing adequate safeguards against malicious application or misuse of that law by motivated persons’⁹⁶. For introducing the procedural safeguards in handling of the blasphemy cases, the court ordered that a charge of Blasphemy should be investigated by a team of two police officers, not below the rank of superintendent police, conversant with the Islamic jurisprudence. In case, the officers have limited knowledge of the Islamic law, he should take help of Islamic scholar well known for his repute and integrity. The team of two police officers shall first investigate whether the offense was committed or not. Once they conclude that there is certain

⁹⁴ Human Rights Watch, World Report 2015: Pakistan (n 93).

⁹⁵ *Malik Muhammad Mumtaz Qadri vs The State* [2015] Supreme Court of Pakistan.

⁹⁶ *ibid* 24.

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evidence of the commission of the offense, they shall then proceed with a case⁹⁷. This procedural safeguard would help in sorting out the false accusation of blasphemy.

The Supreme Court judgment on ‘Suo moto actions regarding suicide bomb attack of 22.9.2013 on the Church in Peshawar and regarding threats being given to Kalash tribe and Ismailias in Chitral’⁹⁸ delivered on 19 June 2014 is considered a further advancement on protection of rights of minorities in Pakistan. The case was a suo moto proceeding taken in response to a letter addressed to the Supreme Court by a non-government organization, named Justice Helpline. The letter was written to the court after a terrorist attack on the church in Peshawar in which 81 people were killed. The letter drew the Court attention towards the grave violation of minorities rights particularly of the Christian, Sikh and Hindu religious communities in Pakistan. The Court initiated the sou moto proceedings in response to the letter and took notice of the news regarding the forceful conversion of kalash tribe and Ismailis tribe in Chitral to Islam and intimidation of these tribes by death threats. The Court in its decision considered such incidents to be violative of the fundamental rights of religious minorities in Islam, Pakistan’s constitution and universal human rights. The Court gave some important recommendations to the federal government to address the causes of violence against the religious minorities.

The Supreme Court draw the attention of the federal government towards the inequalities faced by the minorities in the country and directed the government to take the following measures⁹⁹. Firstly, to set up a ‘National council for minorities’ to

⁹⁷ *Malik Muhammad Mumtaz Qadri vs The State* (n 95).

⁹⁸ Suo moto actions regarding suicide bomb attack of 22.9.2013 on the Church in Peshawar and regarding threats being given to Kalash tribe and Ismailias in Chitral (http://www.supremecourt.gov.pk/web/user_files/File/smc_1.2014.pdf).

⁹⁹ *ibid.*

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monitor the minority's rights and for making policy recommendations to the government. Secondly, to take appropriate measures against speech hatred and a check on its dissemination through any sources. Thirdly, to develop a curriculum for school and colleges which must teach the value of religious harmony and social tolerance in the society. Fourthly, the establishment of special police force for protecting the minority's worship places and to take timely action along with appropriate measures against any act of profanation of minority's worship places. The Supreme Court also ordered to set up a special three-members bench to receive any petition or complaint concerning the violation of minority's rights in Pakistan.

Pursuant to these recommendations, the National Commission of Minorities under the Ministry of Law, Justice and Human Rights was established in 2014. Its task was to develop the national policy on inter faith harmony, to examine the grievances made by any minority group along with individual complaints and to make necessary recommendations to the government¹⁰⁰.

Moreover, the Punjab Government adopted a Punjab Sound System (Regulation Act, 2015) as an initiative against hate speech to eliminate the use of loudspeakers for incitement. The Punjab Government also adopted Punjab Vigilance Committee Act, 2016, which provides for establishment of the vigilance committees at the district and provincial level with a task to report any unlawful activity being planned or carried out concerning incitement against religious minorities. Similar initiatives have been taken by the other provinces (Khyber Pakhtunkhwa and Baluchistan) to curtail hate speech and crimes.

¹⁰⁰ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 193.

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Prevention of Electronic Crimes Bill 2016

The freedom of expression during the last few years has been curtailed through adoption of certain measures by the Government such as Prevention of Electronic Crimes Act 2016, exercise of excessive powers by the Pakistan Electronic Media Regulatory Authority over the contents of the media outlets by threatening to cancel their licenses and issuing fines. Two programmes on private channels were cancelled, which were documenting on oppression of Ahmadiyya community and ban on Indian Programming in October 2016¹⁰¹.

Following concerns were raised against Prevention of Electronic Crimes Act 2016 by the Human Rights Committee ; (a) the bill provides overly broad definitions of terms and offences (b) extensive powers given to Pakistan Telecommunication Authority which includes to remove or block access to any information and to issue guidelines to media service providers (c) the extensive powers given to the Government to legislate regulations and statutory instrument in this area (d) the extensive powers of the authorized officers to request decryption of information (e) imposition of secrecy on service providers (f) the mandatory mass retention of traffic data by service providers (g) cooperation and sharing of information cooperation with foreign Governments without judicial authorization and supervision¹⁰².

Similarly a campaign against 'blasphemy on social media' has been launched as a tool for suppressing the public opinion online¹⁰³.

¹⁰¹ UN Committee on Economic, Social and Cultural Rights (CESCR), Replies of Pakistan to the list of issues (n 45) 8.

¹⁰² UN Committee on Economic, Social and Cultural Rights (CESCR), List of issues in relation to the initial report of Pakistan (n 45) 6.

¹⁰³ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Work-

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The Government needs to review its legislation on data collection and surveillance Prevention of Electronic Crimes Act 2016 and bring it in conformity with its obligations under the Convention. For the implementation of the Act, the Government must establish independent oversight mechanism, in addition to judicial review of surveillance activity. Further review its laws and practice of intelligence sharing with foreign agencies to ensure its compliance with the Convention, review licensing requirements that impose obligation of network service providers to engage in communication surveillance specially in relation to indiscriminate data retention, and to make certain that the surveillance activities comply with its obligations under the Convention. The Government should further adopt a comprehensive data-protection law in line with international standards¹⁰⁴.

Pakistan took some important legislative measures to ensure compliance with ICCR convention. However serious issues still exists concerning protection of minority rights, freedom of expression, enforced disappearances, reinstating moratorium death penalty and consider abolition of death penalty, reviewing Anti-terrorism laws with a view to establish procedural safeguards to ensure fair trials and amending the courts jurisdiction over civilians and its power to award death sentence and amend or repeal its Blasphemy laws to avoid unnecessary prosecution of minorities. All these areas need to be addressed as a part of Government's commitment to abide by the EU direction for taking measures for the improvement of the civil liberties as well as political rights as a necessary requirement for sustaining GSP+status.

ing Document Brussels (n 10) 5.

¹⁰⁴ Human Rights Committee ICCPR, Concluding Observations on the initial Report of Pakistan (23 August 2017) (https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fPAK%2fCO%2f1&Lang=en) 7.

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5.3.3 Status of the Implementation of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Convention on the elimination of all forms of discrimination against women (CEDAW) entered into force on 3 September 1989¹⁰⁵. Pakistan ratified the CEDAW on 12 March 1996 with a reservation¹⁰⁶.

The Government of Pakistan has been legislating on women rights for their empowerment and for uplifting of their social status in the society. Pakistan has also signed the Beijing Commitments and supports the implementation of the United Nations Millennium Development Goals (MDGs), which emphasized gender equality and women's empowerment.

The women rights in Pakistan remained an area of a serious concern. Owing to the Patriarchal nature of society, women status has always been very weak. The religious and cultural norms are often used to subjugate women in almost every sphere of life. Pakistani women experience immense pressure to adhere to norms set by society, which makes it difficult for them to leave their families or extended groups, therefore, they are unable to escape violence or challenge the customary practices¹⁰⁷. They face widespread discrimination at home, educational system, workplace and lag men almost in all social indicators including health and education¹⁰⁸. However,

¹⁰⁵ Convention on elimination of all forms of discrimination against women (CEDAW) [1981].

¹⁰⁶ Pakistan Ratification status (n 15); Pakistan's accession to CEDAW is subject to a declaration, that its accession to the Convention is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.

¹⁰⁷ Filomena M Critelli, 'Women's rights= Human rights: Pakistani women against gender violence' (2010) 37 J. Soc. & Soc. Welfare 135.

¹⁰⁸ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and

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there has been increasing recognition that the State can be effectively accountable through its adherence to human rights treaties and bodies that can help in setting normative standards, sensitizing the community and strengthening societal response to violence against women and human rights protections¹⁰⁹.

The Gender Gap Index 2018 of the World Economic Forum has ranked Pakistan 148 out of 149 countries which makes it the second worst country in the world in terms of gender parity across four thematic areas economic participation and opportunity, education attainment health and survival and political empowerment¹¹⁰.

Women in urban areas of Pakistan is much empowered as compared to women in rural areas. Still they face a stereotype discrimination on daily basis in both urban and rural areas. For strengthening of women's status in the society, the Government needs to enact laws that can overall empower the status of women socially, economically, politically and ensure her protection from harmful and discriminatory customary practices¹¹¹. The Government of Pakistan in compliance with its obligations under CEDAW has enacted some very important national and provincial legislations to ensure that women are not only emancipated from all forms of exploitations and customary practices against her in society, but should also be empowered by uplifting her status. It is important to highlight some important legislations that

Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 195.

¹⁰⁹ Hina Jilani and Eman Ahmed, 'Violence against women: The legal system and institutional responses in Pakistan' in Savitri Goonesekere (ed), *Violence, law and women's rights in South Asia* (SAGE Publications India 2004).

¹¹⁰ World Economic forum, Global Gender Gap report (2018) (<https://www.weforum.org/reports/the-global-gender-gap-report-2018%2011>) 11.

¹¹¹ Anita M Weiss, *Moving forward with the legal empowerment of women in Pakistan* (US Institute of Peace 2012) 111.

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has been adopted by the Government in the recent years to address specific aspects of discrimination against women and women's rights.

In compliance with the reporting requirement of CEDAW, Pakistan submitted its fourth periodic report on 16 June 2011 which covered the period from January 2005 to 30 April 2009¹¹². The report was four years overdue. The Committee gave its concluding observations on the report on 27 March 2013.

Following are the important national and provincial legislations adopted by the Government for women protection and strengthening their status in the society during the reporting period.

5.3.3.1 The Prevention of Anti-Women Practices Act (Criminal Law third Amendment) 2011

This law was promulgated to end the “social, political, and religious excesses against women” by banning practices such as forced marriages, marriage in exchange for vengeance, and deprivation of women from inheritance¹¹³.

The bill, passed on December 23, 2011, is another important legislation towards protection of women rights and improving their legal status. This law has made three offenses punishable: First, if a woman is deprived of her legal inheritance through deceit or illegal means, secondly if a girl is given in exchange called ‘badl-e-sulah’ for settling any civil or criminal disputes between the parties, thirdly a practice of a woman marriage with Quran. In first instance, the offense is punishable with imprisonment not less than seven years with a fine of 1,000,000 rupees. The offense

¹¹² Fourth Periodic Report of State Parties, Pakistan (https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%5C%2fC%5C%2fPAK%5C%2f4%5C&Lang=en), 7.

¹¹³ Weiss (n 111) 8.

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of forceful marriage is punished with imprisonment of not less than three years and shall be liable to fine of 500,00 (check this figure) rupees. Similarly practice of marriage with Quran is punished with imprisonment of not less than three years with a fine of 500,00 (check this figure) rupees¹¹⁴.

The objective of this law is to strengthen position of women and prevent them from becoming victims of unfair culture practices, which make their position more vulnerable and weaker. Under the Islamic law, woman is entitled to the right of inheritance as a legal heir to her father's property as well as her husband's property. In order to deprive her of legal share, women are often deceit (deceived) or through other illegal means of her legal right to inheritance. Similarly, the panchayat and Jirga system also prevail parallel to the judicial system of the country, which settle the local disputes between the parties. The jirgas and panchayat system often used woman as a commodity to settle private disputes between the parties. This deprived the woman of her right of freedom. This practice is prevalent in rural areas of Pakistan where woman is given in exchange for settlement of private matters. The practice is common in rural areas of all the four provinces and is known by different names e.g. 'Wani' in Punjab, 'Swara' in Khyber Pakhtunkhwa, 'Ijaee' in Baluchistan and 'Snage chatti' in Sindh.

5.3.3.2 Acid Control and Acid Crime Prevention Act (Criminal Law Second Amendment, 2011)

The violent act of throwing acid on women to disfigure their physical appearance are quite common instances in cities and rural areas of Pakistan. The reasons behind such crimes against women are imbedded in cultural norms and weak status of the

¹¹⁴ The criminal law (Third Amendment) Act 2011.

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woman in society where the perpetrator of the crime wants to inflict worst harm on woman for reasons such as domestic violence, refusal to marriage, denial of sexual advance, failure to bring dowry, family dispute or can be any other reason. Acid attacks are usually planned. The perpetrator of the crime first obtains the acid and carries with him and stalks the victims and throws acid on the victim soon he gets a chance.

Before the enactment of the law, there was no check on manufacture and supply of acid and control on obtaining them. The Act aimed at curbing such incidents of acid attacks as well as its manufacture and access to obtain it. The Act brought amendment to Pakistan Penal Code and Criminal law by including the acid crimes in definition of Hurt Section 336-B of Pakistan Penal Code. The definition of hurt now includes ‘hurt by dangerous means or substance, including any corrosive substance or acid to be crimes’¹¹⁵. The punishment awarded to the offender can even extend to life imprisonment and shall be liable to a mandatory fine of one million Rupees under the Act¹¹⁶.

5.3.3.3 Protection Against Harassment for Women at the Workplace Act, 2010

The Protection against harassment of Women at the workplace Act was passed by the National Assembly on 21 January, 2010¹¹⁷. The objective of the Act is to provide protection to women in public offices and spaces. The legislation was the outcome

¹¹⁵ Amendment to Section 336-B Pakistan Penal Code (http://www.na.gov.pk/uploads/documents/1329729326_678.pdf).

¹¹⁶ Punishment for hurt by Corrosive substance Section 336-B (http://www.na.gov.pk/uploads/documents/1329729326_678.pdf).

¹¹⁷ The protection against harassment of women at the workplace Act 2010.

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of survey done in the year 2007 by a group of NGOs, which gave the alarming figure of women facing sexual harassment in public places in Pakistan. As per results, 78 percent of working women faced sexual harassment in jobs and among domestic servants, 91 percent of women were sexually harassed¹¹⁸. This means nearly every woman at least once faced sexual harassment in public places in Pakistan¹¹⁹.

This law addresses two main rights of women that is right to work and right to work with dignity. As women cannot utilize their abilities due to harassment they face at work and public places, the Act intends to control the practice of harassment against women which is one of the factor against the women empowerment, therefore, the objective of the Act is to ‘establish a safe working environment free of intimidation and abuse for all employees’¹²⁰.

Under this law, all public and private offices are required to make an internal code of conduct which would be a part of anti-harassment policy of every registered organization. Under that policy, every organization shall make a committee comprising of three people, at least one member shall be a woman. The committee shall receive complaints of sexual harassment.

Sexual harassment is defined in the Act 2010 as ‘Any unwelcome sexual advance, request for sexual favours or other verbal or written communication or physical conduct of sexual nature or sexually demeaning attitudes, causing interference with

¹¹⁸ ‘Sexual Harassment of Women on Rise in Pakistan’ *Daily News and Analysis* (Mumbai, 3 December 2007) (<https://www.dnaindia.com/world/report-sexual-harassment-of-women-on-rise-in-pakistan-1136955>).

¹¹⁹ Huma Yosuf, ‘Issues beyond Harassment’ *The Dawn* (Karachi, 15 November 2009) (<https://www.dawn.com/news/502931>).

¹²⁰ The protection against harassment of women at the workplace Act 2010; See Statement of Objects and Reasons for the protection against Harassment of Women at Workplace (<https://www.qau.edu.pk/pdfs/ha.pdf>)

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work performance or creating an intimidating, hostile or offensive work environment or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment’.

Organizations neglecting to maintain the code of conduct can be prosecuted. The offense, if proved, is punishable with imprisonment up to three years and fine up to 100,000 rupees or both. This Act was within the federal ambit. The provincial governments have enacted their own legislation as the subject devolved on the provinces after the 18th amendment to the Constitution. Punjab Protection of Women against Harassment at the workplace Act 2012, The Khyber Pakhtunkhwa protection against harassment of women at the workplace (Amendment) Bill 2018 and Baluchistan protection against harassment of women at workplace Act 2016. The Sindh Provincial government has drafted the bill on the protection against harassment of women and is currently under discussion before its Parliament.

5.3.3.4 Domestic Violence (Prevention and Protection) Act 2012

The issue of domestic violence was no longer considered a private matter of the parties after the adoption of domestic violence (prevention and protection) Act 2012¹²¹. Due to absence of law on domestic violence, incidents of domestic violence went unreported in Pakistan leading to victimization of women within their houses. Unreported cases of domestic violence gave protection to the perpetrators of the crime who considered it their cultural as well as religious right to physical handle their wives. Domestic violence has been used as a tool to victimize women inside a house. Any sort of external involvement to prevent violence against women

¹²¹ The domestic violence Act 2012.

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was considered against culture and religion. The domestic violence Act punishes the act of abuse with penal and financial penalties. The act of abuse includes those actions which comes under the category of assault as defined in the Pakistan Penal Code such as ‘use of criminal force, harassment, criminal intimidation, ‘mischief’ against property, forceful entry into aggrieved person residence without his or her consent, economic abuse, verbal and emotional abuse, physical abuse, sexual abuse, stalking, insult or ridicule’¹²². These acts of abuse also include ‘wilful or negligent abandonment of the aggrieved person’, ‘wrongful confinement’, and other ‘repressive or abusive behaviour’ where such conduct harms or may cause imminent danger or harm to the safety, health or well-being of the aggrieved person’¹²³.

Though the bill was not antithetical to Islam, however initially the council of Islamic ideology criticized the bill as ‘discriminatory’ and intends to violate the ‘sanctity of home’ by giving opportunity to police to intervene in domestic matters and contributing to divorce.

At the Provincial level, Sindh domestic violence Act 2013, Baluchistan domestic violence (Prevention and Protection) Act 2014 and Punjab protection of women against violence 2016 has been enacted. The Khyber-Pakhtunkhwa domestic violence against women (Prevention and Protection) Bill 2018 is currently placed before the Provincial Assembly.

Elimination of the Custom of Ghag Act 2013

The provincial Government of Khyber Pakhtunkhwa enacted this law to eliminate the customary practices of ‘Ghag’ prevalent in the rural areas of this province. The

¹²² The domestic violence Act 2012, s 4.

¹²³ *ibid.*

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‘Ghag’ refers to public compelling or demanding by force the marriage of woman without her free consent or that of her parents¹²⁴. The Act prohibits the practice of demanding the hand of woman in marriage by ‘Ghag’ and penalize it with imprisonment and imposition of fine.

National Commission on Status of Women Bill (NCSW) 2012

The National Commission on status of women (NCSW) was set up under a Presidential Ordinance 2000 to examine programs, policies, and measures taken by the Government for woman’s development and equality. Its main function is to review laws, rules and regulations that affect the status of women and monitor mechanisms and institutional procedures to redress violations of woman’s rights and individual grievances. For strengthening its institutional capacity and making it autonomous, the NCSW bill was signed into law by the President on 12 March 2012. NCSW can inquire into complaints of violations of woman’s rights and may call for information or report from the Federal Government, civil society organizations and autonomous or bodies concerned. While inquiring into woman’s right violation complaints, the commission has the power of civil courts for enforcing the attendance of any person and compelling the production of documents during its proceedings¹²⁵.

The Criminal Law (Amendment) (Offences in the Name or Pretext of Honour) Act 2016

The practice of killing women in the name of honour is quite common in Pakistan. This practice has claimed hundreds of lives of women every year. Even men are

¹²⁴ Khyber Pakhtunkhwa Elimination of Custom of Ghag Act 2013, s 2(b).

¹²⁵ National Commission on Status of Women Bill 2012.

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also killed alongside women in the name of honour. The victim is usually killed by close family members, most often father, brother or husband. The reasons behind honour killing are usually defying arranged marriages, marrying a man of own choice, seeking divorce, adultery charges or sometimes fake honour killings. In practice, the offender is not prosecuted as the legal heir of victim pardon the offender under the ‘Qisas and Diyat’ Act. In 1990, the sections under Pakistan Penal code dealing with physical injury, murder and manslaughter were revised with the promulgation of the ‘Qisas and Diyat ordinance’; Later, the parliament adopted the Qisas and Diyat (Retribution and Compensation) Act in 1997. Under this Act, the legal heir (wali) of victim has the power to close the criminal investigation and pardon the accused by accepting the compensation(diyat) at any stage of prosecution. The death penalty (Qisas)can only be awarded if strict evidence is available. In case of non-availability of strict evidence and where the legal heir of victim is the direct descendant of the offender, the death penalty is commuted, and maximum sentence is reduced to fourteen years imprisonment. Thus, in practice a person who kills his daughter or wife is pardoned by her family and escapes criminal prosecution¹²⁶. To prevent these crimes from being repeatedly committed, the Government has adopted an Act which disallow the offence of honour killing to be waved or compounded by the legal heirs of the victims¹²⁷.

¹²⁶ Are Knudsen, *License to kill: Honour killings in Pakistan* (Chr Michelsen Institute 2004) 8; See also AI Pakistan, *violence against women in the name of honor* (2017) (<https://www.amnesty.org/en/countries/asia-and-the-pacific/pakistan/report-pakistan/>)

¹²⁷ Criminal Law (Amendment) (Offences in the name or pretext of Honour) Act 2016, s 8; European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 8

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Amendments in Rape Law (Criminal Law Amendment Act) 2016

This Act was passed in 2016. It introduced some new sections and amended some sections of Pakistan Penal code in order to make more strict laws for the offence of Rape. For instance, the offence of rape is made non compoundable and is punished with death penalty or life imprisonment. Now with this amendment, DNA test is made compulsory in rape cases.¹²⁸

All these legislations at the federal and provincial levels represent significant progress for the protection and promotion of women rights in the country. Protection of women rights also required to introduce measures which reduce the economic disparity between the genders in the society. The economic empowerment survey conducted in 2016 indicates large economic disparity between men and women throughout the country. To strengthen the financial status of women in the society, the Government has taken some measures. These include, Benazir income support programme, and at provincial level Punjab Self-employment programme and Punjab education fund. The Benazir income programme has made a strong contribution in empowerment of over 5.3 million women, especially in rural areas¹²⁹. For increasing women representation at political forum, the Government has allotted certain quotas to women. Currently the Government has reserved 17% of seats for women in National Assembly and provincial Assemblies based on proportional representation¹³⁰. The

¹²⁸ Criminal Law (Amendment) (Offences in the name or pretext of Honour) Act 2016.

¹²⁹ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 9.

¹³⁰ For increasing women reserved seats in the elected bodies in Pakistan see 2013 Election Women Representation in legislatures, Aurat Foundation (<https://www.af.org.pk/news/1390295273.pdf>) and European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels

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Government needs to consider the original and continued demand of woman's movement to increase the reserved seats to 33% in all the legislative bodies. Allotting 33% reserved seats to women in legislative assemblies would have a positive and actual impact on bringing in and passing laws concerning women rights issues and overall gender mainstreaming¹³¹. The Election Commission of Pakistan can declare the election of constituency null and void where there is no women voting. This is considered as a progressive step towards increased participation of women in public sphere. In public employment, 10% of quota is reserved for women for the federal jobs beside that she can also compete on open merit¹³². The women literacy rate is quite below in comparison to men. In this regard, as per the UN Committee recommendation the Government needs to take appropriate measures in improving the literacy rate of Women and girls, prevent dropouts among girls, to make policies to enable young women to re-enter schools after pregnancy. For improving the quality of education, to provide systematic and gender-sensitive training to all the teachers and revise the curriculum to remove the gender stereotypes¹³³.

The National Commission on status Women has played an important role by focusing on women issues in the country. However, the commission institutional capacity is overall weak and remained underfunded. It should be provided with ad-

https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 195

¹³¹ 2013 Election Women Representation in legislatures, Aurat Foundation (n 130) 5.

¹³² European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 195.

¹³³ Concluding Observation on the fourth Periodic report of Pakistan (https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%5C%2fC%5C%2fPAK%5C%2fCO%5C%2f4&Lang=en), 8.

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equate financial, human and technical resources for accomplishing its mandates. It is important to establish independent and technically strong Provincial Commission on the Status of Women (PCSW) in all provinces which liaise between the Centre and provinces on women development and follow the Commission's recommendation on legislation, policies and programmes at the provincial level¹³⁴. So far, the province of Khyber Pakhtunkhwa has established its PCSW to oversee implementation laws, policies and programs related to women and propose new measures¹³⁵. Under the National Action Plan for human rights, protection of women rights and elimination of Gender Based Violence is Government's foremost priority. The Ministry of Human rights has formulated the national policy guidelines on Gender Based Violence. Moreover, the Commission on status of women have developed 'standard violence against Women indicators' which is helpful in contributing much needed data concerning general human rights situation in the country¹³⁶.

Pakistan has undertaken considerable legislative activity for the promotion of women rights in the country through adoption of important national and provincial legislations. This indicates Pakistan's seriousness to comply with CEDAW as well as to abide by its commitments with the EU to improve women rights in country necessary for maintaining the GSP+status.

¹³⁴ Concluding Observation on the fourth Periodic report of Pakistan (n 133) 5.

¹³⁵ Khyber Pakhtunkhwa Commission on Status of Women (<https://kpcsw.gov.pk/>).

¹³⁶ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 9.

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5.3.4 Status of the Implementation of the Convention on the Rights of the Child (CRC)

Convention on the Rights of Child (CRC) entered into force on 2 September 1990¹³⁷. Pakistan ratified the convention on 12 November 1990¹³⁸. Pakistan has also ratified the Optional Protocol to the Convention on Sale of Children, Child Prostitution and Child Pornography on 5 July 2011, and Optional Protocol to the Convention on the rights of child on the involvement of the Children in armed conflict¹³⁹.

Children are the most vulnerable section of the society in Pakistan. According to recent statistics reports, 40 % of Pakistan's population is under 18 years of age. To address the children's right, the Government of Pakistan has adopted important policy measures, enacted new important legislations, brought amendments to the existing legislations, establishment of institutions and allocation of funds in compliance with the Convention. Most of these legislations have been adopted before the grant of GSP+status¹⁴⁰. After the 18th amendment to the Constitution, the subject of child has been devolved on the provinces in terms of the administrative, legislative and financial authority. In compliance with the reporting requirement of the Convention, Pakistan submitted its report on 23 May 2014¹⁴¹. The report covers the

¹³⁷ Convention on the Rights of the Child [1990].

¹³⁸ Pakistan Ratification status (n 15).

¹³⁹ Status of Ratification (<http://indicators.ohchr.org/>).

¹⁴⁰ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 196.

¹⁴¹ Fifth periodic report of Pakistan (4 May 2015) (https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%5C%2fC%5C%2fPAK%5C%2f5&Lang=en).

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period between January 2008 to March 2013. The Reports highlights several important federal and provincial legislations adopted for protection of Children's rights. For instance, the Federal government has adopted Islamabad Capital Territory (ICT) Free and Compulsory Education Act 2012.

At the provincial level, the Province of Sindh has enacted Sindh Child Protection Authority Act (SCPAA), 2011, which prohibits traditional discriminatory practices against girl child. This Act is in conformity with the child protection related provisions under the Convention. Remand House Rules were adopted in 2011, which provides rules for creation of temporary custody place for children where they are being provided protection, care and treatment. Sindh Rights of Children to Free and Compulsory Education Act, 2013 was enacted as well.

Similarly, the provincial Government of Khyber-Pakhtunkhwa established KP Child Protection and Welfare Commission (CPWP) and promulgated Child Protection and Welfare Act (CPWA),2010 to prohibit traditional practices against girl child.

The Punjab government enacted Punjab Employment of Children Act (ECA) and a Bill on the right to free and compulsory education has been drafted. The Government of Baluchistan has enacted Compulsory and Free education Ordinance, 2013.

Moreover, the Government has taken several important steps which shows its commitment towards the improvement of Children's rights in the country. One of the important initiatives taken by the Federal Government was through Income support programme (ISP). The programme ensured the rights of children by addressing the issue of extreme poverty. Under this programme, financial support has been provided to families for vocational training, education and small enterprises. Un-

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der this programme, assistance was provided to over 7 million families living across Pakistan through disbursement of more than Rs. 130 billion to its recipients until May 2012¹⁴². The milestone development was the insertion of Article 25-A in the Constitution which has established right to education a constitutional right. The State is under obligation to provide free and compulsory education to all the children between the age of 5 and 16 years¹⁴³. The Government has taken this step in view of the Committee's on the Rights of Child previous recommendations¹⁴⁴. Over the period, the Federal Government has also increased the allocation of budget for education and health. The budget allocation has increased since 2009. The provincial governments have also increased their allocations for education¹⁴⁵. The National commission on rights of child, Act 2017¹⁴⁶ has been adopted still the government has not constituted the National Commission for protection of child rights (NCPCR) under the Act despite the rapid increase of child abuses in the country. The constitution of National commission on the Rights of Child (NCRC) is one of the important requirement under CRC¹⁴⁷. Over 1700 cases of child abuse since 2013 has been reported in the country which is quite alarming¹⁴⁸. The Government has announced the

¹⁴² Fifth periodic report of Pakistan (n 141) 7.

¹⁴³ Constitution of Islamic Republic of Pakistan 2012, art 25A.

¹⁴⁴ Fifth periodic report of Pakistan (n 141) 7.

¹⁴⁵ *ibid* 8.

¹⁴⁶ National Commission on rights of child Act 2017.

¹⁴⁷ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 196.

¹⁴⁸ Obaid Abbasi, 'National Commission on children rights protection yet to be notified by the government' *The Dawn* (20 April 2018) (<https://www.pakistantoday.com.pk/2018/04/20/national-commission-on-children-rights-protection-yet-to-be-notified-by-government/>).

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National action plan (2013-2016) in September 2013 to accelerate education related MGDs¹⁴⁹. To achieve that the Government has committed to increase the spending on education from 1.8% to 4% of the GDP by 2018¹⁵⁰. Similarly, the government of Punjab has set the target of 100% enrolment of children in Schools by 2018¹⁵¹. Despite these positive initiatives, it is estimated 25 million children in Pakistan have no access to education. This includes 55% girls. The security of schools and children is another major concern. In past years, reports of attacks on school and school buses were quite common. Besides access and enrolment in schools, Article 29 of the Convention laid emphasis on the quality of education. This raises the question on the quality of syllabus that is taught in schools. According to previous CRC Committee observation NO 81 b (CRC/C/PAK/CO/3-4) Pakistan was asked to ‘take concrete action to eliminate teaching religious or sectarian intolerance; promote human rights, human rights education, including children rights, peace, tolerance and dialogue between different religions and beliefs’¹⁵².

Besides Children access to quality education and health, the Government has dealt with issue of sexual exploitation of children as part of its commitment to comply with CRC obligations and has introduced safeguards and laws to eliminate sexual abuse of children at every level. In this regard, the Child Protection (Criminal Law Amendment) Bill, 2015 has introduced new sections in Pakistan penal code to criminalize acts, such as exposing children to sexually explicit material, child por-

¹⁴⁹ Ministry of education Government of Pakistan, National plan of action 2013-2016, ‘Achieving universal primary education in Pakistan: MDG acceleration framework’ (http://itacec.org/document/2015/8/nep/National_Plan_of_Action_Pakistan.pdf).

¹⁵⁰ *ibid.*

¹⁵¹ *ibid.*

¹⁵² Convention on Rights of Child, concluding observations Pakistan (15 October 2009) (<https://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-PAK-CO4.pdf>).

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nography, cruelty to children, child abuse and human trafficking within Pakistan¹⁵³. The practice of child marriages with forced conversion and abduction of Hindus and Christian girls needed preventive laws in the country. In these cases, usually the testimony of underage girl is accepted in favour of abductors who testify usually being under his influence and duress and during pending proceeding the under aged victims can remain with the captors. This fallacy of law in turn can cause serious harm to the victim and needs to be addressed with appropriate legislation. To end such practices and for ensuring protection of the children against forced marriages, certain important legislation were proposed namely the Christian marriage (Amendment) Bill 2012 which suggested the registration of marriage as a duty of the state and proposed the age for both female and male to be 18 years¹⁵⁴. This bill was not tabled before the Parliament. Currently, the Christian marriage and divorce bill 2017 has been finalized and will be soon tabled before the National Assembly. A very positive development was the adoption of Hindu Marriage Act 2017 which was a much-needed legislation for the protection of Hindu girls from being forced into marriage. This Act also regulates the registration, age, and other aspect of Hindu marriage including divorce¹⁵⁵. To curtail practice of child marriage, the law set penalty for the parents who give their minor children in marriage and impose fine for religious clerics, who supervise these marriage ceremonies¹⁵⁶. The Government of Sindh has introduced Sindh child Marriages Restraint Rules, 2016 to effectively deal

¹⁵³ Criminal law (amendment Act) 2015.

¹⁵⁴ Fifth periodic report of Pakistan (n 141) 10.

¹⁵⁵ Hindi Marriage Act 2017.

¹⁵⁶ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 197.

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with the issue of child marriage which is a common practice in the rural areas of Sindh¹⁵⁷.

One of the serious issue of concern also highlighted by the Committee on rights of child is that there exist disparity between minimum legal age for marriage of girls (16 years) and for boys (18 years) in all the provinces except (Sindh which have, through adoption of Child restraint marriage Act, 2013 increased the marriage age for both girls and boys to 18 years). The Hadood Ordinances 1979 provides the definition of girl child who is up to age of 16 years or have reached puberty before 16 years. The Committee reiterated that the Government should ensure full harmonization of its legislations concerning the definition of ‘child girl’ and shall define the child as any human being below the age of 18 years. The Committee recommended amending all the provincial Acts on Child Marriage Restraint and Zina and Hadood ordinance (1979) in order to adjust the marriage age for boys and girls by raising the minimum age of marriage for girls to 18 years¹⁵⁸.

5.3.5 International Covenant on Economic Social and Cultural Rights

International Covenant on economic, social and cultural rights entered into force on 3 January 1976¹⁵⁹. Pakistan ratified the Convention on 17 April 2008¹⁶⁰. In compliance with the reporting obligations of the Covenant, Pakistan submitted its

¹⁵⁷ The Sindh Child Marriages Restraint Rules 2016.

¹⁵⁸ Convention on Rights of Child, concluding observations Pakistan (n 152).

¹⁵⁹ International covenant on economic social and cultural rights (<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>).

¹⁶⁰ Pakistan Ratification status (n 15).

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first report on 16 October 2015¹⁶¹. The Committee gave its concluding observations on the report on 20 July 2017¹⁶². Before the ratification of the Covenant, Pakistan had adopted a number of legislative and administrative measures for the realization of economic, social and cultural rights of the people. The Constitutional provisions of Pakistan also envisage the economic, social and cultural rights of its citizens as a policy guideline¹⁶³.

The Government of Pakistan keeps on working to ensure the progressive realization of the rights enshrined in the Covenant. However, the success for realization of these rights to a large extent depend on the economic growth of the country and channelizing the revenues from this growth into the investments in the public welfare¹⁶⁴. Almost 39% of country's population is estimated to live in multidimensional Poverty, without access to basic standard of living, education and basic necessities and jobs. To improve these conditions, priority of the Government is to achieve the economic growth, and to overcome the energy crisis in the country. The Government has achieved certain successes to this end through a reform program facilitated by the International Monetary Fund(IMF). Improvement in annual growth rate was

¹⁶¹ Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (4 February 2016) E/C.12/PAK/1 (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%5C%2fC.12%5C%2fPAK%5C%2f1&Lang=en).

¹⁶² Committee on Economic, Social and Cultural Rights, Concluding observation on the initial report of Pakistan (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fPAK%2fCO%2f1&Lang=en).

¹⁶³ Constitution of Islamic Republic of Pakistan 2012, arts 3, 4, 8, 11(2), 17(1), 19(a), 24, 24(2), 25, 25(a), 25(1), 25(2), 28, 35, 27, 37(e), 38(b,c,d,e).

¹⁶⁴ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 7.

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recorded from 4% to an expected 5.5-6 % in the year 2017-2018¹⁶⁵. However, the target of the Government to increase the tax revenues, remained marginal and to a large extent dependent on regressive direct taxes. For generating revenues for a real change, it is important that government shall broaden its tax base with a focus on income tax¹⁶⁶. Overall the basic social indicators remain poor. Human development indicators on life expectancy, maternal mortality, infant mortality, literacy, school enrolment, dropouts provide a disturbing scenario. The Government has increased its spending on health sector to 3% and in education the spending has increased by 23% during 2014-2016¹⁶⁷. The provinces have also increased its expenditures in education. However, this figure falls short of the declared target of the government to allocate 4% GDP on education¹⁶⁸.

One of the main reason for not attaining the Covenants rights is that Government allocated low level of public funding to areas of Covenant rights, especially social security, employment education and health while its expenditure in area of defense is very high. Allocated funds to education sector in provinces remained unspent. Moreover, the tax regime of the country is characterized by a limited tax base, a non-progressive tax system and heavy reliance on indirect taxes, which is not effective to increase spending on Covenant rights. The Government needs to increase the level of public funding both at national and provincial levels ensuring the progressive

¹⁶⁵ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10).

¹⁶⁶ *ibid.*

¹⁶⁷ PRSP Secretariat, Ministry of Finance Government of Pakistan (http://www.finance.gov.pk/poverty/PRSP_Expenditure.FY.2015-16.pdf).

¹⁶⁸ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 8.

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realization of economic, social and cultural rights. The State should review its tax-regime in order to increase its tax revenues in such a manner that it shall not put a disproportionate burden on persons belonging to low segments rather it should contribute to the redistribution of income and wealth. The Government should also establish the mechanism to ensure that funds, allocated to areas relevant to Covenant rights, are spent well-timed in a transparent and effective manner¹⁶⁹.

Pakistan in its initial report submitted to the Committee on Economic, social and Cultural Rights outline the measures taken to promote the progressive realization of the rights enshrined in the Covenant. This includes the adoption of new legislation for women protection and elimination of discriminatory practices against her, legislation on forced labour and increased government spending in health sector.

The Committee on Economic, Social and Cultural Rights expressed its concerns on a number of issues relating to Pakistan's obligations under the Covenant and made a request that Pakistan should follow up the recommendation and submit its report on the implementation of the Committee's recommendations for improving the capacity of the National Commission for Human Rights in accordance with Paris Principle, protection of human rights defenders from killing, abduction and intimidation and thorough investigation of all the reported cases of disappearance, harassment and killing of human rights defenders and bring the perpetrators to justice and to increase the enrollment rates at all the levels, especially the primary level, with special focus on girls education and children living in rural areas and belonging to low-income families within 18 months¹⁷⁰.

¹⁶⁹ Concluding observations on the initial report of Pakistan (n 46) 3.

¹⁷⁰ *ibid* 15.

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5.3.6 Status of Implementation of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Pakistan ratified the Convention on 23 June 2010. Pakistan submitted its first report, which was four years overdue, on 4 January 2016¹⁷¹. The Committee against torture gave its concluding observation on its initial report on 1 June 2017¹⁷².

Torture or acts amounting to torture, whether committed by private individuals or by an official of government, stand criminalized in domestic laws through Constitutional or another existing legal framework. Under the law, the public servants under no circumstances are permitted to use torture nor can they abet or permit anyone to torture others. Acts or omission of any act justifying torture by any public servant is unlawful. Neither the law permits any exception to prohibition of acts of torture. Even during the state of emergency, no-official or un-official orders can be justified as a defence to the commission of such acts amounting to torture¹⁷³. The Pakistani Constitution guarantees the fundamental rights to its citizens¹⁷⁴. Article 9 and 14 of the Constitution guarantee inviolable rights to Individual's right to

¹⁷¹ Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention (11 February 2016) CAT/C/PAK/1 (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%5C%2fC%5C%2fPAK%5C%2f1&Lang=en).

¹⁷² Committee against Torture, Concluding observations on the initial report of Pakistan (1 June 2017) CAT/C/PAK/CO/1 (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%5C%2fC%5C%2fPAK%5C%2fCO%5C%2f1&Lang=en).

¹⁷³ Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention (n 171).

¹⁷⁴ Constitution of Islamic Republic of Pakistan 2012, Chapter 2 'Fundamental Rights'.

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life, liberty and dignity¹⁷⁵. In the light of these two constitutional provisions, the Supreme Court of Pakistan has condemned the extra-judicial killing or custodial deaths, arrest and torture. The Court declared that ‘such acts by State machinery violate Fundamental Rights under which a person is entitled to be treated according to law and equally before law’¹⁷⁶. Article 4 of the Constitution provides that no action detrimental to life, liberty, body, reputation or property of any person shall be taken except in accordance with law¹⁷⁷. Article 9 guarantees that no person shall be deprived of life or liberty except in accordance with law. Article 10 provides that no person, who is arrested, shall be detained in custody without being informed of the grounds for such arrest nor shall he or she be denied the right the right to consult and be defended by a legal practitioner. A person arrested or detained shall be produced before a magistrate within twenty-four hours of such arrest. Article 14 provides that dignity of man subject to law and the privacy of home shall be infringeable and no person shall be subjected to torture for the purpose of extracting evidence¹⁷⁸. Apart from these fundamental rights, several statutory laws provide protection against torture. A public servant is prohibited under Pakistan Penal Code from knowingly disobeying the law and acting in a way that would injure another person¹⁷⁹. The Penal code prohibits wrongful confinement and extorting confession¹⁸⁰. Using torture to extort a confession is punishable up to ten years¹⁸¹. A confession can also be

¹⁷⁵ Constitution of Islamic Republic of Pakistan 2012, arts 9,14.

¹⁷⁶ *Benazir Bhutto vs President of Pakistan* [1998] Supreme Court of Pakistan

¹⁷⁷ Constitution of Islamic Republic of Pakistan 2012, art 4.

¹⁷⁸ *ibid* art 14(2).

¹⁷⁹ Pakistan Penal Code 1860, Chapter XV, section 166.

¹⁸⁰ *ibid*.

¹⁸¹ *ibid* Chapter XVI, section 337k.

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challenged in a court which is made in a police custody¹⁸². The Police order 2002 provides punishment against act of torture. A police officer who tortures or abuse a person in his custody can be punished with fine or imprisonment for up to five years¹⁸³. The police order provides protection to the prisoners and detainees in police custody¹⁸⁴. It provides that any police officer irrespective of his rank is subject to punishment, if he inflicts torture¹⁸⁵.

Besides these statutory provisions against torture, since Pakistan's ratification of the CAT, both the federal and provincial Governments are committed to ensure the effective implementation of the Convention. Despite that, there are reports that police is involved in widespread practice of torture throughout Pakistan to obtain confessions from people in custody¹⁸⁶. The civil society organizations provide reports about torture and cruel, inhuman, degrading treatment and punishment during the investigation process to obtain confession or information¹⁸⁷. Faisalabad District Standing Medical Board (DSMB) was established to investigate medical examinations in response to allegations of torture. The Board examined 1,867 cases and found conclusive signs of torture in 1,424 cases¹⁸⁸. But no action has been

¹⁸² Qanun-e-Shahadat Order (Law of Evidence) 1984, art 37.

¹⁸³ 9 Police Order of 2002, Chapter XVII, section 156(d).

¹⁸⁴ Pakistan Penal Code 1860, 4(1)(c).

¹⁸⁵ *ibid* 114, 256.

¹⁸⁶ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 195; European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 9

¹⁸⁷ Various reports by the Human Rights Commission of Pakistan, the Justice Project Pakistan, Amnesty International and Human Rights Watch

¹⁸⁸ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and

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taken to conduct official investigation in those cases of torture identified by DSMB. One of main issue concerning implementation of the CAT is that domestic penal code does not define torture in line with CAT. The current legislation also does not compensate the victims against the acts of torture in terms of rehabilitation, restitution, satisfaction and guarantee of non-repetition in accordance with Article 14 of the Convention¹⁸⁹. In many cases, torture is used by authorities to extract confession which is violation of Article 12 of the Convention. The bill on torture, custodial death and custodial rape has been drafted, but it has not been adopted yet.

The Committee against torture expressed its concerns about reports that intelligence agencies, Military and paramilitary forces have been involved in a number of cases of extrajudicial executions involving torture and enforced disappearances. Legislation such as Aid of Civil Power Regulation, amendments to terrorism Act and Army Act have aided in providing an immunity to the members of security forces involved in torture¹⁹⁰. Pakistan indicated in its initial report submitted to the Committee against torture that disciplinary measures had been taken against 7,500 police officers in Khyber Pakhtunkhwa and Punjab provinces as punishment for torture, death in custody, misuse of power, illegal confinement and misbehavior,

Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 197; European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 9

¹⁸⁹ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 197.

¹⁹⁰ Committee against Torture, Concluding observations on the initial report of Pakistan (n 172) 3.

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but no information has been provided to the Committee about criminal proceedings against any of these officers. The Committee recommended the Government to take measures to ensure that all Police officers in the country are prohibited by law to use torture, according to Police Order 2002. The Official at the highest level shall unequivocally reaffirm the absolute prohibition of torture and publicly condemn all the practices of torture. These officers shall issue a clear warning that anyone committing such acts or abets or participates in acts of torture shall be prosecuted and punished. The Government should make sure that police officers if found guilty of torture shall be prosecuted and punished with penalties proportionate to the gravity of the offence of torture in accordance with article 14 of the convention. To reduce the reliance of the police and security officers in securing confessions as the basis for criminal investigation, they should be trained on absolute ban on torture and the provision of the Convention and forensic evidence-gathering techniques¹⁹¹. The Committee has also expressed its deep concern on reports of deaths in custody, extremely poor conditions and overcrowding of jail. National Action Plan for Human Rights also address jail reforms on priority basis. The Government in collaboration with UN office on Drugs and Crime is working on developing Prisons Reform Programme which will help in reforming legal and regulatory framework, will improve management of prisons and will reduce the overcrowding of prisons through parole and probation¹⁹².

¹⁹¹ Committee against Torture, Concluding observations on the initial report of Pakistan (n 172) 2.

¹⁹² European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 10.

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5.3.7 Conclusion

Since the award of GSP+ status, Pakistan has enacted a number of important legislations to ensure effective implementation of seven core UN Human rights conventions in the country. Adoption of these legislations at the national and provincial level by the Government is an effort on Part of Pakistan's Government to fulfilled its commitment with the EU concerning improvement of human rights standards in a country specifically women rights, minority rights and child rights. Through enactment of these legislations the Government has demonstrated its seriousness towards the improvement of the Human rights standards in the country. During the period between 2014-2018, the Government has adopted important National policies, actions and legislative measures. For the very first time the Government has adopted National action plan on Human rights in 2016.. Important oversight bodies such as Human right commission of Pakistan, National Commission on the Status of Women, Commission for protection of minorities rights were established and National commission on child rights is to be nearly formed. Establishment of these commissions is important development for the promotion and protection of women, minorities and child rights in the country. In sphere of women rights, certain important legislations have been framed for the protection of women in a society and prevent them from becoming the victim of violence and dehumanizing cultural practices such as honour killing and protecting them against domestic violence and sexual harassment in public places. For protection of minorities, the government has developed National policy on interfaith harmony and allotted specific quotas to ensure their participation in public sphere, curb hate speech against minorities and ensure protection of their worship places. For protection of children rights, the Government has adopted

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legislations in areas of child labour, education, sexual abuse, trafficking, violence and ill treatment against children and prohibition of child marriages by setting the legal age of marriage for both males and females to 18 years.

5.4 ILO Core Labour Rights Conventions (Conventions 8-15)

5.4.1 Introduction

Pakistan has the ninth largest work force in the world, but with a relatively low labour marked participation rate of 32 percent¹⁹³. The labour force is estimated to be 71.52 million workers, out of whom 54.1 million workers aged between 15-64 are employed¹⁹⁴. The male labour force participation rate is 48.1 percent whereas that of female labour force participation is 15.8 percent only¹⁹⁵. This reflects a deep gender gap which is associated with cultural constraints that restricts women participation in the labour market. Large bulk of labour force between 70 to 80 percent is employed in the informal sectors, mainly agriculture, home based work and more than

¹⁹³ The Global Economy, The Labour force participation-Country rankings (2018) (https://www.theglobaleconomy.com/rankings/Labor_force_participation/); The Global Economy, The labour force-Country rankings (https://www.theglobaleconomy.com/rankings/labor_force/); Khalida Ghaus, Mazoor Hussain Memon, and Muhammad Asif Iqbal, *Trade and Compliance of Labour Standards in Global Supply Chain: A case Study of Pakistan* (, Friedrich-Ebert-Stiftung 2017) (<https://library.fes.de/pdf-files/bueros/pakistan/13953.pdf>) 1

¹⁹⁴ The Global Economy, The labour force-Country rankings (n 193); The Global Economy, The Labour force participation-Country rankings (n 193); Pakistan Labour Market Profile (2018) (http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/LMP2018/lmp-pakistan_2018_final_version.pdf); European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 13

¹⁹⁵ Pakistan Labour Market Profile (n 194) 8,3; Ghaus, Memon, and Iqbal (n 193) 20

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50 percent in vulnerable form of employments. Whereas, employment in the formal sector is limited to few sectors such as footwear, textile and leather industries. The key labour legislations do not meet the international labour standards due to which most of the population is deprived of productive work with fair, safe and decent working conditions, social protection and freedom to organize and participate in the collective bargaining which eventually lead to low unionization rate in industries¹⁹⁶. Significant structural deficiencies in labour market, low human resource development, low level of unemployment, cooperation between employer and employees, flexible wage determination, low level of women participation are few other major problematic areas for labour market efficiency in Pakistan¹⁹⁷. With 18 constitutional amendments, which decentralized the powers between the centre and the provincial government, devolved the subject of labour from federal to provincial governments. Provinces acquired the power of labour legislation and industrial relations including policy development of labour development matters and its enforcement.

Pakistan has ratified 36 International labour rights conventions which include eight core International Labour Organization (ILO) conventions, which are within the scope of GSP + monitoring. Pakistan has maintained its reporting obligations under these conventions. The provinces must comply with the ILO core labour conventions while enacting new labour laws. The capacity constraints and weak labour management system at the provincial level are the main challenges for ensuring compliance with ILO conventions¹⁹⁸. The labour inspection system at the provin-

¹⁹⁶ Pakistan Labour Market Profile (n 194) 3; See also Pakistan Labour Market Profile (2015) (http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/LMP2015/lmp_pakistan_2015_final_version.pdf) 3

¹⁹⁷ Pakistan Labour Market Profile (n 194).

¹⁹⁸ European Commission, The EU Special Incentive Arrangement for Sustainable Development and

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cial level has been weak and corrupted, therefore, refractions are not reported and brought to notice of authorities. The Ministry for Overseas and Human Resource Development (MO & HR) at the federal level oversighted the performance of the provincial labour departments¹⁹⁹. The existing federal laws remained in force until the provinces complete the process of enacting legislation²⁰⁰.

Considerable progress has been shown by the provinces in adopting their new provincial labour legislations. Out of 55 new legislations that have been drafted in four provinces, 23 new labour laws have been adopted²⁰¹. The province of Khyber Pakhtunkhwa and Punjab have shown considerable progress while legislating on its labour laws and other related issues as compared to the province of Sindh and Baluchistan, which somewhat lagged behind in legislating new labour laws²⁰². However, the key piece of legislation Industrial Relations Act has been legislated and adopted by all the four provinces²⁰³.

Implementation of the labour laws and policy is the issue of main concern in each province. For the implementation of labour laws, the system of labour inspection was introduced by the government through labour inspection policy and labour

Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 13.

¹⁹⁹ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 199.

²⁰⁰ *ibid*; Constitution of Islamic Republic of Pakistan 2012, art 270AA

²⁰¹ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 199.

²⁰² *ibid*.

²⁰³ *ibid*.

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protection policy in 2006. However, the labour inspection system didn't prove to be successful due to lack of trained labour inspectors that cover the entire industries in Pakistan. Besides that, many were accused of corruption and collusion with the employers²⁰⁴. Moreover, the provinces have varying capacity to legislate and its agencies which provide help in enforcement of labour laws, are under sourced²⁰⁵. For revitalizing and restructuring the system of inspection, the Government is working with ILO and donors to implement improvements including recruitment of trained inspectors and their capacity building and investments in equipment²⁰⁶.

Pakistan is also a beneficiary of ILO technical cooperation framework Decent Work Programme during the period 2010-2015. Under this programme, ILO together with the federal and provincial authorities has identified four broad priority areas which required intervention: (I) labour law reform, (ii) human resource development with a focus on employable skills, (iii) social protection, including in the informal economy and (iv) promotion of tripartite consultations and social dialogue²⁰⁷. This programme has now entered into its third phase 2016-2020²⁰⁸.

In 2016, EU funded a project on International labour and Environmental Standards Applications in Pakistan' SMEs (ILES). The overall objective of the project is to

²⁰⁴ ILO Committee observation on Labour Inspection Convention, 1947 (NO. 81), 103rd ILC session (2014) (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:3175042,en).

²⁰⁵ Pakistan Labour Market Profile (n 196) 3.

²⁰⁶ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 13; ILO Committee observation on Labour Inspection Convention, 1947 (NO. 81), 103rd ILC session (n 204)

²⁰⁷ ILO Pakistan Decent Work Country Programme (<https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/program/lang--en/index.htm>), 13.

²⁰⁸ *ibid.*

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promote sustainable and inclusive growth by supporting the integration of Pakistan's economy into global and regional economy by improving compliance with the labour and environment standards and enhanced competitiveness²⁰⁹. This will be achieved by focusing on the public and private sectors institutions. To assist public sectors institutions in federal and in four provinces to improve the enforcement of existing legislation and compliance with international labour and environmental standards and to set new laws, where required. In particular, the project will assist SMEs in leather and textile sectors and their associations to institutionalize the implementation and compliance with International labour and environmental legislation (ILES) through their active participation²¹⁰. As Pakistan has been granted GSP + status by the EU for facilitating its exports including textile and leather products to the Eu market. These two sectors are crucial for this initiative as they are the most labour, energy and water intensive, polluting and energy consuming industries in Pakistan. Owing to these industries significant contributions towards trade and GDP growth, it is necessary to strengthen labour and environmental standards compliance in these industries. This will be helpful in improving Pakistan's image in multilateral trading system and will fulfil its GSP + related obligations²¹¹.

²⁰⁹ International Labour and Environmental Standards Application in Pakistan's SME (ILES) 2016-2022 (<https://www.ilo.org/islamabad/whatwedo/projects/WCMS.577265/lang--en/index.htm>).

²¹⁰ *ibid.*

²¹¹ See Action Document for international Labour and Environmental Standards Application in Pakistan SMEs (https://ec.europa.eu/europeaid/sites/devco/files/aap-financing-asia-part3-annex4-20151209_en.pdf), 4.

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5.4.2 Status of the Implementation of the Core ILO Conventions

This part of the chapter will provide situational analysis of Pakistani Government adherence to ILO eight core labour conventions through enactment of legislations at the federal and provincial level for ensuring compliance with these conventions which are within the scope of GSP+ status. Pakistan has been the member of ILO since its independence in 1947. Five out of eight ILO core conventions have been in force since more than sixty years while the other three conventions were ratified by Pakistan during 2001 and 2006. Pakistan's compliance with these conventions is assessed by meeting its reporting obligations under each conventions and ILO committee of experts observations reports concerning each convention. Moreover, EU also independently monitor Pakistan's compliance with ILO eight labour conventions through its reporting and monitoring mechanism imposed by GSP+scheme. European Commission take into account the perspectives of the relevant stake holders, social partners, civil society and NGOs the European Parliament and EU member states for assessing Pakistan's adherence with these conventions²¹². It is reasonable to expect that after a long period of ratification of these conventions along with four years of GSP+ status which has given the trade incentives of duty free access to Pakistan's exports to EU market with an obligation to promote EU labour standards Pakistan should now be poised for ensuring compliance with these labour standards²¹³. To determine that, the status of the implementation of the ILO core eight labour conventions in

²¹² Ghaus, Memon, and Iqbal (n 193) 12.

²¹³ A Report on GSP Plus and Labour Standards in Pakistan (Pakistan Workers Federation 2017) (2017) (<https://library.fes.de/pdf-files/bueros/pakistan/13797.pdf>) 2.

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Pakistan is analysed below.

5.4.2.1 Freedom of Association and Collective Bargaining (Conventions No 87 and 98)

Freedom of Association and Protection of the Right to Organize Convention, 1948 (No87) entered into force 4 July 1950²¹⁴. Pakistan ratified this convention on 14 February 1951²¹⁵. Right to Organize and Collective Bargaining convention, 1949 (No.98)²¹⁶ entered into force on 18 July 1951 and Pakistan has ratified this convention on 26 May 1952²¹⁷.

For determining to what extent Pakistan has ensured compliance with the right of freedom of association and collective bargaining, first it is important to overview the situation of trade union rights in Pakistan and then its industrial relations Acts.

An Overview of the Trade Union Rights in Pakistan

The right to form association and trade union is guaranteed as one of the fundamental rights under the Pakistani constitution. Article 18 of the Constitution provides that ‘Every citizen shall have the right to form association or unions, subject to any reasonable restriction imposed by the law’²¹⁸. Although the right is constitutionally guaranteed, but in actual practice the right to form association and

²¹⁴ Freedom of Association and Protection of the Right to Organise (1948) (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO).

²¹⁵ Status of ratification (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-a&chapter=27&clang=_en).

²¹⁶ Right to Organise and Collective Bargaining Convention (No 98) (1949) (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312243:NO).

²¹⁷ Status of ratification (n 215).

²¹⁸ Constitution of Islamic Republic of Pakistan 2012, art 18.

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trade unions and the subsequent rights of the worker's rights to join them have been violated from time to time. According to International Trade Union Confederation (ITUC) Global Right Index survey, Pakistan was ranked 4 on a scale from 1-5 based on a degree for respect of rights of workers²¹⁹. This means workers in Pakistan function with systematic violation of rights²²⁰. In 2018 ITUC Global Right Index ranking, Pakistan was ranked 5 out of 5²²¹. This revealed that workers are not guarantee civil liberties, right to establish or join trade union and right to collective bargaining. Moreover, ITCU has also reported several cases of trade union violations in various sectors in Pakistan. These include incidents of baton charge of teachers who were protesting before the Sindh provincial Assembly demanding the payment of overdue salaries, salary suspension of the trade union leader who was actively organizing the members of the union for collective bargaining, 360 ship breaking workers were sacked who filed a police case against the employers concerning injury and deaths at ship breaking yard due to deplorable working conditions resulting in alarming number of deaths and injuries, arrest and detention of train drivers' union leader, health workers strike was banned by invoking of section 144 Criminal Procedure Code of Pakistan (CRPC) by the district administration of Peshawar, the refusal of the Pepsi company to recognize the rights of its Pepsi Co Workers union and harassed and threatened its union officers. Eighty eight workers of the Denim Clothing Company (DDC), which manufacture clothes for international brands such as Primark and H& M, were sacked for demanding their rights. The workers were not

²¹⁹ International Trade union Confederation (ITUC), Global Rights Index, The World's Worst Countries for Workers (2014) (<http://www.ituc-csi.org/ituc-global-rights-index-%202014?lang=en>) 69.

²²⁰ *ibid.*

²²¹ ITUC, Global Rights index (2018) (<https://www.ituc-csi.org/ituc-global-rights-index-2018>) 10.

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given any medical facilities, social security insurance and were paid very low salaries. They were demanding these rights from the management²²². Public sector workers and workers in Export processing zone (EPZ) were prohibited from striking and collective bargaining²²³. ITUC also reported several acts of violence against protesting and striking workers and their alleged arrests in 2015 and 2016²²⁴. On 2 February 2016 during a protest against privatization plan of Pakistan International Airline (PIA), two PIA workers were killed by law enforcement forces and several others were injured²²⁵. A ban on strikes in health sector, refusal to grant demonstration permission to nurses and new incidents of violence against protesting and striking workers in health, transport, education and tourism sectors have been reported by the ITUC recently. It also alleged the prosecution of the workers under terrorism charges for trade union activities and a ban on strike in health sectors²²⁶.

The International Labour Organization(ILO) committee of Expert on the Application of Conventions and Recommendations and trade unions has raised several concerns regarding freedom of association and collective bargaining in Pakistan²²⁷. For example, legal rules continue to exclude the employees in public services from

²²² ITUC, Survey of Violations of trade union Rights, Pakistan (<https://survey.ituc-csi.org/Pakistan.html?lang=en#tabs-3>).

²²³ *ibid.*

²²⁴ *ibid.*

²²⁵ *ibid.*

²²⁶ Freedom of Association and Protection of the Right to organize Convention, 1948 (NO.87) Observation (CEACR)-adopted 2018, published 108th ILC (2019) (https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100.COMMENT_ID:3962733).

²²⁷ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission_2016_report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 200; European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 14

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formation of unions which include, health, education, agriculture, security, banking and employees in special economic and trade zones. The Committee has also raised its concern regarding the absence of legal framework to regulate the unionization and collective bargaining in informal sector. Harassment and intimidation of trade union members is a common issue. Sometimes they are threatened with threats of dismissals and in some instances, they are forced to sign an undated resignation letter. There is a widespread practice that workers in the industries do not receive a formal appointment letter, which is legally required for joining any trade union or to apply for other benefits. To curtail this practices, robust labour inspection and appropriate sanctions for infractions would be required²²⁸. Moreover, the registration procedure for new trade union in Pakistani workplace is complex and restrictive and is subject to the wide discretion of the registrar. The registration requirement for a new trade union that it shall represent more than 20% of the work force, has allegedly led to employers registering fake-pocket unions²²⁹. There has been allegation of collusion between employers and registrar to prevent registration and instances of intimidation and violence is also reported to dissuade the workers from forming unions or striking. Furthermore, the provincial labour department lacks the capacity to ensure proper registration²³⁰. However, during the last few years there has been a genuine effort on part of the federal and provincial governments to address these shortcomings. Further, the grant of GSP+ status and its potential benefits,

²²⁸ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf).

²²⁹ *ibid.*

²³⁰ *ibid* 201.

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highlighted by many stakeholders within Pakistan and International delegation, is the main factor which has contributed towards adoption of new policy measures and ensuring compliance with trade union standards.

Overview of the Federal Industrial Relations Acts

The workers' rights in the industrial sectors were covered by the federal laws before the powers about labour rights devolved in the provincial scope by virtue of eighteen constitutional amendment. Here it is necessary to take a brief account of the Federal Industrial Relations Act 2008 that had covered the work force in industries and their trade union rights²³¹. This Act was adopted after repealing the industrial relation ordinance 2002. The Industrial Relation Act 2008 was considered progressive as compared to its predecessors, however certain provisions of the act could not meet the standards set in ILO convention no 87 and 98²³². For instance, the Act excluded many sectors to exercise the right to form association, such as Pakistan's armed forces, security staff of Pakistan, International Air Lines, persons employed by the government other than in Railways and postal services, employees of an establishment engaged in production and distribution of gas, employees of the security or fire service of the oil refinery, employees of the public administration in charge of treatment or care of sick persons, employees of the Pakistan Security Printing Corporation or the Security papers Limited. Employees of Karachi electric supply, employees holding the supervisory and managerial posts, Agriculture work-

²³¹ Pakistan-Industrial Relations Act 2008.

²³² International Trade Union Confederation (ITUC), 2009-Annual survey of violations of trade union rights in Pakistan (11 June 2009) (<https://www.refworld.org/docid/588f3a234.html>); Pakistan-Industrial Relations Ordinance Passed by the Senate 2011

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ers and workers in export processing zone²³³. This Act was interim and expired on 30 April 2010. Meanwhile Industrial Relation Ordinance of 1969 was revived, which was not an acclaimed ordinance²³⁴. Following the devolution of federal powers to the provincial governments under the Eighteenth amendment to the Constitution, the federal legislation on the industrial matters no longer exists. The Provinces become responsible to enact and enforce its own labour laws²³⁵. With this change, the national industry trade wide unions could no longer function. The Supreme court through its ruling also dissolved National Industrial Relation Commission on 2 June 2011²³⁶. To fill in the legal vacuum created at the federal level, the Industrial Relation Ordinance (IRO)2011 was promulgated²³⁷. This ordinance lapsed after 120 days, however the National Assembly through its resolution on 17 November 2011 extended the Ordinance till 17 March 2012²³⁸. It is important to note that the Industrial Relation Ordinance 2011 contained similar flaws that were noticed in the Industrial Relation Ordinance 2008. For instance, it has excluded a certain class of workers from the scope of its application, registration requirement that trade unions of workers engaged in the same industry can only be registered, prohibition on the registration of trade union if two or three trade unions are already in the same establishment, group of establishment or industry in which trade unions are connected unless the trade union has more than 20 percent of the workers of the

²³³ International Trade Union Confederation (ITUC), 2009-Annual survey of violations of trade union rights in Pakistan (n 232).

²³⁴ *ibid.*

²³⁵ Constitution (Eighteenth Amendment Act) 2010.

²³⁶ International Trade Union Confederation (ITUC), 2009-Annual survey of violations of trade union rights in Pakistan (n 232); Pakistan-Industrial Relations Ordinance Passed by the Senate 2011

²³⁷ *ibid.*

²³⁸ *ibid.*

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establishment, group of establishment or industry. Right of strike was given only to a representative trade union and among others several impermissible restrictions were put for holding the union office. Besides that, the right of collective bargaining was restricted to the trade union which should have over 30 percent of the membership of the industry's employees²³⁹. The government through an order can put an end to the strikes that extend more than 30 days and can compel even a unilateral arbitration. Moreover, the go-slow actions under the IRO 2011 were considered an unfair labour practice²⁴⁰.

Federal Industrial Relations Act 2012

The industrial relations Act (IRA) 2012 was adopted on 17 of March 2012 to fill the gap at the federal level for regulation of the industrial matters²⁴¹. The law covered the industries and establishments in the capitol territory and those carrying out businesses in more than one province. With few exceptions, the Act covered all the workers²⁴². The provisions of the Act regulates industrial disputes, workers' participation and trade unions. This Act also defined unfair labour practices.

National Industrial Relations Commission (NIRC)²⁴³ was re-established to fill the vacuum between the federal and provincial territories. The Commission is empowered to adjudicate the trans-provincial industrial dispute and to deal with the

²³⁹ International Trade Union Confederation (ITUC), 2012-Annual Survey of Violations of Trade Union Rights in Pakistan (2012) (<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4fd88930c&skip=0&query=Industrial%5C%20relation%5C%20act%5C%202008&coi=PAK>).

²⁴⁰ *ibid.*

²⁴¹ Industrial Relations Act 2012.

²⁴² *ibid* s 1(2).

²⁴³ *ibid* s 53.

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registration matters of national industries and trade union federations. The Commission is also responsible to deal with cases of unfair labour practices on part of the trade unions, workers and employers as specified in the Act as well as to take measures to prevent workers or employers from committing unfair labour practices²⁴⁴. The Commission also carried the responsibility of educating the workers about their rights and obligations and trade unionism. The commission is also responsible to secure the provision of facilities for the workers and to apportion the cost if any on equitable basis between the government, trade unions, federation of trade unions and employers²⁴⁵.

At the federal level, tripartite consultative Councils are formed to discuss key labour market issues both at the federal and provincial level²⁴⁶. Other tripartite mechanism such as Workers Welfare funds and Provincial Minimum wage board have been established. Workers employer's bilateral council of Pakistan (WEBCOP), which is a forum for bilateral discussions between workers and employers, have proved more effective²⁴⁷.

However, concern was raised by the ILO Committee of experts on the limited role of the federal government regarding labour issues. It was pointed out that the federal government lacked the coordinated role and has set no minimum standard for labour practices for the provinces. Concern was also raised on the effective implementation of the treaty requirements in the provincial legislations keeping in view

²⁴⁴ Industrial Relations Act 2012, ss 54(e), 54(g).

²⁴⁵ *ibid* s 54(f).

²⁴⁶ Pakistan Labour Market Profile (n 196) 2,3.

²⁴⁷ *ibid*.

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the ambiguous regulatory environment²⁴⁸.

Overview of Provincial Industrial Relations Acts

After the 18th constitutional amendment, each of the four provinces adopted its industrial relations Acts respectively i.e., Khyber Pakhtunkhwa Industrial Relation Act (KPIRA) was adopted in 2010²⁴⁹, Punjab Industrial Relation Act (PIRA) was adopted in 2010²⁵⁰ later the act was amended in 2014. Sindh Industrial Relation Act (SIRA) was adopted in 2013²⁵¹ and Baluchistan Industrial Relations Act (BIRA) was adopted in 2010 amended in 2015²⁵². Although the provinces have implemented its own industrial relation Acts, the federal government still has to perform the coordinating role in order to ensure compliance of provincial labour legislations in accordance with the international labour conventions. The Ministry of Human Resource, development and overseas Pakistanis is the federal body, which liaise with the labour departments of the provinces and centre on the important labour issues and policies. It also collects statistical proofs from the provinces. The federal government is responsible to submit report regarding provincial labour legislations compliance with the ILO conventions at the end of each year. The ILO committee of experts has made a detailed analysis of the legislative issues in the federal and provincial IRAs and requested for amendments for bringing the federal and provincial IROs in

²⁴⁸ 2014 Annual Country Reports on Human Rights Practices – Pakistan, United States Department of States (25 June 2015) (<https://www.refworld.org/docid/559bd54a28.html>); <https://www.state.gov/documents/organization/253185.pdf>

²⁴⁹ Khyber Pakhtunkhwa Industrial Relations Act 2010.

²⁵⁰ Punjab Industrial Relations Act 2010.

²⁵¹ Sindh Industrial Relations Act 2013.

²⁵² Baluchistan Industrial Relations Act 2010; Baluchistan Industrial relations (Amendment) Act 2015

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line with the Convention.

ILO Committee of Experts Observations on Provincial Industrial Relations Acts and its Compliance with the Conventions

According to ILO Committee of expert initial observations, the federal IRA 2012 and provincial Industrial Relations Acts were adopted without in conformity with the convention. The Committee noted with regret that Federal IRA 2012 was adopted without addressing its previous comments on IRA 2008 and IRA 2011. Similarly, the provincial governments adopted their respective IRAs without any tripartite consultation, and all raise similar issues that existed in federal legislation 2012²⁵³. Provincial IRAs did not cover the inability of the agriculture worker to form association. These excludes the forestry workers, banking and financial workers, and officials in managerial and administrative capacity, the right to collective bargaining²⁵⁴. Similarly, the workers in export processing zone, government and state enterprises, State administrators and public sector workers were not given the right to collective bargaining and striking. The provincial IRAs also limit the right to strike and lock out. Similarly, under the Punjab IRA the right of trade union is not given to industry having less than 50 employees²⁵⁵.

The rights of the workers in informal and agricultural sectors was an important

²⁵³ Freedom of Association and Protection of the Right to Organise Convention, 1948(NO.87) Observation (CEARC) – adopted 2012, published 102nd ILC Session (2013) (https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3084394); United States Department of State, 2014 Country Reports on Human Rights Practices -Pakistan (25 June 2015) (<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=559bd54a28&skip=0&query=Industrial%5C%20relation%5C%20act%5C%20%5C%202012%20&coi=PAK>)

²⁵⁴ Freedom of Association and Protection of the Right to Organise Convention, 1948(NO.87) Observation (CEARC) – adopted 2012, published 102nd ILC Session (n 253).

²⁵⁵ *ibid.*

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area of concern, which was not covered in all the provincial IRAs. The Committee made a direct request that these workers should be brought within the scope of respective provincial IRAs for ensuring security and benefits²⁵⁶. Sindh Government under its IRA that was adopted in 2013 and Baluchistan Government through amendment in its IRA (2010) in 2015 allowed the workers in the informal sectors, such as agriculture and fisheries, within the scope of their respective IRAs application. Subsequently, the first ever Sindh Agriculture and Fishing workers Union has been formed (SAFWU)²⁵⁷. Currently this Union has 400 members, including 180 women²⁵⁸. Khyber Pakhtunkhwa is also considering to bring the workers in informal sectors within the cover of its IRA. In Punjab, a first home-based workers union has been formed, yet is not being able to operate and bargain collectively due to absence of legal framework under the Punjab IRA²⁵⁹. The Committee expressed its hope that the federal and provincial government will amend its current legislation in order to bring workers engaged in all the sectors, including agriculture and fishing within the scope of their respective IRAs so that these workers enjoy the rights afforded by the Convention in law and practice²⁶⁰.

²⁵⁶ Freedom of Association and Protection of the Right to Organise Convention, 1948(No.87) Observation (CEARC) – adopted 2012, published 102nd ILC Session (n 253).

²⁵⁷ Freedom of Association and Protection of the Right to organize Convention, 1948(No.87) Observation (CAER) -adopted 2016, published 106th session (2017) (https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3299939); European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 14

²⁵⁸ Freedom of Association and Protection of the Right to organize Convention, 1948(No.87) Observation (CAER) -adopted 2016, published 106th session (n 257).

²⁵⁹ *ibid.*

²⁶⁰ *ibid.*

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ILO Committee of Experts Observations on Strikes and Lock Out Provisions Under Federal and Provincial Industrial Relations Acts

The ILO committee of experts gave its observation concerning strike and lock out provisions in federal IRA 2012²⁶¹ and Provincial IRAs (KPIRA²⁶², BIRA (amended in 2015)²⁶³, SIRA²⁶⁴ and PIRA (amended in 2014)²⁶⁵ which limit the strike and lock outs. The Committee noted that sections 42(3) of the federal IRA, 44(3) of the KPIRA, 48(3) of the BIRA and 40(3) of the PIRA provides that, “where the strike lasts for more than 30 days the Government by an order, prohibit such a strike, provided that strike can also be prohibited at any time before the expiry of 30 days if ‘it is satisfied that continuance of such a strike is causing serious hardship to the community or is prejudicial to the national interest. Secondly the Government under sections 45 of the IRA and KPIRA, section 49 of the BIRA and section 41 of the PIRA the Government can prohibit a strike at any time before or after the commencement of strike related to an industrial dispute of ‘national importance’ or in respect of any public utility services²⁶⁶. A strike carried out in contravention of these sections is deemed illegal by virtue of section 43(1)(c) of IRA, 59(1)(c) of the KPIRA, 63(1)(c) of the BIRA and 55(1)(c) of the PIRA. Public utility services are listed in the schedules of the IRA and provincial IRAs and include services such

²⁶¹ Industrial Relations Act 2012.

²⁶² Khyber Pakhtunkhwa Industrial Relations Act 2010.

²⁶³ Baluchistan Industrial relations (Amendment) Act 2015.

²⁶⁴ Sindh Industrial Relations Act 2013.

²⁶⁵ Punjab Industrial Relations (Amendment) Act 2014.

²⁶⁶ Freedom of Association and Protection of the Rights to Organize Convention 1948 (NO 87) Direct Request (CEACR)- adopted 2016, 106th ILC session (2017) (https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100.COMMENT_ID:3299943).

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as oil production, postal, railways and air services the precision regarding strike of ‘national importance’ is not present in PIRA and KPIRA²⁶⁷. The Committee stated that prohibition of strike can only be allowed in the following situations. First in essential services where the interruption of services would endanger the life, personal safety or health of the whole or part of the population, secondly in the event of an acute national or local crisis thirdly in public services only when public servant exercising authority in the name of the state. Further the committee adds that not every strike lasting longer than 30 days fulfill these conditions and that services such as oil production, postal services, air and railway services do not fall in the category of essential services in the strict sense of the term.

The committee once again requested the government to amend the legislation to make it certain that any prohibition and restriction imposed on the right to strike is in full conformity with the Convention. Similarly, the governments of the provinces also amend their respective legislations concerning strike prohibitions after consultation with the social partners²⁶⁸.

Right of Workers and Employers Without Distinction Whatsoever to Establish and Join Organizations: Article 2 of the Convention

One of the main reason for low trade unionization in Pakistan is that several important sectors of employment in federal and provincial IRAs are excluded from exercising the right to freedom of association²⁶⁹. This shows noncompliance of fed-

²⁶⁷ Freedom of Association and Protection of the Rights to Organize Convention 1948 (NO 87) Direct Request (CEACR)- adopted 2016, 106th ILC session (n 266).

²⁶⁸ *ibid.*

²⁶⁹ These sectors are defense services, police, state administration, Ordnance Factory, Pakistan Security Printing Cooperation and Security Papers Limited, Security Staff of airlines, Public health

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eral and provincial IRAs with section 2 of the convention. The federal IRA excludes the following category of workers to form association e.g. workers employed in services or installation exclusively connected with armed forces of Pakistan, including the Factory Ordinance maintained by the federal government section 1(3) (a); workers employed in the administration of the state other than those employed as workmen, 1(3) (b); security staff in Pakistan International Airlines Corporations (PIAC), or drawing wages in a pay group not lower than Group V in PIAC, 1(3) (c); workers employed in Pakistan Security Printing Corporation or Security Papers Limited, 1(3) (d); workers employed by an establishment or institution or establishment for the care or treatment of sick or mentally unfit person, excluding those run on commercial basis and 1(3) (e); workers of the charitable organizations. In addition to that the committee noted that Section 1 of the KPIRA, PIRA and BIRA also exclude workers following list of workers (i) workers employed in services or installation exclusively connected with or incidental to armed forces of Pakistan, including the Factory ordinance maintained by federal government; (ii) workers in watch and ward staff, security or fire service staff of an oil refinery or an airport and sea port (KPIRA and BIRA), (iii) members of security staff or fire member staff of an establishment engaged in production, transmission or distribution of natural gas or liquefied petroleum gas, (iv) staff employed in administration of states except those employed as workmen by the Pakistan post and railway, (v) in the KPIRA and PIRA workers employed in institution or establishment providing education or emergency services except those run on commercial basis²⁷⁰.

and education sectors, security and fire services staff of oil refineries and airports, logistics and security, gas and petroleum production

²⁷⁰ Observation on Freedom of Association and Protection of the Rights to Organize Convention 1948 (NO 87) Direct Request (CEACR)- adopted 2016, 106th ILC session (n 266).

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The ILO Committee of experts also gave its observation on Section 1 of new SIRA which has excluded the above-mentioned five categories of workers from scope of its application except members of the watch and ward, security or fire service staff of a seaport²⁷¹. The Committee also noted that BIRA 2010 amended in 2015 even retains the exclusion of same category of workers from the scope of its application²⁷².

The federal and provincial government should amend those provisions of their respective IRAs which exclude the above mentioned categories of workers from the right to form association shall be given the right to establish and join organizations of their own choosing to further and defend their social, economic and occupational interests in accordance with Article 2 of the Convention²⁷³.

Moreover another restriction of Rights of association is the condition of twenty percent membership of total employed workers in any industry or firm imposed by all the IRAs. This condition is often misused by employers to thwart the establishment of multiplicity of union in one establishments. The employers in connivance with the labour departments, get secretly registered two fake pockets in their establishments, hence preventing the registration of representation workers union in their firm²⁷⁴. The employers often use ambiguities in definition of workers and employers categories to promote the workers to managerial status without actual salary increase so that they no longer qualify for the union membership²⁷⁵. These inconsistencies,

²⁷¹ Freedom of Association and Protection of the Rights to Organize Convention 1948 (NO 87) Direct Request (CEACR)- adopted 2016, 106th ILC session (n 266).

²⁷² *ibid.*

²⁷³ *ibid.*

²⁷⁴ A Report on GSP Plus and Labour Standards in Pakistan (Pakistan Workers Federation 2017) (n 213) 2.

²⁷⁵ *ibid.*

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legal exclusion and ambiguities exists almost in all IRAs²⁷⁶. The Essential Services Maintenance Act is invoked at times to limit and abolish the workers rights including banning of rights by the union. In February 2016 the same Act was invoked in Pakistan International Airlines against the protesting workers²⁷⁷. Similarly Banking Service Ordinance has severely decimated the union strength when section No 27-B was included in the law in 1997. The Government didn't retract the infamous section despite its commitment with the ILO to do so²⁷⁸.

Export Processing Zones(EPZs)

In Pakistan there are eight Export Processing Zones (EPZs) with 300 units employing 40,000 workers of which 70 percent are women²⁷⁹. These are managed by autonomous federal government body known as Export processing zone authority EPZA²⁸⁰. The IRAS are not applicable in these areas thus workers in these areas are not given the right to form labour union, collective bargaining and strikes. The ILO committee of experts in its observations indicated the lack of progress concerning grant of right to organize to the worker's in EPZS. The Government has committed to the ILO committee for the past 13 committee to bring changes in law to ensure compliance with rights of association and collective bargaining. The ILO committee urged the Government to accelerate the process of adopting the Export

²⁷⁶ A Report on GSP Plus and Labour Standards in Pakistan (Pakistan Workers Federation 2017) (n 213).

²⁷⁷ *ibid.*

²⁷⁸ *ibid.*

²⁷⁹ *ibid* 2.

²⁸⁰ Regional location of EPZs are Dadar, Saindal (Balochistan), Gujranwala, Sialkot (Punjab) Risalpur (Kyber Pakhtunkhawa) Karachi, Tuwariqi (Sindh)

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Processing Zones (Employment and Service Conditions) Rules 2009 without delay so as to guarantee the right to organize in EPZs and deprivation of the workers from the right to organize should not be considered as an incentive for the investors²⁸¹. It was expected that grant of GSP+ status would accelerate this process but it has not happened yet.

Article 4 of the Convention: Promotion of Collective Bargaining

The ILO committee of experts observed that relevant sections concerning collective bargaining in federal IRA and provincial IRAs restrict the collective bargaining. Section 19(1) of the IRA and Section 24(1) of the KPIRA, BIRA and PIRA and SIRA stipulates that ‘if the trade union is only one in the establishment or group of establishments or (industry in KPRA, BIRA, PIRA) but it does not have at least one third of the employees in its membership, no collective bargaining is possible in the given establishment or industries’. The Committee observed that the Government should amend the sections concerning collective bargaining in the IRAs in accordance with the Convention. In response to the Committee’s observations, the Government indicated that the condition of minimum requirement, which a trade union shall have, that is one third membership of the employees aims to promote democratic principles for the promotion of healthy and popular trade unionism; secondly, Pakistan follow an industrial relation system, where a trade union, after being selected as a collective bargaining agent is granted exclusive rights to represent all the workers, therefore, merely on the basis of its own membership or without

²⁸¹ Freedom of Association and Protection of the Right to Organise Convention, 1948(NO 87) Observation (CAER)-adopted 2018, published 108 ILC session (2019) (https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3962733).

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a referendum process, collective bargaining rights cannot be given to any union; thirdly, the provincial governments of Baluchistan and Sindh are consulting their respective law departments concerning these sections. Regarding the threshold of representativity, the committee responded that the determination of the threshold of representativity to nominate an exclusive agent so that he can negotiate collective agreements on behalf of all the workers in a sector or establishment is compatible with the convention in so far as the required conditions do not hinder the promotion of free and voluntary collective bargaining in practice. The committee specified that if no union meet the threshold of representation in any sector or unit to negotiate on behalf of all the workers, then minority trade union shall be allowed to negotiate jointly or separately, at least on behalf of their own members. The Committee of experts, therefore, requested the Government to take necessary measures in order to ensure that if there is no union which fulfills the requirement of threshold of representativity to be nominated as the collective bargaining agent, in that situation collective bargaining rights are granted to the existing unions, jointly or separately so that they can negotiate at least on behalf of their own members. The Committee emphasized that the Governments of the provinces should also take similar measures²⁸². Regarding the enjoyment of collective bargaining rights by the trade unions in various industries in Pakistan, Pakistan Workers Federation remarked in its report that ‘Collective bargaining without representation union is impossible. Without bargaining, the economic and commercial benefits of GSP+ cannot be justly shared

²⁸² Right to organize and collective bargaining Convention (NO 98) Observation (CAER)-adopted 2017, published 107th ILC (2018) (https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3340287); Right to organize and collective bargaining Convention (NO 98) Observation (CAER)-adopted 2018, published 108th ILC (2019) (https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3965931)

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with workers and Pakistan's citizens. To begin with, the additional profits of exporters must start benefit workers engaged in export sector industries, in particular the textile and garment sectors, without any further delay. Hence the freedom to form representative's workers union in the textile and garment sector will be the litmus test for the successful course of GSP+ scheme'²⁸³.

Overall the federal and provincial IRAs restrict the rights of association and collective bargaining. The federal IRA and Provincial IRAs continue to exclude several group of employments from the right to form association. These IRAs also do not provide coverage to the workers engaged in informal sectors such as agriculture, fisheries and home based workers. Except in Sindh province where the workers in informal economy have been given the right to form trade unions and collective bargaining. The condition of 20 percent membership in a firm for the registration of third trade union in all the IRAs further restrict the right of unionization. Exclusion of workers in EPZS from the rights to form association and collective bargaining till present is regrettable. Analysis of the relevant provision of Federal and Provincial IRAS concerning right to form association and collective bargaining shows that the national and provincial governments should amend those provisions for ensuring trade unionization and collective bargaining rights to the workers in all the sectors.

²⁸³ Pakistan's workers Confederation, European Union GSP Plus and Challenge of Labour Standards Compliance in Pakistan (2015) (<https://library.fes.de/pdf-files/bueros/pakistan/12099.pdf>).

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5.4.2.2 Worst Form of Child Labour and Minimum Age for Work (Conventions 182 and 138)

Worst form of Child labour Convention entered into force on 19 November 2001²⁸⁴ and Pakistan has ratified the Convention on 11 October 2001²⁸⁵. Minimum age Convention, 1973, (No.138) entered into force on 19 June 1976²⁸⁶ and Pakistan's ratified the Convention on 6 July 2006²⁸⁷.

An Overview of Child Labour in Pakistan

Article 11 of the Constitution prohibits all forms of slavery, forced labour and child labour. It provides that no child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment²⁸⁸. Article 37 clause (e) of the Constitution further provides that the State shall make provisions for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex²⁸⁹. Despite these constitutional guarantees, child labour is one of the serious issues and is prevalent throughout the country. No accurate figure is available on child labour in the country. The last survey was conducted in 1996, which has estimated 3.3 million underage workers in the country. Since then, no dedicated survey has been conducted on the estimates of

²⁸⁴ Worst forms of Child Labour Convention (No182) [1999].

²⁸⁵ Status of ratification (n 215).

²⁸⁶ Minimum age Convention (No138) [1976].

²⁸⁷ Status of Ratification (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200.COUNTRY_ID:103166).

²⁸⁸ Constitution of Islamic Republic of Pakistan 2012, art 11.

²⁸⁹ *ibid* art 37(e).

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the child labour in the country²⁹⁰. The ILO has estimated that 2.5 million children between the age of 10 and 14 are engaged in various forms of labour in Pakistan²⁹¹. The incidence of the child labour has considerably increased during past years. The higher share of boys in age group of 10 to 17 years is estimated to be involved in child labour especially in the province of Sindh and Baluchistan²⁹². Concerning worst form of child labour, no reliable data is available. However, there are reports that it takes place throughout the country and children are commonly employed in particular agriculture, brick kiln sectors and as domestic servants. Other instances of hazardous occupation include carpet weaving, mining industry, fish raising and glass bangles industry²⁹³ construction business, informal transport, surgical instruments industries and leather tanning²⁹⁴. Besides that, child trafficking is also a serious issue. Children who are kidnapped, sold and rented to work in various employments and

²⁹⁰ European Commission, ‘The EU Special Incentive Arrangement for Sustainable Development and Good Governance (‘GSP+’) covering the period 2014-2015’ SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 202.

²⁹¹ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 15.

²⁹² European Commission, ‘The EU Special Incentive Arrangement for Sustainable Development and Good Governance (‘GSP+’) covering the period 2014-2015’ SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 202.

²⁹³ U.S. Department of State. Pakistan. In: Country Reports on Human Rights Practices- 2018 (13 April 2019) (<https://2009-2017.state.gov/j/drl/rls/hrrpt/humanrightsreport//index.htm>) 49-54; U.S. Department of State, 2018 Trafficking in Person Reports (<https://www.state.gov/wp-content/uploads/2019/02/282803.pdf>), 336-340; ILO Committee of Experts, Individual Observation concerning Worst Forms of Child Labour Convention, 1999 (No.182) (15 February 2013) (<http://www.ilo.org/ilolex/cgi/lex/pdconv.pl?host=status01&textbase=iloeng&document=12714&chapter=6&query=Pakistan%40ref&highlight=&querytype=bool&context=0>)

²⁹⁴ ILO-IPEC, Supporting the Timebound Program on the Elimination of the Worst Forms of Child Labour in Pakistan, Technical Progress Report (14 September 2008); ILO-IPEC, Supporting the Timebound Program on the Elimination of the Worst Forms of Child Labour in Pakistan, Project Document (17 September 2003)

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are often deployed to beg²⁹⁵. Girls are trafficked internationally and domestically and forced into commercial sexual exploitation²⁹⁶. Boys are the equal victims of human trafficking. They are usually kidnapped from truck shops, bus stations, hotels and shrines and forced into commercial sexual exploitation²⁹⁷. Children are also used for smuggling drugs and small weapons across the Pakistan – Afghan border²⁹⁸. Militants groups also use children for spying in arm conflict and train them for suicide attacks²⁹⁹. Those children, who are trafficked across Pakistan and Afghan borders, are often used for this purpose. In some cases, even the parents are coerced to hand over their children to these groups. During this whole process, children are then subjected to psychological, physical and sexual abuse³⁰⁰. Children, who work as a domestic servant, are subjected to extreme abuse and sexual assault. Instances of children being killed by their employers are reported from time to time in media³⁰¹.

²⁹⁵ U.S. Department of State, Country Reports on Human Rights Practices- 2014 (27 July 2015) (<http://www.state.gov/documents/organization/243561.pdf>).

²⁹⁶ U.S. Department of State. “Pakistan”, in Trafficking in Persons Report-2014 (Washington, DC; July 27) (<http://www.state.gov/documents/organization/243561.pdf>); U.S. Department of State, Country Reports on Human Rights Practices- 2014 (n 295) 336-340

²⁹⁷ *ibid.*

²⁹⁸ *Children and armed conflict: Report of the Secretary-General* (A/65/820-S/2011/250, UN General Assembly Security Council 2011)

²⁹⁹ U.S. Department of State, Country Reports on Human Rights Practices- 2014 (n 295); Child Soldiers International, Pakistan: Alternative report to the Committee on the Rights of the Child on Pakistan’s fifth periodic report on the Convention on the Rights of the Child (2015) (http://child%20soldiers.org/research_report_reader.php?id=845)

³⁰⁰ U.S. Department of State, Country Reports on Human Rights Practices- 2014 (n 295).

³⁰¹ Child Rights Movement Punjab, *The Unending Plight of Child Domestic Workers in Pakistan: Exploitation, Abuse, Rape, and Murder* (2013) (<http://www.isj.org.pk/policyresearch/the-unending-plight-of-child-domestic-workers-in-pakistan/>).

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Laws and Regulations on Worst Form of Child Labour in Pakistan

Following the 18th amendment to the Constitution, the powers relating to child welfare become a subject of the provincial governments. The provincial governments owe the responsibility to legislate and implement child labour laws, and to adopt policies in their respective provinces³⁰². The Federal government must perform the coordinating role and responsibility to ensure that the federal and provincial legislations and policies comply with the ILO conventions no 182 and 138, ratified by Pakistan. Till the province complete the process of adopting their own legislation, the Federal law Employment of Children Act 1991, which regulated the employment of children to work and hazardous occupation, remained in force.

Employment of Children Act 1991

This federal law on employment of children Act, was adopted in 1991, which prohibits the employment of children in certain list of occupations and processes, given in the schedules of the Act. The Act has specified the age limit for the employment of child and adolescent. According to this Act, a child is a person who has not completed his or her 14th year of age and adolescent is a person who has completed his fourteen years but has not completed his eighteenth year. The Act prohibited employment of a child who is under fourteen years of age in such occupations and processes deemed hazardous by the Government. Such occupations and processes are set forth in Parts 1 and 2 of schedule of the Act³⁰³. This Act did not specify the

³⁰² Constitution (Eighteenth Amendment Act) 19 April 2010.

³⁰³ Employment of children Act 1991, ss 2(1)(3), 3.

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age for admission to hazardous work³⁰⁴. In 2002, the federal Government included 29 occupations and 34 processes in its list of hazardous occupations and processes for children under 14 years of age. The list covered making, mixing and applying pesticides and insecticides, carpet weaving, ports or working at railway station, employment in glass bangle industry, manufacturing of cements, explosives or such products that involved use of toxic substances³⁰⁵. However, domestic work and brick kilns sectors, in which large number of children are employed, were not included in the list of prohibited occupation and processes. Further, by prohibiting the employment of children under 14 years of age in these occupations and processes, left the children in age bracket of 15-17 years of age unprotected from being employed in dangerous occupations³⁰⁶.

Following the devolution of power under the 18th constitutional amendment, the federal government and each of the four provincial governments have worked on drafting its prohibition of Employment Children Act, which prohibits employment of children below 14 years to ensure compliance with minimum age requirement for admission to employment or work in accordance with article 2(1) of the Convention. It is important to recall that at the time of ratification of the convention, Pakistan has specified 14 years as applicable minimum age³⁰⁷. The Province of Khy-

³⁰⁴ Employment of children Act 1991, ss 2,3.

³⁰⁵ *ibid*; ILO-IPEC, Supporting the Timebound Program on the Elimination of the Worst Forms of Child Labour in Pakistan, Project Document (n 294)

³⁰⁶ ILO Committee of Experts, Individual Observation concerning Minimum Age Convention, 1973 (No. 138) Pakistan (ratification: 2006) Published:2011 (15 February 2013) (<http://www.ilo.org/ilolex/cgi%20lex/pdconv.pl?host=status01%5C&textbase=iloeng%5C&document=12548%5C&chapter=6%5C&query=Pakistan%5C%40ref%5C&highlight=%5C&querytype=bool%5C&context=0>)

³⁰⁷ Minimum age Convention 1973 (NO.138) Committee of expert Observation (CEACR)-adopted 2013, published 103rd ILC (2014) (https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3112766).

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ber Pakhtunkhwa adopted prohibition of Employment Children Act in 2015, which have specified the minimum age for admission to work as 14 years. Punjab adopted Punjab Restriction on Employment of Children Act, 2016, which has specified the minimum age of employment of children as 15 years. The Sindh prohibition of employment of children Act, has specified the minimum age for admission to work as 14 years. Federal and Balochistan Government have drafted legislation with similar provisions but have not adopted the final Acts yet. The ILO Committee of Experts in its observations has urged the Government that legislation on Prohibition of Employment of Children Acts in all the four provinces and in Federal territory should be adopted compliance with the Article 2(1) of the Convention, which has specified 14 years as the applicable minimum age for children admission to work and also less than 18 years of age in hazardous occupation³⁰⁸.

Ministry of Overseas Pakistani and Human Resource Development (MOP&HRD) in 2016 developed a National strategy for elimination of child and bonded labour in a coherent, systematic and effective manner through re-alignment of existing institutional mechanism at federal, provincial and district level. The provinces will take steps on legislations, rules, regulations, enforcement of law, policies and actions plans. Proposed actions included capacity building of all stakeholders, enhancing the system child and bonded labour data collection, partnership and resource mobilization and Information, Education and Communication (IEC)³⁰⁹.

³⁰⁸ Minimum Age Convention, 1973 (NO.138) Committee of expert Observation (CEACR)-adopted 2017, published 107th ILC (2018) (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100.COMMENT_ID:3327224:NO).

³⁰⁹ National Strategy on the elimination of Child and Bonded labour in Pakistan (2016-2020) (https://www.ilo.org/islamabad/info/public/pr/WCMS_477252/lang--en/index.htm).

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Analysis of Provincial Governments Legislations in Compliance with the Conventions

Khyber Paktunkhwa Prohibition of Employment of Children Act 2015:

The provincial government of Khyber Pakhtunkhwa has enacted the Elimination of Child Labour, protection of children and young Persons Act, and has repealed the federal law employment of children act 1991. Under the Act, child is a person who has not completed his fourteenth year of age and adolescent is any person who has completed 14 years of age but has not completed his 18th year of age³¹⁰. The act ‘prohibits employment of children in any establishment except a child not below 12 years of age can be engaged in a light work for a maximum of two hours a day for acquiring any skill, in a private undertaking, or in any school established, assisted or recognized by the government’³¹¹. No adolescent is to be employed or permitted to work in any hazardous work included in the schedule of the Act³¹². The Act penalized the employment of children or adolescent for breaching the provisions of the Act³¹³.

Punjab Restriction on Employment of Children Act 2016: The provincial government of Punjab has adopted Restriction on employment of Children Act on 14 of July 2016. The Act declared employment of children under the age of 14 years as heinous crime as well as laid down strict regulations for employment of adolescents between 15-18 years³¹⁴. The Act also aimed at giving protection to children from

³¹⁰ Khyber Pakhtunkhwa Prohibition of Employment Children Act 2015, ss 2(a), 2(b).

³¹¹ *ibid* s 3.

³¹² *ibid* s 3(2).

³¹³ *ibid* s 15.

³¹⁴ The Punjab Restriction of Employment of Children Ordinance 2016, ss 2(a),2(c),3.

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bonded labour, trafficking and abuse. It penalizes the employment of the children or permitting him to work and that of adolescent in hazardous occupation and illegal industries for a maximum period of imprisonment of six months which shall not be less than seven days and a fine maximum up to 50,000 Rupees which shall not be less than 10000 Rupees³¹⁵. The Act also prescribed punishment for the repeated offenders with imprisonment which may extend to five years and shall not be less than three months along with the fine prescribed for the offence³¹⁶. The Act holds accountable both the employer and parents or the guardians³¹⁷. The Act set the rules for the employment of the adolescent by specifying their working hours, which shall not exceed three hours a day, setting break times which include mandatory one-hour break, if working hours exceed three hours a day. Under the Act, total period of working hours for the adolescent, including break interval, shall not exceed maximum seven hours a day³¹⁸. The employer shall give mandatory one day off in a week. Further, it is laid down that the working hours shall not hinder the education or vocational training of the adolescent. The Act specified the list of industries in the schedule which prohibit the employment of adolescent due to their health and personal safety³¹⁹. Under the Act subjecting children and adolescents in slavery or using them for immoral activities, prostitution, drug production or its trafficking is also punishable with imprisonment for a term up to seven years which shall not be less than three years and with a fine up to one million rupees which shall not be less

³¹⁵ The Punjab Restriction of Employment of Children Ordinance 2016, s 11(1)(2).

³¹⁶ *ibid* s 11(4).

³¹⁷ *ibid* s 12(2).

³¹⁸ *ibid* s 5.

³¹⁹ *ibid* ss 2(1), see schedule of the Act.

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than Rs200,000 rupees³²⁰.

The Punjab Prohibition of Child Labour at Brick Kilns Act 2016: The Act is considered to be the first sector-specific legislation that was adopted to prohibit child labour specifically in brick kiln, a common practice in the province of Punjab. Under the Act, an owner shall not employ, engage or permit a child to work at a brick kiln³²¹. If a child above five years of age is found at the brick kiln during the school timings, until the contrary is proved, he is deemed to be employed, engaged or permitted to work at the brick kiln³²². The liability is on the employer and a parent or guardian if a child is employed or permitted to work at the brick kiln, contrary to the provision of the Act³²³. The employer, if found guilty of employing a child at the brick kiln, shall be punished with simple imprisonment maximum up to six months which shall not be less than seven days and a fine which may extend to 500,000 rupees³²⁴ and shall not be less than 50,000 rupees. Further measures include inspections in kilns, provisions of computerized national identity cards to workers in kilns as incentives to enrol their children in schools.

In year 2014, 133, 973 inspections were conducted on brick kilns in Punjab, which detected 790 children in child labour. In 2015, 153, 418 inspections were conducted, which detected 1, 446 children in child labour. All these cases were prosecuted, and convictions were handed out with fines³²⁵.

³²⁰ The Punjab Restriction of Employment of Children Ordinance 2016, s 11(3).

³²¹ The Punjab Prohibition of Child Labour at Brick Kiln Act 2016, s 5.

³²² *ibid* s 6.

³²³ *ibid* s 7.

³²⁴ *ibid* s 13.

³²⁵ Minimum Age Convention, 1973 (NO.138) Committee of expert Observation (CEACR)-adopted 2017, published 107th ILC (2018) (n 308).

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Overall enforcement of Child labour legislations is important area of concern. The labour inspection system is weak due to lack of inspectors assigned to child labour, lack of training and resources, corruption issue and penalties, when imposed are too minor to lack a deterrent effect. In addition to that, there is a total lack of labour inspections in the informal sectors where most children work³²⁶. The ineffectiveness of labour inspection machinery reduces the likelihood of investigations into reports of child labour, and hinders the prosecution, conviction and punishment of those who violate the law. In response to Committee observation, the Government indicated that building the capacity of the labour inspectors is the priority area for the government as well as implementation of the labour laws. The provincial labour departments have set up the training centres to provide training on child labour³²⁷.

For the revitalization and restructuring of the labour inspection system, the Federal Ministry of Overseas Pakistanis and Human Resource Development (OP&HRD) has worked on framework document. The Reforms recommended under this framework are being followed under the ‘Programme of Strengthening Labour Inspection System for promoting Labour standards and Ensuring Workplace Compliance in Pakistan’ supported by ILO³²⁸. According to new laws in Punjab and KPK on prohibition of employment of children, the maximum fines have been increased from 20,000 to 50,000 Pakistani rupees³²⁹. However, the lack of sufficiently trained inspectors, their vulnerability to corruption and lack of resources to visit the sites

³²⁶ Minimum age Convention 1973 (NO.138) Committee of expert Observation (CEACR)-adopted 2013, published 103rd ILC (2014) (n 307).

³²⁷ *ibid.*

³²⁸ Minimum Age Convention,1973 (NO.138) Committee of expert Observation (CEACR)-adopted 2017, published 107th ILC (2018) (n 308).

³²⁹ *ibid.*

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are the main issues which the government is required to address in order to enforce the law on elimination of child labour in informal sectors. The Committee of experts requested the government to continue its effort to strengthen the capacity of labour inspection system and to provide full information on the number and nature of violations relating to employment of children, found by the labour inspectors. The government should make sure that those persons, who violate these laws, are prosecuted and sufficiently effective and dissuasive penalties are imposed on them³³⁰.

The ILO Committee of experts urged the Government to take measures to ensure the adoption of draft laws prohibiting the employment of children under 18 years of age in hazardous employment in federal territory, Sindh and Baluchistan provinces in near future. The Government should determine the type of hazardous employment or work prohibited to young persons under 18 years after consultation with the organization concerned of employers and workers in conformity with Article 3(1) (2) of the Convention³³¹.

The ILO Committee of experts highlighted that under Article 25A of the Constitution, the state has made provision of free compulsory education to all children between the ages 5-16 years in such a manner as determined by law. Under this Article, the Provinces have adopted free and compulsory Education Acts i.e. Punjab Free and Compulsory Education Act 2014, Baluchistan Compulsory Education Act 2014, Sindh Right of children to Free and Compulsory Education Act 2014 which provide for free and compulsory education to children within age bracket of 5-16 years. However, in province of Khyber Pakhtunkhwa Compulsory Primary Educa-

³³⁰ Minimum Age Convention, 1973 (NO.138) Committee of expert Observation (CEACR)-adopted 2017, published 107th ILC (2018) (n 308).

³³¹ *ibid.*

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tion Act 1996 remains applicable, which provides for free and compulsory education between 5-10 years of age. The ILO Committee of experts pointed out a discrepancy that exists in these legislations concerning minimum age of employment that is 14 year of age while the age for compulsory education provided by the state is 16 years. If the minimum age of work is lower than a school leaving age, children will be encouraged to leave school as they are legally permitted to work. As per Article 3 (2) of the Convention minimum age required for admission to work shall not be lower than age of completion of compulsory education. In this regard, the committee of experts made a request to the Government to provide information on any measures taken to link the minimum age for admission to employment to the age of completion of compulsory education, in accordance with article 3(2) of the Convention³³².

The International labour standard unit in the Ministry of OP & HD, by using the ILO Global estimation Methodology on Child Labour, has created the first detailed national profile on child labour and children in employment, and published the report ‘Understanding Children’s Work in Pakistan. An insight into Child Labour Data (2010-2015) and Legal framework’. As per that report, the number of children in age bracket of (10-17) years of age engaged in child labour has decreased from 4.04 million in 2010-11 to 3.70 million in 2014-15. Out of these, 2.067 million children, which makes 55 percent, are in the age bracket of 10-14 years. These figures show that high number of children under the minimum age are still working. The Committee, therefore, urged the government to strengthen its efforts to prevent and eliminate

³³² Minimum Age Convention,1973 (NO.138) Committee of expert Observation (CEACR)-adopted 2017, published 107th ILC (2018) (n 308).

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child labour in the country, including thorough continued cooperation with ILO³³³.

To further streamline the efforts done so far on the elimination of child labour including the worst form at the central and provincial level, the federal government has appointed a focal Person in the Ministry of Pakistanis and Human Resource development. His task is to make inventory of the previous legislations on child labour, to work on a national strategy for eliminating child labour and to correspond with the provincial governments to adopt necessary legislations on child labour and to conduct local surveys on child labour³³⁴.

5.4.2.3 Equal Remuneration Convention, 1951 (No. 100) and Elimination of Discrimination in (Employment and Occupation), 1958 (No.111)

Equal remuneration Convention entered into force on 23 May 1953³³⁵, Pakistan ratified the Convention on 11 October 2001³³⁶. Elimination of discrimination in (employment and occupation) entered into force on 15 June 1960³³⁷. Pakistan ratified the Convention on 24 January 1961³³⁸. Pakistan has maintained the reporting

³³³ Minimum Age Convention,1973 (NO.138) Committee of expert Observation (CEACR)-adopted 2017, published 107th ILC (2018) (n 308).

³³⁴ European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 202.

³³⁵ Equal Renumeration Convention,1951 (No.100) (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312245:NO).

³³⁶ Status of ratification (n 215).

³³⁷ Discrimination (Employment and Occupation) Convention,1958 (No.111) (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312256:NO).

³³⁸ Status of ratification (n 215).

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obligation under both these Conventions.

An Overview of the Participation of Women Work Force in Labour Market of Pakistan

As reported by Labour force survey 2015, only half of Pakistan's population is in labour force, i.e. 53.4 percent³³⁹. This figure represents a small increase from 1992, when labour force participation was only 48.6 percent. Between 1992 and 2014, men labour force participation in labour market remained unchanged to 83 percent, while that of women work force participation rate doubled from 13.3 percent in 1992 to 25 percent in 2014³⁴⁰. Yet the participation of the female labour force in urban areas remains low, while it is the rural unpaid female workers that has increased³⁴¹. According to ILO statistic report (ILOSTAT), Pakistan's female labour force participation rate remain one of the lowest not only in south Asia but globally³⁴². The female participation is concentrated in few sectors such a garments, electronics, knitting and other informal activities. Besides that, in factories the women employment is either contractual or on a piece rate basis and the nature of work involved is temporary and manual, which requires very little skills. Women are employed as a part time worker; therefore, their terms of employment are usually discriminatory and without any implementation of labour laws³⁴³. As per ILO 2011

³³⁹ Pakistan Labour Market Profile (n 196) 15; Saman Amir and others, 'Female Labor Force Participation in Pakistan: What Do We Know?' [2018] World Bank

³⁴⁰ The Global Economy, Country Ranking, Female Labour Force Participation (https://www.theglobaleconomy.com/rankings/Female_labor_force_participation/).

³⁴¹ *ibid.*

³⁴² Pakistan Labour Market Profile (n 196) and The Global Economy, Country Ranking, Female Labour Force Participation (n 340)

³⁴³ Maliha Zia Lari, 'Gender Review of Labour Laws in Pakistan' [2010] Pakistan Institute of Labour Education and Research (PILER) (<http://piler.org.pk/wp-content/uploads/2017/02/Gender->

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report findings, women working in construction sector face socio-cultural religious discrimination and harassment. These barriers are prominently the main obstacles which prevent women to participate in various trades. However, the study did not give any result on gender wage gap³⁴⁴. As compared to men, female's share as unpaid family workers and employees is higher³⁴⁵. The reason being that large bulk of female work force is engaged in home-based industries in comparison to men. According to 2008-09 labour force survey, large bulk female work force is engaged in home-based industries; the ratio is 71.4 percent female workers as compared to 29.6 percent of male workers³⁴⁶. Women are mostly engaged as part time workers, seasonal workers, domestic workers, in agriculture sector and in formal sector and home-based sectors which leads to their less favourable treatment, thus resulting in the indirect gender discrimination³⁴⁷. Gender discrimination and wage gap between men and women having the same qualification and performing the same amount of work verily exist in the labour market of Pakistan³⁴⁸. Therefore, male workers enjoy an economic advantage over the female workers despite having the same character-

Review-of-Labour-Laws.pdf).

³⁴⁴ Baseline Study to Assess Gender Disparities in Construction Sector Jobs; Towards Gender Parity in Pakistan (TGP), (ILO Country Office for Pakistan, Islamabad 2011) (<https://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-islamabad/documents/publication/wcms-185255.pdf>).

³⁴⁵ Government of Pakistan, Labour Force survey 2009-10 (<http://www.pbs.gov.pk/content/labour-force-survey-2009-10>).

³⁴⁶ Government of Pakistan, Labour Force survey, 2008-09 (<http://www.pbs.gov.pk/content/labour-force-survey-2008-09>).

³⁴⁷ Nadia Salem, 'Emerging shape of labour market and women' in Nadia Salem (ed), *Labour Rights in Pakistan expanding informality and diminishing Wages* (PILER 2011) 39-56.

³⁴⁸ *ibid.*

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istics³⁴⁹. The UNDP findings pointed out that the maternity benefits are available only to women employed in formal sectors. The findings also show that there is no specific law on equal pay in Pakistan³⁵⁰. Women receive on average less than 60 percent of the salary of men for equal work³⁵¹.

Moreover, the women entrepreneur usually ventures their business in micro enterprises, and they are hardly seen in the large and medium enterprise categories. The reasons are the socio – cultural and legal and economic inequalities which prevent them to expand their businesses³⁵². As barriers compared to men, the women do not get equal property rights, education, access to finance, any business support, non-acceptance of women economic role in household by men and sexual harassment faced by women at work places are few important reasons which put them in a disadvantage position³⁵³. Therefore, women workers are concentrated in the informal sector without any legal protection and support of labour welfare institutional schemes³⁵⁴. The constitutional provisions of Pakistan also guarantee the right to equal opportunity in employments and right to equal remuneration between men and women without any discrimination. For instance, Article 18 of the Constitution provides for the freedom to enter any lawful trade, profession or business to

³⁴⁹ Mohmmad Farooq and Dato'Jamalludin Sulaiman, 'Gender Earnings Inequality and Discrimination in the Pakistani Labor Market' (2009) 4(3) Dialogue (1819-6462).

³⁵⁰ Hasna Cheema, *Benchmarking National Legislation for Gender Equality: Findings from Five Asian Countries* (Human Development Report Unit, UNDP Asia-Pacific Regional Centre 2010).

³⁵¹ European Commission, The EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) assessment of Pakistan covering the period 2016-2017, Joint Staff Working Document Brussels (n 10) 16.

³⁵² ILO, Gendered review of SME Policy, Towards Gender Parity in Pakistan (TGP) Project (http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@iloislamabad/documents/publication/wcms_185251.pdf).

³⁵³ Constitution of Islamic Republic of Pakistan 2012, art 18.

³⁵⁴ Pakistan Labour Market Profile (n 196) 11.

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all the citizens without any discrimination'³⁵⁵. Article 25 of the Constitution stands for the equality of legal status of the citizens and guarantees that there shall be no discrimination based on gender'³⁵⁶. Article 27 provides the safeguard against any discrimination in service. If a citizen is qualified for appointment in the service of Pakistan, he or she cannot be refused appointment merely on the ground of race, religion, caste, sex, residence or place of birth'³⁵⁷. Article 37 of the Constitution stands for the promotion of social justice and eradication of social evils in the society. It provides that the state shall make provisions for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment'³⁵⁸. These Articles guarantee the fundamental rights of equality among the citizens of Pakistan and ensure equal opportunity to secure any employment and occupations without any discrimination. Any law made in contravention of the basic provisions of these articles can be challenged in High Courts. These Articles provide the basis for legislations and policy formulations in the field of labour'³⁵⁹. The government of Pakistan has framed various national policy frameworks from time to time to give protection to female labour force in market and to ensure compliance with the ILO Conventions.

There exist no discrimination in labour laws of Pakistan concerning male or female workers. The term 'worker' is used in labour laws which includes both male

³⁵⁵ Constitution of Islamic Republic of Pakistan 2012, art 18.

³⁵⁶ *ibid* art 25.

³⁵⁷ *ibid* art 27.

³⁵⁸ *ibid* art 37(e).

³⁵⁹ Muhammad Javaid Iqbal, 'ILO Conventions and Gender Dimensions of Labour Laws in Pakistan' (2015) 30(1) *South Asian Studies*, 243-247.

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and female³⁶⁰. However there is no specific legislative framework to address these conventions of equal remuneration and discrimination with respect to employment and occupation³⁶¹. There is no separate law or any specific provision in the labour laws which indicates that between men and women, there shall be no discrimination in employment and occupation opportunities³⁶². To avoid discrimination in employment, the federal government has allotted minimum quotas for female employment in public sectors, the allotted quotas is 10 percent, 5 percent to minorities, 2 percent to disabled. The Provincial governments have also allotted quotas for female employment, Punjab government fixed the quota to 15 percent, 5 percent in Khyber Pakhtunkhwa and Baluchistan, 7 percent in Sindh. The quota for disabled is fixed at 3 percent in all the provinces except Khyber Pakhtunkhwa where the minimum quota for disabled is one percent³⁶³.

Gender discrimination exists regarding equal opportunity in employment and occupation and payment of wages. Out of total female labour force only 1 percent of women (0.30 percent) are employed in positions like senior officials, managers and legislators of the total labour female employed force³⁶⁴. Women often lack access to better employment opportunities and take up occupation in informal sectors and agriculture, where they are paid low. The lack of education, necessary skills required for any job are the main challenges in getting equal opportunity relating to any employment and occupation. Except in Public sector employments, the women workers

³⁶⁰ Ghaus, Memon, and Iqbal (n 193) 20.

³⁶¹ *ibid.*

³⁶² Iqbal (n 359) 253

³⁶³ Ghaus, Memon, and Iqbal (n 193) 20.

³⁶⁴ *ibid.*

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are usually paid low for equal amount of work in informal employment. This trend is due to absence of specific laws and legislation which can ensure equal pay for equal amount of work³⁶⁵. The important Federal laws need to be mentioned here which deal with wages, i.e Payment of Wages Act 1936, Minimum Wages Ordinance 1961 and Minimum wages (for unskilled) workers Ordinance 1969. The Payment of Wages Act lays down provision regarding payment of wages to workers in industries and in such other occupations defined by the Act, provides procedure for lodging complaints in case of delay in payment of wages and provides the necessary provisions for safeguarding right of workers to wages. The minimum wage ordinance 1969 prescribed the wages up-to certain limit that can be paid to certain class of workers and Minimum wage ordinance 1961 gave provisions regarding the payment of wages to class of workers. It is important to note that these three legislations that deal with the wages were not gender specific and were applicable on all the workers that comes within the scope of its application³⁶⁶.

Provincial Governments Legislations on Equal Remuneration and Discrimination (Employment and Occupation) Conventions

Pursuant to the transfer of the labour Ministry to the Provincial governments under the eighteenth amendment to the Constitution, the important legislations adopted by the provincial governments regarding implementation of ILO Convention on equal remuneration and discrimination in employment and occupation are as follows;

³⁶⁵ Pakistan Labour Market Profile (n 196); European Commission, 'The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') covering the period 2014-2015' SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european-commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 203

³⁶⁶ Iqbal (n 359) 250,251.

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Khyber Pakhtunkhwa Minimum Wages Act 2013: The Act, by establishing the minimum wages board, provides for the ‘regulation of minimum rate of wages and various allowances for different categories of workers employed in certain industrial and commercial undertakings and establishments’³⁶⁷. Section 26 of the Act enumerates grounds of discrimination, it states that ‘there shall be no discrimination on the basis of gender, religion, sect, colour, caste, creed, ethnic background, in the wages and other benefits for work of equal value’³⁶⁸. It is important to evaluate the impact of this law on the elimination of gender gap³⁶⁹.

Section 18 of the Act, which enumerated the prohibited grounds of discrimination, does not include ‘sex’. The ILO Committee of experts noted that this may result in setting the lower wages in those sectors which predominantly employ women workers. Hence to ensure that wages are fixed without any gender bias, attention should be paid while setting the minimum wages for every sector³⁷⁰.

Sindh Minimum Wages Act 2015: The Act gives regulations for the minimum rate of wages for the different categories of workers employed in certain industrial and commercial undertakings. Section 18 of the Act provides for protection against discrimination. It says, ‘No discrimination shall be made based on sex, religion, political affiliation, sect, colour, caste, creed, ethnic background in considering and disposing of issues relating to the enforcement of this Act’³⁷¹.

³⁶⁷ Preamble, Khyber Pakhtunkhwa Minimum Wages Act 2013.

³⁶⁸ *ibid* s 26.

³⁶⁹ Equal Remuneration Convention, 1951 (No.100) Direct Request (CEACR)-adopted 2017, published 107th ILC session (2018) (https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101.COMMENT_ID:2258134).

³⁷⁰ *ibid*.

³⁷¹ Sindh Minimum Wages Act 2015, s 18.

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Punjab Payment of Wages (Amendment) Act 2014: The Punjab payment of wages (Amendment) Act, 2014 is the amendment to Payment of wages Act 1936. It regulates the payment of wages to certain class of workers employed in factory, industrial or commercial establishment or in any other undertakings³⁷². The Act does not contain any specific provision regarding protection against discrimination on ground of gender, however there is no classification of workers when it comes to payment of wages. Section 4 of the Act reads, ‘The Act applies to the payment of wages to persons employed in any factory, industrial establishment or commercial establishment and to persons employed (otherwise than in a factory, industrial establishment or commercial establishment) upon any railway by a railway administration or, either directly or through a subcontractor, by a person fulfilling a contract with a railway administration.

Minimum Wages for Unskilled Workers (Amendment) Act, 2016: The Act was adopted by the federal government and is applicable to the capital territory. This Act is amendment to minimum wages for unskilled worker’s ordinance 1969. The Act has amended the wages for the unskilled workers specified in the schedule column (2) of Minimum wages ordinance 1969³⁷³.

In Pakistan considerable wage differences exists between male and female workers in Pakistan³⁷⁴. Over the years wage gap has increased significantly in sectors like construction and agriculture but has worsened in sectors like fianace & insurance, education. In the manufacturing sector the wage gap is considerably largest. The

³⁷² Punjab Payment of Wages (Amendment) Act 2014.

³⁷³ Minimum wages for unskilled workers (Amendment) Act 2016.

³⁷⁴ Ghaus, Memon, and Iqbal (n 193) 20.

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women in this sector earn 62 percent less than their male counterparts³⁷⁵. According to PWF report only 66 percent women employees are getting equal remuneration in their respective organizations. In textile industry, the ratio is 68 percent³⁷⁶.

Federal and Provincial Governments Legislations Against Discrimination in (Employment And Occupation): For the elimination of discrimination in employment and occupations, few important developments are made in this area as well. The Federal government has established the tripartite committee in 2015 which works with the provincial governments to facilitate the implementation of the convention. The tripartite commission is responsible to review the provincial legislations to incorporate all the grounds of discrimination given in article 1 (1) of the convention on discrimination in (employment and occupation). The Ministry of overseas Pakistanis & Human Resource Development (OPHRD) has drafted a model law to assist the provinces for the enactment of laws at provincial level to bring it in accordance with relevant conventions³⁷⁷. The federal ministry of human rights has also drafted a Model Women Empowerment package which will be used by provinces for possible adoption³⁷⁸. To give women an equal opportunity to work in (a) healthy and feasible environment by raising the awareness against the sexual harassment, the Federal Ombudsman's Secretariat, Pakistan Workers Federation and Employers Federations of Pakistan through their combined efforts have arranged a series of training programs. An online complaint mechanism has been set up to deal with sexual harassment at workplaces. In addition to that, the provincial governments

³⁷⁵ Ghaus, Memon, and Iqbal (n 193).

³⁷⁶ *ibid.*

³⁷⁷ *ibid.*

³⁷⁸ International Labour Standard Unit, GSP -Plus and compliance with core labour standards: Pakistan's case, Ministry of overseas Pakistani & Human Resource Development .

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have appointed the gender focal persons to work with relevant departments to deal with the gender related issues³⁷⁹. The establishment of the Provincial Commissions on the status of the Women at the provincial levels is another important progress towards attaining the gender equality.

The Punjab Fair Representation of Women Act 2014: Another milestone development for empowering women and give them equal participation in the decision-making process is brought through the Punjab fair representation of women Act. The Act has brought amendment to important bodies and public entities by giving fair participation and representation to women as quotas in the decision-making bodies³⁸⁰. The Government of Punjab under its Women Empowerment package 2012 aimed to address the social and economic rights of women who make up half of the population of Punjab. Important measures for women empowerment under this package include increase in quota for women in public service employment to 15 percent. Provision of day care facilities in all public sector offices, and for encouraging women entrepreneurs the Punjab government announced ‘Women entrepreneurs ship financing scheme for loans for commercial ventures by women such as eateries, day care centres, shops, catering, driving schools, vocational centres, clothing and accessories etc³⁸¹.

Domestic Workers Trade Union in Punjab 2015: The trade union of domestic workers, the very first trade union of its kind, was formed in the year 2015.

³⁷⁹ European Commission, ‘The EU Special Incentive Arrangement for Sustainable Development and Good Governance (‘GSP+’) covering the period 2014-2015’ SWD(2016) 8 final Brussels (https://eeas.europa.eu/sites/eeas/files/european_commission._2016._report_on_the_generalised_scheme_of_preferences_during_the_period_2014-2015.pdf), 203.

³⁸⁰ The Punjab Fair Representation of Women Act 2014.

³⁸¹ Punjab women empowerment package (2012) (<http://punjabeducationfoundation.blogspot.com/2012/03/punjab-women-empowerment-package-2012.html>).

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The union was registered under the Punjab industrial relation Act 2010. The trade union consists of 90 percent of domestic female workers. The trade union was established under the ILO project ‘promoting gender equality for decent employment’. The object was to recognize the domestic work as a sector in which mostly women are employed and to bring it under the coverage of labour laws in Pakistan. Through establishment of domestic trade worker’s union, legal protection would be available to all the domestic workers who have remained so far, the most vulnerable class of workers who works in exploitative conditions, without any terms of employment, wages and regulation of working hours³⁸².

5.4.2.4 Forced Labour Convention, 1930 (No.29) and Abolition of Forced Labour Convention, 1957 (No.105)

Forced labour convention entered into force on 1 May 1932³⁸³. Pakistan ratified the Convention on 23 December 1957³⁸⁴. Abolition of Forced labour Convention entered into force on 17 January 1959³⁸⁵, Pakistan also ratified this Convention on 15 February 1960³⁸⁶.

Bonded labour is one another major issue in Pakistan. It is mostly prevalent in agriculture, brick kilns, carpet, coal and glass industries. This issue is concentrated in Punjab and Sindh provinces. Bonded labour in Pakistan often involved

³⁸² First Domestic Workers Trade Union Registered in Pakistan (http://www.ilo.org/islamabad/info/public/pr/WCMS_338484/lang--%20end/index.htm).

³⁸³ Forced labour Convention, 1930 (No.29) (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312174).

³⁸⁴ Status of ratification (n 215).

³⁸⁵ Abolition of forced labour convention, 1957 (No.105) (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312250:NO).

³⁸⁶ Status of ratification (n 215).

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religious minorities, who due to weak financial status and lack of education, are bonded in debt bondage. There are no recent figures available on bonded labour in Pakistan, but global survey index 2016 estimates that around 2.2 million people in Pakistan live in modern slavery. This figure ranked Pakistan third out of 167 countries in the global slavery index 2016³⁸⁷. The Government adopted Federal Bonded labour system (Abolition) Act in 1992, which criminalized bonded labour throughout Pakistan. After the devolution of powers to provinces, the provinces are in the process of adopting its own legislation to eliminate bonded labour. Currently the Federal bonded labour system (Abolition) Act 1992 is applicable in federal territory and in province of Baluchistan. Khyber Pakhtunkhwa has enacted the KPK Bonded Labour System Abolition Act in 2015, and Sindh has enacted Sindh Bonded Labour System (Abolition) Act 2015. Both these provincial Acts on bonded labour contain provisions which prohibit bonded labour, terminating remaining debts, and have increased penalties and fines for employed found involved in any type of bonded labour. Similarly, to eliminate bonded labour in brick kilns in Punjab, which is a common practice in that province, the Prohibition of Child Labour at Brick Kiln Act 2016 has been promulgated. This Act not only prohibits the engagement of child under the age of 14 in brick kilns but also regulates the employment of adults in brick kiln to keep a check on bonded labour in this sector. Section 3 of the Act requires a written contract from an employer which shall specify the amount of wages, the amount of advance given and its return schedule. The owner of the brick kiln is required to send a copy of the contract to the inspector in a local area. The contract can be terminated by either party subject to a 30 days prior notice in

³⁸⁷ The Global Slavery Index (2016) (<https://www.globallslaveryindex.org/>).

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writing³⁸⁸. Despite that, the issue of bonded labour exists in brick kilns in Punjab due to absence of effective enforcement. The ILO Committee of experts has urged the Government to take immediate measures to ensure the effective implementation of provincial legislation related to the abolition of bonded labour³⁸⁹.

The Sindh government has also adopted a Provincial Plan of Action to combat Bonded Labour in the province. In 2010, an ILO started a project with the title ‘Strengthening Law Enforcement Responses and Action against Internal Trafficking and Bonded Labour’ in the Provinces of Punjab and Sindh. The object was to engage the brick kiln owners to institute practices towards the eradication of bonded labour and to link the brick kiln workers with social safety nets. The Provincial government in Punjab has started a programme to eliminate bonded labour in brick kilns for a period of 2012-18 in four districts. Under this programme 196 non-formal education centres are set up in these districts which have enrolled 6, 131 persons, i.e. 2,988 females and 3,143 males. Furthermore, 1,423 brick kiln workers have been issued the Computerized national identity cards. The Punjab government has also initiated an integrated project of elimination of child and bonded labour with the objective of rehabilitation of children working at the brick kiln and economic empowerment of their families³⁹⁰. The Provincial government has reactivated the District Vigilance committees throughout Punjab for supervising the brick kilns in various districts. These committees work and hold its meetings under the supervision of the respective District Coordination officers. Sindh and Khyber Pakhtunkhwa provinces have also

³⁸⁸ The Punjab Prohibition of Child Labour at Brick Kiln Act 2016, s 3.

³⁸⁹ Force labour Convention, 1930 (NO.29) Observation (CEACR)-adopted 2017, published 107 ILC (2018) (https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_617065.pdf), 206.

³⁹⁰ *ibid.*

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established the district vigilance committees under its new enacted laws on bonded labour. The establishment of these vigilance committees at the district level is important as it is impossible to monitor bonded labour through a normal inspection procedure³⁹¹. Baluchistan government is also taking measures to functionalize the District vigilance committees soon. The Committee of experts urged the Government to pursue its efforts to ensure that survey on bonded labour is undertaken in each province for the availability of accurate data on bonded labour³⁹².

Pakistan is reported to be a source, transit and destination country for women and men trafficked for the purpose of sexual exploitation and bonded labour. To tackle the issue of internal trafficking, the government has adopted a criminal law (Amendment) Act 2015, which penalized the human trafficking with a penalty of five to seven years imprisonment or with fine from 50,000 to 70,000 Pakistani rupees. The federal investigation agency has set up 27 anti-trafficking law enforcement units at the federal, provincial and local levels to investigate human trafficking and smuggling³⁹³. The ILO Committee of experts urged the government to ensure that persons involved in offences of trafficking are prosecuted and convicted with adequate and dissuasive penalties³⁹⁴.

³⁹¹ Force labour Convention, 1930 (NO.29) Observation (CEACR)-adopted 2017, published 107 ILC (2018) (n 389).

³⁹² *ibid.*

³⁹³ *ibid.*

³⁹⁴ *ibid.*

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Penalties Involving Compulsory Labour as a Punishment for Expressing Political Views, as a Mean of Labour Discipline, as a Mean for Religious Discrimination or as a Punishment for Having Participated in Strikes: Articles 1(a), (b), (c), (d) and (e) of the Abolition of Forced Labour Convention

The Committee of experts have highlighted certain provisions of various Pakistani legislations, which allow for imprisonment involving compulsory labour for expressing political views, religious views or having participated in strikes. For instance, sections 10-13 of Security of Pakistan, Act 1952, sections 5, 26, 28, 30 of the Press, Newspaper, News Agencies and Books Registration Ordinance 2002, section 32(2) and (3) of the Electronic Media Regulatory Authority Ordinance 2002 and section 8 and 9 of the Anti-Terrorism act 1997, which provide for restrictions on the expression of political views and penalties of imprisonment involving compulsory labour. Similarly, under Pakistan Essential Services (Maintenance), Act 1952 and corresponding provincial Acts, the employees are prohibited from leaving the service without consent of employer as well as from striking, and in case of violations is subject to penalties of imprisonment that involves compulsory labour³⁹⁵. Section 298B (1) and (2) and 298C of the Pakistan Penal code under which any person from Qadiani, Ahmadi group uses Islamic epithets, nomenclatures and titles is punishable with penalties of imprisonment which involve compulsory labour for a term up to three years. The committee of experts urged the government to amend these legislations to eliminate the penalty of compulsory labour, thus bringing these legislations in

³⁹⁵ Abolition of forced labour convention, 1957 (No.105) Observation (CEACR)-adopted 2017, published 107th ILC (2018) (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3328794).

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conformity with article 1 (a) of the Convention³⁹⁶.

5.4.2.5 Conclusion

Overall Pakistan compliance with the ILO core eight conventions remained moderate. Six out of eight conventions has been ratified by Pakistan for more than fifty years still Pakistan cannot develop a compliant legal framework. The GSP+ incentive to Pakistan for the duration of four years linked with the obligation for the improvement of labour rights in a country proved to be stimulator for the promotion of labour standards in a country. During the period of four years GSP + duration the Provincial governments of Khyber Pakhtunkhwa, Punjab and Sindh have legislated some new laws prohibiting child labour, bonded labour in there provinces which is quite commendable. The Punjab government has also revitalized the system of inspection for ensuring the implementation of laws prohibiting child labour and bonded labour. Sindh and Khyber Pakhtunkhwa have also established District vigilant committees to keep a check on child employment and bonded labour. It was expected that after the award of GSP+ status necessary amendments in relevant provisions of IRAs would be introduced by the federal and provincial governments ensuring freedom of association and collective bargaining rights to workers in all the sectors specially to workers in EPZs. Workers in informal sectors like agriculture, fishers and home based workers still could not be embodied within scope of IRAs except by the Sindh government which have brought these workers within the ambit of its Provincial IRA. In labour market of Pakistan discrimination in respect of employment and wage-gap exists between male and female workers to a large extent. To overcome

³⁹⁶ Abolition of forced labour convention, 1957 (No.105) Observation (CEACR)-adopted 2017, published 107th ILC (2018) (n 395).

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the wage gap provincial governments of Punjab, Khyber Pakhtunkhwa and Sindh has recently made amendments in Minimum Wages Act to prohibit discrimination based on sex, sect religion caste and creed. However the federal and provincial laws must adopt necessary changes to ensure the principle of gender equality and equal remuneration for equal work both in formal and informal sectors.

5.5 UN Conventions on Environmental Protection and Climate Change

Pakistan has ratified all the eight UN conventions on environmental protection and climate change which are within the scope of GSP+. After the devolution of power to provinces under the 18th constitutional amendment the environmental pollution and ecology became the subject of provincial legislation. Provinces have enacted their provincial legislations and policies. In 2015 Ministry of Climate Change was reinstated by the Government³⁹⁷. This demonstrated Pakistan commitment to the protection of environment and mitigation risks of Climate Change, a conditionality linked with the GSP+scheme. The National reports on the implementation of conventions identify a number of overarching challenges. These challenges mainly relate to division of responsibilities between federal government and provincial governments and limited human and financial resources which cause hindrance to comply with obligations under the conventions³⁹⁸.

The situational analysis of Pakistan's compliance with these conventions through

³⁹⁷ 'Pakistan Pushes climate change back up political agenda' *Reuters* (London, 21 January 2015) (<https://uk.reuters.com/article/us-pakistan-climatechange-idUKKBN0KU0XL20150121>).

³⁹⁸ Mid-term Evaluation of the EU's Generalised Scheme of Preferences Final Interim Report, Development Solutions (21 September 2017) 145.

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enactment of national and provincial legislations and policies measures is assessed below.

5.5.1 Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)

The convention on international trade in endangered species of wild flora and fauna (CITES) entered into force on 1 July 1973³⁹⁹. Pakistan ratified the Convention on 19 July 1976⁴⁰⁰. The CITES convention aims to ensure that international trade in wild animals and plants does not threaten their survival⁴⁰¹. The parties shall make ensure that specimens shall pass through any formalities required for trade with a minimum of delay⁴⁰². Appointment of at least one scientific and management authority under Article IX is essential⁴⁰³.

To transpose the basic objectives of the Convention, Pakistan National Assembly enacted the Pakistan Trade Control of Wild Fauna and Flora Act 2012⁴⁰⁴. The Act prohibited the export or re-export out of or import into Pakistan any specimen listed in the Appendix of the CITES. The Act ordained the export, re-export or import of these specimens only through a customs port of exit or entry, or subject to any other law relating to control or export and import for the time being in force. The offence

³⁹⁹ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Resolution Conf8(RevCOP15)) National Laws for the Application of the Convention [1973].

⁴⁰⁰ List of contracting parties in *ibid*.

⁴⁰¹ *ibid* art VIII; National laws for implementation of the Convention (<https://cites.org/eng/res/08/08-04R15.php>)

⁴⁰² Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Resolution Conf8(RevCOP15)) National Laws for the Application of the Convention (n 399) VIII(3).

⁴⁰³ *ibid* art IX.

⁴⁰⁴ Pakistan Trade Control of wild Fauna and Flora Act 2012.

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is made punishable with imprisonment or with fine⁴⁰⁵. Further as per the Convention requirements, the Act establishes the management and scientific authorities⁴⁰⁶. The ministry of climate change work as the management authority.

At the 65th Annual meeting of CITES Standing Committee held in July 2014, Pakistan was listed in a category of countries requiring attention as a priority about the need to enact legislation as per CITES requirements. It was noted by the Committee that the legislation had been enacted but implementing regulations were not adequately developed. To make up the deficiency in its current legislation there was an agreement between Pakistan and the CITES Secretariat on revised legislative analysis⁴⁰⁷. In May 2015 Pakistan was identified by the United Nations Environment Programme (UNEP) and CITES secretariat as one of the 17 countries that require attention as priority for strengthening their legislation to implement the CITES Convention. The Ministry of Climate Change has informed that new rules and regulations are in process of formulation with assistance from International Union for Conservation of Nature (IUCN) and would be finalized by the end of 2015. Taking note of Pakistan's progress towards preparing new legislative measures in compliance with the convention, it was reported by the CITES Secretariat in December 2015 that while Pakistan has taken steps to prepare new legislative measures to ensure compliance with the Convention, the country remains deficient in complying with the convention and need to accelerate its efforts to enact adequate legislation

⁴⁰⁵ Pakistan Trade Control of wild Fauna and Flora Act 2012, s 3.

⁴⁰⁶ *ibid* ss 15,16.

⁴⁰⁷ Sixty Fifth Meeting of the Standing Committee Geneva (SWI24:TZERLAND), National Laws for implementation of the Convention (7 July 2014) (<https://www.cites.org/sites/default/files/eng/com/sc/65/E-SC65-22.pdf>) 5, Annex p-3 and p-8; European Commission, The EU special incentive arrangement for Sustainable development and good governance ('GSP') covering the period 2014-2016 [2016], 205

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by the 67th meeting of the CITES standing committee in September 2016⁴⁰⁸. At the 69th meeting of the Standing Committee, it was notified that Pakistan's legislation still fall in Category 2 and required adequate changes to ensure compliance with the CITES Convention. It was decided that progress in updating its legislation will be evaluated at its 70th meeting of the Standing Committee on CITES⁴⁰⁹. The Standing Committee at its 70th meeting appreciated Pakistan's efforts for submitting revised implementing regulations for adoption in July 2018, to the Secretariat for observations⁴¹⁰. The revised draft was prepared as per the comments provided by the Secretariat in May 2016. Presently, the agreement between Pakistan and the CITES Secretariat on revised legislative analysis must be reached⁴¹¹. Overall Standing Committee appreciated Pakistan's efforts for making substantive progress in adopting measures for the effective implementation of the CITES Convention⁴¹².

At the provincial level, the provinces have also adopted rules to ensure compliance with the CITES convention. The Provincial Government of Sindh has amended its Wildlife legislation Act to include all the species of fresh water as protected. The Sindh Government has also put a ban on turtle hunting and bear baiting which has contributed in preventing illegal trade in protected species.

⁴⁰⁸ Sixty-sixth meeting of the Standing Committee Geneva (Switzerland) (11 January 2016) (<https://cites.org/sites/default/files/eng/com/sc/66/E-SC66-26-01.pdf>) 6.

⁴⁰⁹ Sixty-ninth meeting of the Standing Committee Geneva (Switzerland) (27 November 2017) (<https://cites.org/sites/default/files/eng/com/sc/69/sum/E-SC69-SR.pdf>) 18.

⁴¹⁰ Seventieth meeting of the Standing Committee (1 October 2018) (<https://cites.org/sites/default/files/eng/com/sc/70/E-SC70-25-R1.pdf>) 3-4.

⁴¹¹ Status of Legislative Progress for Implementing CITES September, 2017 ([Status_of_legislative_progress_for_implementing_CITES.docx.pdf](#)).

⁴¹² Seventieth meeting of the Standing Committee (n 410) 17.

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5.5.1.1 Basel Convention

Basel convention deals with the control of transboundary movements of hazardous wastes and their disposal by the States through adoption of necessary measures in order to ensure that the management of hazardous wastes and other wastes including their transboundary movement and disposal is consistent with the protection of human health and environment irrespective of the place of disposal⁴¹³. This convention entered into force on 5 May 1992⁴¹⁴. Pakistan acceded to this convention with no reservation on 26 July 1994 and the convention entered into force on 24 October 1994⁴¹⁵. Pakistan has not ratified the amendment to the Convention (Decision III/1) yet but has informed the authorities concerned that it is in process of consultation with relevant stakeholders on this⁴¹⁶.

5.5.1.2 Pakistan Environment Protection Act 1997

Pakistan environment protection Act, 1997 is an overarching legal framework which covers aspects related to environment protection in Pakistan. This include environmental planning, protection, conservation, rehabilitation and its improvement. The legislation also deals with the prevention and control of pollution and promotion of sustainable development of the hazardous wastes and their disposal⁴¹⁷. Sections

⁴¹³ Basel Convention on the Control of transboundary movements of hazardous wastes and their disposal [1989].

⁴¹⁴ *ibid.*

⁴¹⁵ Parties to the *ibid.*

⁴¹⁶ The Conference decides to adopt the amendment by inserting new Article 4 A to the Convention. The amendment is not yet in force. See (<http://www.basel.int/Portals/4/Basel%5C%20Convention/docs/text/BaselConventionText-e.pdf>), 14

⁴¹⁷ Pakistan Environment Protection Act 1997.

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13 and 14 of the Act prohibit the import of hazardous waste into Pakistan and its territorial waters as well as its export⁴¹⁸. The eighteenth constitutional amendment has devolved the subject of environment within the scope of Provinces. All the four provinces have legislated their environmental protection legislation⁴¹⁹.

5.5.1.3 Rules on Control of Hazardous Substance

With regard to the control of hazardous waste under the Basel convention, the Government has adopted various national strategies, industry commitments and economic instrument including 'The Basel Convention Import Policy order' which put a ban on import of hazardous waste in 2016⁴²⁰. This policy also regulates the import of scrap/waste tyres. Previously the Government adopted the rules on Hazardous substances 2003. These rules make provision for granting of licences for the collection, treatment, storage, importation, transportation of Hazardous substances⁴²¹. Later the provincial governments have framed their own hazardous substance rules.

5.5.1.4 Prohibition of Non-Degradable Plastic Products (Manufacturing, Sale and Usage) Regulations 2013

This Regulation was applicable to the Islamabad Capital territory. It prohibited the import, manufacture, stockpile, trade, supply, distribution, Sale or usage of any

⁴¹⁸ Pakistan Environment Protection Act 1997, ss 13,14.

⁴¹⁹ Khyber Pakhtunkhwa Environmental protection Act 2014; Punjab Environmental protection (Amendment) Act 2012; Sindh Environmental Protection Act 2014; Balochistan Environmental Protection Act 2012

⁴²⁰ Ministry of Commerce, Import policy order (2016) (http://kcaa.pk/wp-content/uploads/2016/04/IPO_345_2016.pdf) 24.

⁴²¹ Hazardous Substance Rules (2003) (<https://www.ecolex.org/details/legislation/hazardous-substances-rules-2003-lex-faoc064438/>).

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scheduled plastic product which is non-degradable⁴²².

5.5.1.5 Gaddani Ship Breaking Yard

The Gaddani shipyard, which is one of the largest ship-breaking yards in the world after Alang in India and Chittagong in Bangladesh, is located about 60 km southwest of Karachi, on a 10 km long stretch of coastline. The working conditions on Gaddani ship breaking yard are worst. Roughly 6,000 workers at Gaddani work at their own peril without any safety and insurance regulations. In case of injury, there is no local hospital where workers can be treated and offered medical assistance. The Gaddani shipyard lacks the basic facilities such as clean drinking water, medical care, sewage system, electricity, schools and public infrastructure. Besides that, the practices of ship breaking industry are extremely dangerous not only to the workers and people in the surrounding areas, but it poses threat to marine life and overall environment of the area. No precautionary measures are available for the safety of the workers who are exposed to the toxic materials in their working conditions such as lead, zinc, asbestos, ozone depleting substances, heavy metals and PCBs (Polychlorinated biphenyls). These toxins sicken the workers and has devastated the coastal ecosystems. The heavy lifting equipment used in ship breakage cannot be supported by the muddy sand and shifting grounds of tidal beaches resulting in accidents that maim or kills thousands of workers each year. The ship breaking practices in Gaddani coastal area is strongly criticised by the local human and environmentalist groups as well as international groups who demands for the safe and

⁴²² Prohibition of non-degradable plastic products (manufacturing, sale and usage) Regulations (2013) (<http://extwprlegs1.fao.org/docs/pdf/pak168042.pdf>).

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decent working conditions for the workers and protection of the environment⁴²³. In 2015 the Basel secretariat has directed a project in supporting the development of inventories of hazardous waste in Gaddani ship breaking industry in collaboration with Cabinet secretariat, Climate Change Division of the Government of Pakistan. The project was funded by the European Union under its thematic programme for environment and sustainable management of natural resources. The objective was to develop a hazardous waste management capacity of the industry and to take incremental steps for the protection of the environment as well as workers health and safety standards in the recycling facilities⁴²⁴. A project to manage electrical and electronic waste in an environmentally sound manner in Pakistan⁴²⁵. Currently the Government is working to develop its National waste management policy which is essentially required for the environmentally sound waste management in Pakistan. And is also working on a project for environmentally sound management of electronic waste in Pakistan⁴²⁶.

⁴²³ Dirty and dangerous shipbreaking in Gaddani, Pakistan (Environment Justice Atlas 2016) (<https://ejatlas.org/conflict/dirty-and-dangerousshipbreaking-in-gadani>) For details on explosion on oil tanker that took place on 22 October 2016 on Gaddani coastline which resulted in loss of 28 human lives due to non-adherence of requirements to start work on oil tanker as per Baluchistan Environment Protection Act 2012 see Report of an HRCF Fact Finding Mission, (Human Rights Commission of Pakistan (HRCF) November 2016) <http://hrcf-web.org/hrcfweb/wp-content/uploads/2017/02/Fact-Finding-Report.pdf>

⁴²⁴ Developing downstream hazardous waste management capacity in Pakistan (<http://www.basel.int/Implementation/ShipDismantling/Endoflifeships/tabid/3868/Default.aspx>).

⁴²⁵ European Commission, The EU special incentive arrangement for Sustainable development and good governance ('GSP') covering the period 2014-2016 (n 407) 206.

⁴²⁶ *ibid* 206.

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5.5.1.6 Convention on Biological Diversity

The Convention on biological diversity entered into force on 29 December 1993⁴²⁷. Pakistan signed the convention on 29 December 1993⁴²⁸. The objective of this convention are the conservation of biological diversity, the sustainable use of its components and fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies and by appropriate funding⁴²⁹.

Pakistan is very well known for its varied landscapes ranging from Arabian sea to peaks of Himalayas in North. The variation of its climatic conditions and diverse topography has bestowed Pakistan with rich biodiversity, many ecosystems, habitats and species of global significance. The four ecosystems of Pakistan are included in global 200 most biologically outstanding Eco regions of the world⁴³⁰. The rich biodiversity has been under pressure since long due to human activities and the degradation of natural habitats. The various factors include over grazing, illegal hunting, firewood collections, deforestation leading to disappearance of shrubs and ground flora together with the vertebrate and invertebrate fauna which these forests normally support, pollution from municipal and industrial waste and development of infrastructure, disposal of untreated sewage and industrial effluent into the rivers and sea that are the major threats to aquatic and marine biodiversity as well as

⁴²⁷ Convention on Biological Diversity [1992].

⁴²⁸ Parties to *ibid*.

⁴²⁹ *ibid* art 1.

⁴³⁰ Pakistan Biodiversity facts (<https://www.cbd.int/countries/profile/default.shtml?country=pk#facts>).

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overfishing⁴³¹.

The federal and provincial Governments have their own laws and regulations governing forestry and fisheries and wildlife. There has been no comprehensive national assessment of biodiversity and trends in Pakistan. Pakistan prepared its first Biodiversity Action Plan (BAP) in 2000. The plan outlined strategic goals, objectives and identifies suitable action plan for conservation of biodiversity. The plan gives an overall assessment of the status and trend of the country's biodiversity⁴³². This plan was prepared under an agreement between the Government of Pakistan and world bank under the Global Environment Facility (GEF) Trust Fund⁴³³. Even after this plan, no assessment of status and trends of biodiversity at national and regional level took place⁴³⁴. Pakistan has recognized in its 5th national report on progress on CBD that the implementation of the BAP was uneven⁴³⁵. Apart from BAP 2000, Pakistan in its 5th national report recognized that it has not fixed any national or regional targets for the implementation of CBD strategic plan 2010-2020 and Aichi Biodiversity targets. The reason given was weak institutional capacity of the national authority for the implementation of the Convention on Biodiversity as well as complete absence of any institutional arrangement at the provincial and regional level⁴³⁶. In addition to that, there has been inadequate policy and legal framework for the implementation of the convention and low prioritizing of basic studies

⁴³¹ Pakistan Biodiversity facts (n 430).

⁴³² Biodiversity Action Plan (2000) (<https://www.cbd.int/doc/world/pk/pk-nbsap-01-en.pdf>).

⁴³³ *ibid* 3.

⁴³⁴ Pakistan 5th National report on Progress on CBD strategic plan 2010-2020 and Aichi Biodiversity targets (2014) (<https://www.cbd.int/doc/world/pk/pk-nr-05-en.pdf>) VIII, 31, 32.

⁴³⁵ *ibid* IX, 31, 32.

⁴³⁶ *ibid* 33.

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on value of biodiversity, and its contribution to the national economy and human well-being⁴³⁷ However, few major successes include the establishment of a protected areas system, which covers more than 10 percent of country's territory, conservation status of many threatened endangered species has improved, biodiversity is included in curriculum of many universities, many botanical gardens and herbaria have been established in various universities, certain progress has been made to control soil erosion in catchment area of large dams as well as sustainable use of water for irrigation⁴³⁸. The provincial Government of Khyber Paktunkhwa has launched its 'Billion Tree Tsunami' project in 2015 with the support of the International union of the Conservation for Nature (IUCN) to be implemented in four years. The project aims at restoring 350,000 hectares of forests and degraded land to surpass Bonn challenge commitment⁴³⁹. The CBD Secretariat remarked that Pakistan has made 'reasonable progress' towards reaching biodiversity targets, still the country has not yet reached the threshold level which is required for making significant progress'⁴⁴⁰. Pakistan has been regularly submitting its progress reports on its policy measures ensuring implementation of the obligations under the convention including strategic plan for biodiversity 2010-2020 and Aichi biodiversity targets.

⁴³⁷ Pakistan 5th National report on Progress on CBD strategic plan 2010-2020 and Aichi Biodiversity targets (n 434) 46.

⁴³⁸ *ibid.*

⁴³⁹ Bonn Challenge (<http://www.bonnchallenge.org/content/pakistan-kpk>).

⁴⁴⁰ European Commission, The EU special incentive arrangement for Sustainable development and good governance ('GSP') covering the period 2014-2016 (n 407) 207.

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5.5.1.7 National Biodiversity Strategy and Action Plan (NBSAP) 2017-2030

Pakistan has finally adopted its National biodiversity and action plan (NBSAP) 2017-2030. This document, which is prepared in line with UN 17 Sustainable development goals (SDGs) 2015 and Aichi Biodiversity targets (ABTS) (2011-2020), demonstrates Pakistan's commitment to implement the objectives of CBD, that is conservation of biodiversity, the sustainable use of its components and equitable sharing of benefits arising out of the utilisation of genetic resources. The plan provides recommendation to integrate the CBD into its national plan and sectoral planning frameworks. It provides a framework for the implementation as well as monitoring and evaluation of national and provincial biodiversity strategies and action plans. The NBSAP also identifies institutional, legal, capacity, knowledge and technical gaps in enforcing ABTS and gives recommendations such as raising awareness and capacity, improving scientific and knowledge capabilities, mainstreaming biodiversity as well as improving national coordination mechanism, encouraging cross-sectoral collaboration and following fresh financing strategy. The strategy and action plan consist of 74 proposed actions across five strategies goals which are further classified into 31 thematic areas and 20 ABTS needing \$74.8 million⁴⁴¹.

5.5.1.8 Cartagena Protocol on Biosafety

Cartagena protocol on biosafety was adopted by the Conference of the Parties as a supplementary agreement to the Convention on Biological diversity. The objective

⁴⁴¹ Pakistan National Biodiversity Strategy and Action Plan for achieving Aichi Biodiversity targets and Sustainable development goals 2017-2010 (<https://www.cbd.int/doc/world/pk/pk-nbsap-v2-en.pdf>), 13.

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was to seek the protection of the biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. To achieve that end, the protocol set up an Advance Informed Agreement (AIA) procedure to make it certain that the countries are provided with information necessary to make informed decision before making an agreement for the import of such organisms into their territory. The protocol was adopted on 29th January and came into force on 11th September 2003⁴⁴². Pakistan ratified the Protocol on 2nd March 2009, and it entered into force on 31st May 2009⁴⁴³. So far, Pakistan has met reporting obligations of the protocol by submitting its 2nd National report in 2011 and third national report in 2016⁴⁴⁴.

To govern the import of Genetically Modified Organisms(GMOs) and their products, Pakistan has enacted the Biosafety Rules and Guideline 2005⁴⁴⁵, which provides procedure for the research and development on living and genetically modified organisms and their products, including their release and their products for commercial purposes and field trials. The National Biosafety Centre(NBC)⁴⁴⁶ was established on a project basis at the federal level in April 2006-June 2014 to oversee the implementation of the obligations under the Cartagena Protocol. It provides the safeguards for the protection of plants, animals, environment and human health

⁴⁴² The Cartagena Protocol on Biosafety (<http://bch.cbd.int/protocol?area=biotechnology&faq=3>).

⁴⁴³ Parties to *ibid*.

⁴⁴⁴ Pakistan second third national report on the implementation of the Cartagena protocol on biosafety (<http://environment.gov.pk/images/PDF/Pk-nr-2.pdf>); The current plan include the establishment of NBC on regular budgetary (<http://bch.cbd.int/database/record.shtml?documentid=11102151>)

⁴⁴⁵ National Biosafety Guidelines (2005) (<http://www.environment.gov.pk/images/PDF/BiosftyGlines2005.pdf>).

⁴⁴⁶ Pakistan Environment Protection Agency, National Biosafety Centre Pakistan (<http://ilsirf.org/wpcontent/uploads/sites/5/2016/06/M.Khurshid.pdf>).

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against the undesirable effects of genetically modified organisms and regulated the import, export, production, storage handling and trade in GMOs. The institutional set up were National Biosafety Committee, technical advisory committee and institutional biosafety committee. All the public and private sectors institutions that are involved in research and development of the biotechnology are required to establish institutional biosafety committee (IBC), whose function is to give clearance for initiating research as per biosafety rules and guidelines 2005. The current plan includes the establishment of NBC on regular budgetary footing and enactment of national biosafety act and establishment of national biosafety laboratory for the testing of GMOs. Moderate financial resources are one of the main challenge for the effective implementation of biosafety rules and guidelines and a need for enhancing the capacity of all stakeholders, which include the training of seed certification, Quarantine, Commerce and Custom department⁴⁴⁷.

5.5.1.9 Stockholm Convention on Persistent Organic Pollutants

The Stockholm convention on persistent organic pollutant entered into force on 17th May 2004⁴⁴⁸. It aims at protecting human health and the environment from persistent organic pollutants(POPs)⁴⁴⁹. The exposure to POPs is detrimental to human health and can cause certain cancers, birth defects, greater susceptibility to disease and damages to certain and peripheral nervous system and dysfunctional immune and reproductive systems⁴⁵⁰. Pakistan ratified the Convention on 17th April

⁴⁴⁷ European Commission, The EU special incentive arrangement for Sustainable development and good governance ('GSP') covering the period 2014-2016 (n 407) 208.

⁴⁴⁸ Stockholm Convention on Persistent Organic Pollutant [2004].

⁴⁴⁹ *ibid* art 1.

⁴⁵⁰ *ibid*.

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2008 without reservations and it entered into force on 17th June 2007⁴⁵¹. The main legal framework governing the implementation of the Convention includes the Environmental Protection Act 1997, National Environmental Policy 2005, Agriculture Pesticides Rules 1973 and Provincial environmental regulations.

Though Pakistan has put a ban on use of all severely toxic and hazardous pesticides included in POPs and Industrial wastes and hazardous pesticides included in Prior Informed Convention Chemicals(PIC) in early 1990s still there are considerable stockpiles of obsolete POPS pesticides as per the inventory survey conducted in 2009. The country has not adopted a complete regulatory system on POPs yet. The current regulations only deal with the restriction of the first list of POPs covered by the Stockholm convention before 2009, with specific reference to pesticide.

As per Article 7 of the Stockholm convention each party state is required to develop a National implementation plan (NIP) which shall explain how they will implement the obligations under the convention in their national laws and shall take measures to put the plan into operation⁴⁵². For instance, the plan shall reflect the initial obligations imposed by the convention and will address the twelve persistent organic pollutants listed in Annexes A, B, C of the Convention. Further, Parties are required to review and update their initial NIP as per the changes in various factors⁴⁵³. Pakistan has developed its national implementation plan and submitted it in July 2009. The National implementation plan established a policy framework that lays a guideline to address the specific issues of POPs. The plan was deemed defi-

⁴⁵¹ Parties to Stockholm Convention on Persistent Organic Pollutant (n 448).

⁴⁵² *ibid* 7, Implementation Plan.

⁴⁵³ Decision of the Conference of the Parties SC-1/12 ([/Downloads/UNEP-POPS-COP.1-SC-1-12.English.PDF](#)); Stockholm Convention on Persistent Organic Pollutant (n 448) 7, paragraph 1(c) Implementation Plan

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cient due to the following reasons 1) Lack of adequate legal provisions on POPs with regards to production, screening, import, use and disposal, 2) lack of inadequate provisions on hazardous waste management, lack of awareness in public on health and environmental risks associated with POPs, 3) weak environmental quality standards for disposal facilities are weak which did not comply with Stockholm convention⁴⁵⁴. However, Pakistan has not resubmitted its reviewed and updated NIP on periodic basis as per the requirements in accordance with Article 7 Paragraph 1(c) of the convention⁴⁵⁵.

Pakistan has met the reporting requirement of the convention so far and submitted its third national report in January 2016⁴⁵⁶. The report explained that Pakistan has started implementing the required provisions of the Convention. The report identifies the factors which hinder the implementation of the convention they lack financial resources, insufficient technical capacity, lack of disposal facilities, lack of storage facilities, and lack of analytical laboratories. Pakistan has not yet submitted its Fourth national report and was requested to submit it by August 2018.

With the assistance of United Nation Development Programme (UNDP), the Government of Pakistan has launched the project 'Comprehensive reduction and elimination of POPs in Pakistan'. The project started in 2015 and will end in December 2019. The objectives of the project is to 'reduce risks to human health and environment by enhancing management capacities and disposal of POPS' through 1) the

⁴⁵⁴ National Implementation Plan for phasing out and Elimination of POPs from Pakistan under Stockholm Convention Article 7(a) (2009) (<http://chm.pops.int/Countries/CountryProfiles/tabid/4501/Default.aspx>).

⁴⁵⁵ Stockholm Convention on Persistent Organic Pollutant (n 448) art 7, paragraph 1(c).

⁴⁵⁶ Pakistan Third National Report (<http://ers.pops.int/ERSExtended/FeedbackServer/fsadmin.aspx?fscontrol=respondentReport&surveyid=64&voterid=45842&readonly=1&nomenu=1>).

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development and implementation of a regulatory policy and enforcement mechanism to reduce POP release and its disposal, 2) capacity building to reduce exposure to and release of POPs in environment, 3) collection, transport and disposal of 300 tons of PCB and 1,200 tons of POPs pesticides⁴⁵⁷.

5.5.1.10 United Nations Framework Convention on Climate Change (UNFCCC)

The United Nations Framework Convention is the international environment treaty that was adopted on 9th May 1992 and entered into force on 21st March 1994⁴⁵⁸. The objective of the convention 'is to stabilize greenhouse gas concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with earth's climate system'⁴⁵⁹. Further, Article 3(1) of the Convention states that Parties should act to protect the climate system based on common but differentiated responsibilities; and that developed country Parties should "take the lead" in addressing climate change. Pakistan ratified the convention on climate change on 1st June 1994⁴⁶⁰. Pakistan has acknowledged its role as a responsible member of the global community to combat climate change by adopting various national measures for implementation of the UNFCCC and its successive protocols like Kyoto protocol and by recently signing the Paris agreement. This shows its seriousness and commitments to address the issues of climate change and its devastating effects on

⁴⁵⁷ Comprehensive reduction and elimination of persistent organic pollutants in Pakistan (<http://www.pk.undp.org/content/dam/pakistan/docs/Project%20Briefs/August2018/ECCU/Project%20Brief%20-%20Reduction%20and%20Elimination%20of%20POPs-Aug18.pdf>).

⁴⁵⁸ United Nations Framework Convention on Climate Change [1992].

⁴⁵⁹ *ibid* art 3.

⁴⁶⁰ *ibid* 3(1).

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country's economy and infrastructure. Following are the important measures taken by Pakistan to deal with issue of climate change.

One of the first tasks set by the UNFCCC for the state parties was to establish the national greenhouse inventories of greenhouse gas (GHG) emissions and removals. These were used to create the 1990 benchmark levels for accession of Annex I countries to the Kyoto Protocol and for the commitment of those countries to GHG reductions. Although Pakistan's contribution to the overall GHG emission is very small, it is severely impacted by the negative effects of climate change. In compliance of Article 12.1 and decision 10/CP2, Non-Annex parties were required to submit a national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases as per their capacities by using comparable methodologies agreed upon by the Conference of Parties⁴⁶¹. Pakistan prepared its national inventory by using Intergovernmental Panel on Climate Change (IPCC) recommended methodologies⁴⁶². Pakistan finalized its first greenhouse inventory in 2007-08 and second one is under preparation. The current one is prepared according to the new guidelines issued by UNFCCC.

5.5.1.11 National Climate Change Policy 2012

The National climate change policy was adopted in 2012 which provides policy measures for climate adaptation and mitigation. The following objectives were outlined

⁴⁶¹ United Nations Framework Convention on Climate Change (n 458) 12.1 and decision 10/CP2.

⁴⁶² The inventory was established as part of AGLAS project ADB/GEF/UNDP Asia least -cost Greenhouse gas abatement strategy (ALGAS)-Pakistan 1998. IPCC, 1996a. IPCC Guidelines for National Greenhouse Gas Inventories, Volume I: Reporting Instructions. WGI Technical Support Unit, Intergovernmental Panel on Climate Change, UK. See also Ministry of Environment, Pakistan's initial National Communication on Climate Change (2003) (<https://unfccc.int/resource/docs/natc/paknc1.pdf>) 32-34

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by the policy 1) to pursue economic growth by appropriately dealing with climate change, 2) to integrate climate change policy with other related national policies 3) to facilitate and strengthen Pakistan's role as a responsible member of the international community 4) to focus on pro-poor gender sensitive adaptation while also promoting mitigation to the extent possible in a cost effective manner 5) to ensure food security, water security and energy security 6) to minimise the risks arising from expected increase in frequency and intensity of extreme climatic events 7) to strengthen decision making and co-ordination 8) to facilitate effective use of the available opportunities, specifically financial 9) to foster development of appropriate economic incentives to encourage public and private sectors investment 10) to enhance the awareness, skill and institutional capacity of relevant stakeholders 11) to promote conservation of natural resources and long term sustainability.

5.5.1.12 Framework for Implementation of Climate Change Policy 2014-2030

This framework is developed for the implementation of national climate change policy 2012 by taking into consideration the current and future threats to Pakistan's various sectors. It provides a broader framework for adapting to the changing impacts of climate change and how to play a role in its mitigation. The framework highlights the vulnerabilities of various sectors to climate change such as water, forestry, agriculture, biodiversity, coastal areas, health and other ecosystem and provide appropriate adaptation actions to deal with it. Besides that, the framework also provides actions program concerning disaster preparedness, capacity building, institutional strengthening and raising awareness in relevant sectors. The framework is called a living document as its action and programmes will continue to be adapted

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as per the changing impacts of the climatic conditions⁴⁶³.

5.5.1.13 Pakistan Climate Change Act 2017

The first national Act on climate change was adopted to meet Pakistan's obligation under the international conventions relating to climate change and to provide adoption of comprehensive adaptation and mitigation policies, programmes, projects and other measures necessary to address the effects of climate change⁴⁶⁴. The Act set provision for the establishment of Pakistan climate change Council, which will be headed by the Prime Minister or any such person as the Prime Minister may nominate. The important functions of the council include 1) to monitor implementation of international agreements relating to climate change in the country, 2) to co-ordinate and supervise mainstreaming of climate-change concerns into decision making by federal and Provincial governments, ministries, divisions and departments in order to create enabling conditions for integrated climate-compatible and climate-resilient development processes in various sectors of economy, 3) to monitor implementation of National adaptation plan and provincial and local adaptation action plans and to monitor the communication submitted to the secretariat, if Nations Framework Convention on Climate changes, 4) the Council will approve the guidelines for the protection and conservation of renewable and non-renewable resources, species, habitats and biodiversity 5) the Council will consider the National Climate change policy and give appropriate directions⁴⁶⁵.

⁴⁶³ Climate Change Division, Government of Pakistan, Framework for implementation of Climate Change Policy 2014-2030 (<http://www.gcisc.org.pk/Framework%20for%20Implementation%20of%20CC%20Policy.pdf>).

⁴⁶⁴ Pakistan Climate Change Act 2017.

⁴⁶⁵ *ibid* s 4.

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5.5.1.14 Kyoto Protocol to the UNFCCC 1997

The protocol to the United Nations Framework Convention on Climate change the (Kyoto protocol) was adopted at the third session of Conference of the parties (COP3) of UNFCCC in Kyoto, Japan on 11 December 1997. It entered into force on 16 February 2005⁴⁶⁶. The objective of the protocol is to restrict the industrialized countries and those in transition to a market economy agreed to limit or reduce their emissions. Pakistan ratified the protocol on 11th January 2005⁴⁶⁷. The protocol is based on two mechanisms, joint implementation (JI), which involves reduction that arises from project investment in other countries with their own Kyoto emission targets, and Clean Development Mechanism (CDM), which involves emission reduction arising from project investment in developing countries which do not have their own Kyoto emission targets. These mechanisms are based on the principle that no matter where the gases come from, the impact on environment is same, and the reduction in emissions should come from the places where it will cost the least. Clean development Mechanism is the part involving the participation of the developing countries. The mechanism helps them in achieving sustainable development and contributing to the ultimate objective of the convention. Pakistan's Ministry of environment has set up its first CDM cell. Its function is to approve and facilitate projects in line with national sustainable goals and works with public and private sector partners to attract investments for projects together with capacity building

⁴⁶⁶ Kyoto Protocol to the UNFCCC (<https://unfccc.int/process/the-kyoto-protocol/status-of-ratification>).

⁴⁶⁷ Status of ratification (n 215).

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and technology transfer⁴⁶⁸.

5.5.1.15 Paris Agreement 2015

The Parties to the UNFCCC in its Conference of parties (COP2) meeting in Paris on 12 December 2015 signed the Paris agreement. The agreement entered into force on 4th November 2016⁴⁶⁹. The objective is ‘to strengthen the global response to climate change and to take measure for keeping a global temperature rise this century below 2 degrees Celsius above pre-industrial levels while pursuing efforts to limit the temperature increase even further to 1.5 degree Celsius’⁴⁷⁰. To achieve this temperature goal, the agreement aims to reach global peaking of greenhouse emissions (GHGs) as soon as possible while recognizing that peaking will take longer for the developing country party, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of GHGs in the second half of the century⁴⁷¹. The agreement required that each party shall prepare, communicate and maintain a nationally determined contribution (NDC) and shall adopt domestic mitigation measures with the aim of achieving the objectives of such contribution. The parties are required to communicate their NDCs every five years and each successive NDCs shall reflect the highest possible ambition in comparison to the previous NDCs Plan⁴⁷². Pakistan ratified the agreement on 10th November 2016 and entered into force the

⁴⁶⁸ Ministry of Environment, Government of Pakistan Clean Development Mechanism (CDM) National operational strategy (<http://environment.gov.pk/images/policies/PakCDMNatOpelStrgy.pdf>).

⁴⁶⁹ Paris Agreement [2015].

⁴⁷⁰ *ibid* art 2.

⁴⁷¹ *ibid* art 4.

⁴⁷² *ibid* 4, para 2.

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same day⁴⁷³.

According to long-term climate risk index (CRI) report, which is based on 20-year average, Pakistan is ranked seventh among 10 most affected countries from 1998-2017 which have caused 10,248 lost lives and \$3.8 billion equivalent to 0.678 percent of the GDP losses⁴⁷⁴. In short-term, the climate risk index for 2016, Pakistan is ranked on 40th position with 262 lives lost and have caused \$384.52 million equivalent to 0.036 percent of the GDP losses⁴⁷⁵. According to this report, during the last 20 years (1998-2018), 526,000 people have died throughout the world due to 11,500 overall during the last 20 years (1998-2018), due to more than 11,500 weather events and caused losses worth (something is missing here) have killed 526,000 people throughout the world and caused losses worth \$3.47 trillion⁴⁷⁶. The Global Climax Index 2019 report revealed that Pakistan is greatly affected by extreme weather changes and needs predictable and reliable financial support with climate-induced loss and damage as well. Pakistan's vulnerability to climate change in long-term index is constantly high although its emissions are less than one percent in global carbon trajectory. The reason is attributed to its geographical location. Therefore, Pakistan must bear the biggest impacts of climate changes such as heavy rainfalls accompanied by flooding, landslides etc. It was indicated in the report that Pakistan must play its part in

⁴⁷³ Status of ratification (n 215).

⁴⁷⁴ The German Watch Global Climate Risk Index, The Long-Term Climate Risk Index (CRI), Pakistan ranked seventh among the 10 countries most affected from 1997 to 2016 (annual averages) (<https://germanwatch.org/sites/germanwatch.org/files/publication/20432.pdf>), 9.

⁴⁷⁵ German Watch Global Climate Risk Index (2016) (<https://germanwatch.org/sites/germanwatch.org/files/publication/20432.pdf>) 29; German Watch Global Climate Risk Index Report, Pakistan is ranked 33 among the list of countries (2017) (<https://www.germanwatch.org/sites/germanwatch.org/files/Global%20Climate%20Risk%20Index%202019.2.pdf>) 33

⁴⁷⁶ For details see David Eckstein, Vera Künzel, and Laura Schäfer, 'Global Climate Risk Index, 2019 Who Suffers most from Extreme weather events? Weather related loss events in 2017 and 1998 to 2017' [2018] German watch Briefing Paper, 4,8

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undertaking the challenge of keeping a global warming below 1.5 degrees. Further, it was suggested that Pakistan ‘must increase efforts, in the context of common but differentiated responsibilities, to reduce domestic emissions from all sectors. At the same time, the government should assess and identify local communities most affected and develop national and local adaptation strategies on how to deal with the impacts, while relying on international support. Pakistan required international climate finance to deal with challenges of climate change. Pakistan has received USD 38 million from Green Climate Fund(GCF) and USD 5 million Adaptation Fund and funding.

5.5.1.16 Pakistan’s First Nationally Determined Contribution (NDCs)

Pakistan has submitted its first Nationally intended contribution report in November 2015. The report provided a detail regarding overall Greenhouse Gas (GHG) emission profile and future emission projections by taking into consideration present and future socio-economic parameters, changes in demographic dynamics and energy needs. The report also described mitigation and adaptation measures that had been already implemented and highlighted the challenges and difficulties in addressing the climatic changes likely to be confronted in future⁴⁷⁷. The document is being criticized on ground that it does not mention any reduction of greenhouse emissions or set of mitigation activities despite the country being exposed to worst climatic changes in last five years such as droughts, flood and recent heat wave. As already mentioned above, Pakistan is the lowest emitter of world’s greenhouse, but it does not absolve it of its responsibility to commit to mitigation targets. Besides, Pakistan’s nation-

⁴⁷⁷ Pakistan’s Intended Nationally Determined Contribution (PAK-INDC) (<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Pakistan%20First/Pak-INDC.pdf>).

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ally contribution report stems from vision 2025, which envisages a rapid economic growth target for the country. These activities will certainly increase in greenhouse gases emission; therefore, it should commit to reducing these emissions by planning integrating low carbon and climate compatible policies in all the development sectors. As far Pakistan's reporting obligation under the agreement is concerned, it has not yet submitted its first Initial national communication report which is due.

5.5.2 Conclusion

Overall Pakistan complinace with the eight UN environmental protection has been improved despite the institutional and capacity constraints of the Government at national and provincial level. The Government has adopted important strategies, action plans and policies to ensure compliance with UN environmental protection Conventions. The environmental protection conditionality linked with a GSP + status has helped strengthen the resolve of the Government for the protection of the environment. All the provinces have adopted its environmental protection Acts which is a positive development. Due to lack of coordination between federal and provincial Ministries, lack of capacity and resources provincial departments, lack of technical expertise strict environmental standards could not enforced in the country. Public is not much sensitized about the importance of the pollution free environment. The country faced immense environment issues due to deforestation and waning of biodiversity. As industrial activities in various sectors has increased notably textile and leather industries in post GSP+ period, it has also severely impacted the overall environment leading to air and water Pollution. Emission of Green House Gases through industrial activities is another area to be seriously dealt with keeping in view the adverse impact of climate change on Pakistan. Until now the Government could

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not develop a waste management policy which not only caused severe water pollution but health hazards for the general public. Enforcement of the obligations under the environment conventions can only improve the deteriorating environment in the country. The Industries shall abide by the laws and abandon use of the chemicals and bleaches harmful to the environment, particularly in textile and leather good industries. As an enforcement mechanism of these standards, the EU can demand that these industries shall not use those chemicals which can lead to adverse water and air pollution. The EU can help in providing its support and expertise in strengthening of federal and provincial institutions responsible for the enforcement of the environment standards in the country. The legislators and policy makers who frame the laws and policies, the industrialists, labors, civil society, other stake holders are most commonly unaware of the importance of adhering to environment standards in specific industries. Civil society workers, industrialists and general public need to be educated and informed concerning the environmental issues. The adoption of Pakistan Climate Change Act, 2017 is a positive development keeping in view the vulnerability of Pakistan environment to adverse impact of climate change. The Government should develop an oversight mechanism for the effective implementation of environment conventions and should seek enhanced cooperation with the EU to address its environmental issues.

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5.6 Status of Implementation of UN Conventions on Good Governance (Conventions 24-27)

The Convention on Narcotics drugs of 1961, as amended by 1972 Protocol, was adopted on 30th March 1961⁴⁷⁸. Pakistan ratified the convention on 9th July 1965⁴⁷⁹. Convention on Psychotropic substances of 1971 entered into force on 16 August 1978⁴⁸⁰ and ratified by Pakistan on 9th June 1977⁴⁸¹. Convention against illicit Traffic in Narcotic drugs and Psychotropic substances of 1988 entered into force on 11 November 1990⁴⁸². Pakistan ratified this Convention on 25th October 1991⁴⁸³. This convention provides a comprehensive legal mechanism for enforcing the 1961 Single Convention on Narcotic drugs and 1971 Convention on Psychotropic substances. It also includes provisions against money laundering and the diversion of precursor chemicals.

5.6.1 Overview of Drug Situation in Pakistan

Geographically Pakistan shares its 2,400 km Southern border with Afghanistan and thus bears the brunt of large-scale heroin trafficking on its southern route. The trafficking of drugs is facilitated by physical and human geography across the opium

⁴⁷⁸ Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol [1975].

⁴⁷⁹ Parties to *ibid.*

⁴⁸⁰ Convention on Psychotropic substances [1971].

⁴⁸¹ Status of ratification (n 215); Convention on Psychotropic substances (n 480)

⁴⁸² United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 [1988].

⁴⁸³ Status of ratification (n 215); United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (n 482)

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producing areas of Afghanistan and transit routes through Pakistan that provides a broad deep canvas on which the traffickers operate⁴⁸⁴. Officially, there are three borders crossing point, one is in province of Baluchistan and two are in tribal belt of Khyber Pakhtunkhwa province. The topography of these borders' areas consists of numerous mountain ranges, whose natural passes, desert roads and trails provide the smuggling routes. These passes, trails and roads are mostly unmanned thus making it impossible to keep a check on movement of people⁴⁸⁵. This posed a biggest challenge against the smuggling of heroine through these areas. United Nations Office on Drugs and Crime (UNODC) 2009 estimate suggest that 45 percent of illicit Afghan opiates are smuggled through Pakistan⁴⁸⁶. The big amount of this is transported to the global market while small portion of it is consumed by opiate users in Pakistan⁴⁸⁷. All the trafficking of opium through Pakistan occurs along the southern route. Pakistan was declared poppy free in 2000/01. But the cultivation was resumed on a limited scale in northern parts of Baluchistan and in Khyber agency in Tribal belt of Khyber Pakhtunkhwa specifically after the start of American war on terror and were reported as the main poppy growing areas⁴⁸⁸. Due to the security reasons, the reliable ground surveying could not be possible to determine precise cultivation level. The Anti-Narcotics force (ANF) reported the cultivation of 977

⁴⁸⁴ Afghan Opiate Trafficking through the Southern route [2015] (https://www.unodc.org/documents/data-and-analysis/Studies/Afghan_opiate_trafficking_southern_route_web.pdf), 34.

⁴⁸⁵ *ibid.*

⁴⁸⁶ *ibid*; The global Afghan opium trade: a threat assessment [2011] (https://www.unodc.org/documents/data-and-analysis/Studies/Global_Afghan_Opium_Trade_2011-web.pdf), 1

⁴⁸⁷ Afghan Opiate Trafficking through the Southern route (n 484).

⁴⁸⁸ Ministry of Narcotics Control/Anti Narcotic Force, Government of Pakistan, Drug Abuse Control Master Plan 2010-2014 (<http://anf.gov.pk/library/pubs/Drug%20Control%20master%20Plan%202010-141.pdf>).

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hectars of poppy in these areas. It managed to eradicate 605 hectares of cultivated poppy and left a balance 372 hectares of poppy.

The law enforcement agencies of Pakistan seize variety of opiates which are trafficked through Pakistan from Afghanistan. In comparison to countries on the southern route, analysis of opiate trafficking entails analyzing heroin consumption and trafficking only, however in Pakistan, traffickers handle morphine, opium, and heroine of various grades. This shows that various forms of opiates are consumed by the users in Pakistan which revealed a more complex picture of trade⁴⁸⁹.

The drugs, which are smuggled into Pakistan, are then smuggled out of Pakistan through Iran-Pakistan border, Baluchistan coastal line Makkran, Indian ocean or through air⁴⁹⁰. The sea route for trafficking of opiate takes place from the coasts of Baluchistan and Sindh Provinces. Maritime trafficking helps the traffickers to quickly move the sizeable quantities of opiate to third countries. Similarly trafficking by air routes usually takes place from Lahore, Karachi, Islamabad and Peshawar to the Middle east. Similarly, Lahore and Karachi also offer several connections to South and South East Asia, as well as Europe⁴⁹¹. Within Pakistan, the trafficking across the provinces occurs by land. All the seizures that occur in Baluchistan, Federally Administered Tribal Areas(FATA)now part of Khyber Pakhtunkhwa and Gilgit Baltistan exhibit land as the usual mode of trafficking⁴⁹².

The volume of heroine seizures in Pakistan increased by more than 550 percent

⁴⁸⁹ Afghan Opiate Trafficking through the Southern route (n 484) 35.

⁴⁹⁰ *ibid* 38.

⁴⁹¹ *ibid* 41.

⁴⁹² *ibid*.

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during the period between 2008-2012, going from 1,900 kg to 12,630 kg⁴⁹³. This trend also signifies larger inflows of heroin smuggling and effective law enforcement activity. In comparison to the global total of heroine seizure, Pakistan has intercepted under 18 percent of the global total of heroine seizures in 2012 and 16.6 in 2013⁴⁹⁴. In past few years rise in Seizures of Cocaine and Chemical precursors (acetic anhydride and ephedrine) have also been reported. Between 2014-2015 increase of 300% has been recorded for cocaine⁴⁹⁵. In the first six months of 2016 seizure of 30 190kg of opium, 2800 kg of morphine and 8156 kg of heroin was reported by anti-drug trafficking agencies. The total value of these seizures was assessed to be USD 1925 million⁴⁹⁶. This led to the arrest of 21 369 people and opening of 20 145 legal proceedings. In 2015, 1,207 cases of drugs charges were registered with only 35% of conviction rate⁴⁹⁷. The trial of the suspects takes place in special narcotics courts. Presently six special courts for Control of Narcotics Substances (CNS) are established in main cities. Anti-Narcotics force (ANF) prosecutor prosecutes the cases of person arrested on charge of drugs trafficking.

According to United Nations Office on Drugs and Crime (UNODC) report, three possibilities could be drawn from the smuggling of opium from Afghanistan into Pakistan. First, it indicates the existence of significant opium markets in Pakistan, in neighboring countries and distant regions. The 2012 survey report estimated that

⁴⁹³ Afghan Opiate Trafficking through the Southern route (n 484) 34.

⁴⁹⁴ *ibid.*

⁴⁹⁵ Council of the European Union, French Presidency of the Dublin Group Report on situation in Afghanistan and Pakistan (9 November 2016) 14067/16 (<http://data.consilium.europa.eu/doc/document/ST-14067-2016-INIT/en/pdf>), 10.

⁴⁹⁶ *ibid.*

⁴⁹⁷ Afghan Opiate Trafficking through the Southern route (n 484).

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there were 1.06 million opiate users aged between 15-64 years in Pakistan among which 860,000 people are regular heroin users and 32,000 people were opium users⁴⁹⁸. This indicates a large-scale consumer market of opium in the country. However, the concentration of seizures in Baluchistan mean domestic demand is not enough to absorb the large quantities of opium that appear to be smuggled from Afghanistan into Pakistan⁴⁹⁹. Secondly, the presence of sizeable quantities of opium in the country indicates that opium processing is taking place on the southern route. Thirdly, opium seizures, especially those in Baluchistan, may indicate that opium consumption in Islamic Republic of Iran or opiate processing along the Balkan route are the main factors for the attraction of these opium consignments⁵⁰⁰.

5.6.2 Status of Implementation of UN Conventions on Fighting Illegal Drugs

Pakistan has regularly maintained the reporting requirements of the UN Conventions on drugs control which are within the GSP+ scope. For ensuring compliance with these conventions, Pakistan has adopted national narcotics policy, legislations and has set up institutions to combat drug trafficking and drug abuse in Pakistan.

⁴⁹⁸ United Nations office on Drugs and Crime (UNODC) and Ministry of and Interior and Narcotics Control, Government of Pakistan, Report on Drugs use in Pakistan (2013) (https://www.unodc.org/documents/pakistan/Survey_Report_Final_2013.pdf); A small number of people may be using both opium and heroin, therefore the sum of both being greater than the total number of opiate users. 1.6 million people were also reported non-medical use of prescription opioids in year 2012. Council of the European Union, French Presidency of the Dublin Group Report on situation in Afghanistan and Pakistan (n 495) 9

⁴⁹⁹ Afghan Opiate Trafficking through the Southern route (n 484) 39.

⁵⁰⁰ *ibid.*

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5.6.2.1 Pakistan's National Drug Strategy

The first anti narcotic policy was given by the Government in 1993 which created various institutions and drug enforcement structure. The policy cannot achieve the desired objectives due to lack of cohesive approach to deal with drugs issue which led to the continued drug trafficking and proliferation of drugs in Pakistan. In 2010 the Government formulated National anti-narcotics policy. The main objectives were to prevent the trafficking and production of narcotic drugs, psychotropic substances and precursor chemical, to re-energize existing national Drug law enforcement institutions, capacity-building of anti-narcotics forces, develop an effective coordination and control mechanism. Through education and community mobilization campaigns, involve the general public especially youth and public and private institutions to play an active role in eradicating drugs. This policy also seeks to promote and actively participate in bilateral, regional and international efforts to combat narcotic drugs. The policy was updated in August,2011 following the devolution of powers to the provincial governments as a result of 18th amendment to the constitution⁵⁰¹. With the amendment the subject of control of drugs fall within the jurisdiction of provinces. Ministry of Narcotics is the principal institution that deal with policy formulation and control of narcotics in Pakistan.

Drug Abuse Control Master Plan 2010-2014: The Ministry of Narcotics Control had prepared the Master plan for Drug abuse control for the period 2010-2014. The Master plan outlined four important objectives 1) control the production and trafficking of narcotics substances 2) to limit smuggling, trafficking and distribution of psychotropic substances, narcotics drugs and amphetamine type stimulants

⁵⁰¹ National Anti-Narcotics Policy (2010) (<http://anf.gov.pk/library/acts/Policy%20Revised.pdf>).

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and precursor chemicals 3) to keep a check on increase in drug demand and achieve reduction in number of drug addicts through preventive and rehabilitation measures 4) to make efforts to forfeit drug-generated assets and control money-laundering 5) to actively participate in international cooperation to control drugs⁵⁰². Under this plan complete eradication of opium poppy cultivation remains a Government priority.

Anti Narcotics Force(ANF): Anti-Narcotics force is the principal agency responsible for the control and eradication of drugs in Pakistan. Its responsibilities entails interdicting the drugs production,smuggling, trafficking abuse of narcotics and illicit psychotropic substances. It collects intelligence, and is responsible for arrests, drug seizure, investigation and prosecution of offenders. It is a principal enforcement agency and implement government policy on reducing supply and demand at both international and national level. It can seizure drugs generated assets and curbing money laundering and curbing which complements ANF's enforcement role. It is also responsible for the coordination of projects for the elimination of poppy cultivation. This agency is the main contact partner which coordinates with the foreign counter-narcotics agencies such as Inter-Agency Task Force (IATF)⁵⁰³.

Establishment of Inter-Agency Task Force: The inter-agency task force was established on narcotics control in February 2010. With this task force, the government has improved the coordination of various law enforcement agencies i.e. The federal police forces, Rangers, Frontier Corps, Federal Bureau of Revenue, Pakistan Customs, Pakistan Coast Guards, Railway Police, National Highways and Motorway

⁵⁰² Ministry of Narcotics/ Anti Narcotics Force, Government of Pakistan, Drug Abuse Controm Master Plan 2010-2014 (<https://www.aidsdatahub.org/pakistan-drug-abuse-control-master-plan-2010-14-government-of-pakistan-ministry-of-narcotics-control>), 8.

⁵⁰³ Anti-Narcotics Force (<http://anf.gov.pk/nap.php>).

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Police in combating drug trafficking within and out of the country⁵⁰⁴.

The Control of Narcotic Substances Act, 1997: This Act provides a legal framework and cover all aspects of Pakistan's drug control efforts⁵⁰⁵. The Act prohibits the cultivation of opium, cannabis and manufacture and possession, sale, purchase, transport of narcotic drugs or psychotropic substance as well as its import and export of these substances. The Act also facilitates the prosecution of cases against the illegal cultivators on the Agriculture land⁵⁰⁶. The Act provides provisions for the freezing and forfeiture of assets derived from drug trafficking and reverses the onus of proof and presumption of innocence in respect of possession of accused. The Act also provided provisions for the mandatory reporting by banks and financial institutions regarding any suspicious transactions. Under the Act the Government can set up special courts with exclusive jurisdiction in Drug matters. The Act also allows to establish a National Fund for the Control of Drug abuse to be partially funded from assets forfeited under the legislation. Chapter IV of the Act provides provision concerning treatment and rehabilitation of addicts. The Provincial governments are directed to set up the treatment centers and register the drugs addicts for de-toxification, de-addiction, education, rehabilitation, aftercare, social integration of addicts and provide medicines necessary for the de-toxification of addicts The Act specified the death or imprisonment for a life punishment if the quantity of narcotic drug, psychotropic substance exceed one hundred grams⁵⁰⁷.

Drug Regulatory Authority of Pakistan 2012: Under this Act the drug

⁵⁰⁴ Pakistan Inter-Agency Task force (<http://anf.gov.pk/iatf.php>).

⁵⁰⁵ Control of Narcotic substances Act 1997.

⁵⁰⁶ *ibid* s 10.

⁵⁰⁷ *ibid* s 4-8; See also Ministry of Narcotics Control/Anti Narcotic Force, Government of Pakistan, Drug Abuse Control Master Plan 2010-2014 (n 488) 15

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regulatory authority was established for regulating the availability of narcotics drugs and psychotropic substances for scientific and medical purposes⁵⁰⁸.

5.6.2.2 Pakistan's International Cooperation to Combat Drug Trafficking

During the last decade, Pakistan has developed its international counter narcotics cooperation to a great extent and has established itself as a front-line state on the southern route⁵⁰⁹. The Pakistan office of the UNODC collaborates at the regional level with offices in Iran, Afghanistan, Kyrgyzstan, Kazakhstan, Turkmenistan and Uzbekistan in implementing the Regional Programme for Afghanistan and Neighboring Countries (2016-2019). The total budget for the implementation of this regional programme is estimated at USD 43 million⁵¹⁰. The UNODC facilitated the Triangular Initiative among Islamic Republic of Iran, Afghanistan and Pakistan for joint operation against the drug smuggling⁵¹¹. This Triangular initiative is supported by the Paris pact initiative and Regional programme for Afghanistan and neighboring countries which include vast range of programmes designed to reduce the poppy cultivation and trafficking and consumption of drugs. Under this initiative, successful joint operations were launched between the three countries that resulted in more than three tons of drugs seized in March 2011⁵¹². Seventeen operations were

⁵⁰⁸ The Drug Regulatory authority of Pakistan Act 2012.

⁵⁰⁹ Afghan Opiate Trafficking through the Southern route (n 484) 34.

⁵¹⁰ Council of the European Union, French Presidency of the Dublin Group Report on situation in Afghanistan and Pakistan (n 495) 11.

⁵¹¹ The Triangular Initiative between Pakistan, Iran and Afghanistan [2007] (<https://www.unodc.org/islamicrepublicofiran/en/triangular-initiative.html>).

⁵¹² The Council of the European Union, Dublin group country Report on Islamic Republic of Iran (27 May 2011) 10815/11 (<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010815%2011>).

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planned and coordinated by the joint planning cell of this Triangular initiative which resulted in seizure of more than eight tons of drugs⁵¹³. Recently 13th Triangular Initiative Officials meeting was held in Islamabad on 12 December 2018 between the counter narcotics authorities from Pakistan, Afghanistan and Iran. The objective was to discuss ways and means for strengthening the regional partnership against the trafficking of Afghanistan opiates. The meeting decided various regional operation mechanism for drugs control which included information sharing, planning and conducting drug-interdiction operation between the regional partners, and establishment of border liaison offices (BLOs). The triangular initiative forum serves as a corner stone of the regional approach to eradicate drugs.

For targeting drugs and crime issues, the Government of Pakistan and United Nations Office on Drugs and Crime (UNODC) launched a first country program in (2010-2014) for Promoting the rule of law and Public Health in Pakistan. The objective of the programme was to contribute to ‘A safer community, free from the threats posed by organized crime and drug use and confident in the integrity of the criminal justice system to provide access to justice’⁵¹⁴. This programme has targeted three critical and interdependent areas of development assistance 1) trafficking and border management 2) criminal justice and 3) drug demand reduction and HIV/AIDS. For trafficking and border management, UNODC worked with Pakistan law enforcement and regulatory agencies for improving the security of borders. UNODC provided support for enhancement of core capacities in relevant agencies, improve-

202011%20INIT).

⁵¹³ Afghan Opiate Trafficking through the Southern route (n 484).

⁵¹⁴ UNODC Country Programme (2010-2014), Promoting the Rule of Law and Public Health in Pakistan (2010).

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ment of information collection and analysis and supporting Pakistan in defining, projecting and coordinating at international level its interests regarding trafficking and border management. In area of criminal justice, UNODC focused on key entities responsible for securing and implementing justice including law enforcement agencies, prosecution and prison services and anti-corruption authorities. Similarly, for reduction of drug demand and control and spread of HIV /AIDS, UNODC assisted the development of Government's capacity to plan, resource and implement comprehensive drug use prevention, treatment, rehabilitation and harm minimization services. In this area, UNODC support system for the collection of on drug use and conducting a national drug survey for the purpose of creating a platform for action. Under this programme, a joint UNODC-Government of Pakistan governance committee was established for effective implementation of the programme⁵¹⁵.

Drug Treatment Capacities: Overall Pakistan has a fewer drug treatment capacities and rehabilitation centre. Only 100 clinics are operating in the country, which is insufficient to meet the current demand. The public sector hospitals do not offer the drug treatment facilities. Khyber Pakhtunkhwa is the first province which has taken steps to integrate basic drug addiction counseling into its public health system. The public hospitals in general cannot offer the drug treatment due to lack of funding and facilities, therefore, over 90% of detoxification centres are run by the local and international NGOs. The cost is the main factor which prevented the access to treatment as a result 75% of people remained without medical treatment⁵¹⁶. As

⁵¹⁵ Mid-term In-depth Evaluation of the Country Programme promoting the Rule of Law and Public Health in Pakistan (2010-2015) (2014) (https://www.unodc.org/documents/evaluation/indepth-evaluations/2014/IDE_Report_CP_Pakistan_midterm_evaluation_2014.pdf).

⁵¹⁶ European Commission, 'Report on the Generalized Scheme of Preferences during the Period 2016-2017' COM(2018) 36 final (https://trade.ec.europa.eu/doclib/docs/2018/january/tradoc_156536.pdf), 22.

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per UNODC report fewer than 30,000 drug addicts received detoxification therapy annually. Due to lack of institutional capacity, most drug users receiving treatment are men, while women drug addicts are mostly neglected and offered no treatment.

5.6.2.3 Assessment of Pakistan's Compliance with Treaty Obligations by INCB Mission

A mission of International Narcotics Control Board (INCB) gave its assessment on Pakistan's compliance with international drug control treaties and progress made in the implementation of the recommendations made by the board following its previous mission in 2004. The mission appreciated Pakistan's efforts in implementing its National drug control master plan for the period (2010-2012) and making progress in the field of supply reduction and law enforcement. To control drug trafficking the government has made improvements in co-ordination of various law enforcement agencies. The mission appreciated the Government efforts in bringing institutional changes, as well as various legislative and administrative measures and policies that has been adopted at the federal and provincial level to address the emerging challenges in drugs control in the country. However the mission identified the following shortcomings 1) The Government needs to strengthen the institutional capacity to monitor illicit activities related to the narcotic drugs and psychotropic substances and at the same time ensure their availability for scientific and medical purposes 2) call for the establishment of monitoring mechanism for precursor chemicals 3) to ensure that Drug Regulatory Authority becomes fully functional 4) the provinces should fully assume the devolution of responsibilities in pursuance of 18th amendment of the Constitutional by strengthening their institutions and enhancing their

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capacities to combat drug trafficking and its use⁵¹⁷.

5.6.2.4 Conclusion

Pakistan is one of world's top transit corridors for opiates and cannabis which are trafficked from its porous border with Afghanistan and Iran. Therefore, Pakistan has to deal with two important issues, to counter drug trafficking and drug abuse. In compliance with UN Conventions fighting illegal drugs Pakistan has enacted laws, adopted administrative measures and policy, setting up law enforcement agencies aim at addressing the challenges with regard to control of licit activities related to narcotics drugs, psychotropic substances and precursor chemicals. Considerable measures have been taken by the anti-narcotics force to combat drug trafficking in the country and eliminate the cultivation of poppy country wide and declare a country poppy free. Pakistan is also playing a very significant role in a regional cooperation along with Afghanistan and Iran to combat drug trafficking by participating in triangular initiative as well as collaborating with international actors. Pakistan needs to enhance the capacity of its law enforcement agencies at the provincial and federal level and increase coordination between them for better intelligence sharing and monitor illicit activities. A National survey to drug abusers needs to be carried out to determine the latest figure of drugs users and for the assessment of the scope of problem. The federal and provincial Governments need to work on a comprehensive plan for the treatment, rehabilitation of drugs addicts and their reintegration in the society specially women drugs addicts and children need to be accommodated and provided treatment who are usually ignored.

⁵¹⁷ Report of the International Narcotics control Board for 2012 (http://www.incb.org/documents/Publications/AnnualReports/AR2012/AR_2012_E_Chapter_II.pdf), 15.

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5.6.3 UN Convention Against Corruption (UNCAC)

The United Nation Convention against Corruption (UNCAC) was adopted by the UN General Assembly on 31st October 2003 and it entered into force on 14th December 2005⁵¹⁸. The Convention is the only legally binding instrument against corruption. Many of the provisions of the conventions are mandatory, which make it a unique tool for developing a comprehensive response to tackle the issue of corruption as a global issue.

Under Article 5 of the Convention, each party to the convention shall develop, implement or maintain effective co-ordinated anti-corruption policies in accordance with the fundamental principles of its legal systems that promotes the participation of society and reflects the principles of rule of law, proper management of public affairs and public property, integrity, transparency and accountability⁵¹⁹. The parties are required to periodically evaluate their legal instruments and administrative measures to determine their adequacy to curtail corruption⁵²⁰. Parties shall collaborate with each other and with relevant and regional organizations in promoting and developing the measures required by the parties to undertake under the Article⁵²¹. The State parties are required to set up the bodies in accordance with the fundamental principles of its legal systems that prevent corruption through such means a) implementation of policies referred in Article 5 of the Convention and where appropriate overseeing and coordinating the implementation of these policies

⁵¹⁸ United Nations Convention against Corruption [2003].

⁵¹⁹ *ibid* art 5.

⁵²⁰ *ibid* art 5(3).

⁵²¹ *ibid* art 5(4).

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b) increasing and disseminating knowledge about the prevention of corruption⁵²². The bodies established shall be given the necessary independence in accordance with the fundamental principles to carry out their functions effectively without any influence. These bodies shall be provided with necessary material resources and specialized staff as well as the training that such staff may require to carry out their functions⁵²³.

Pakistan ratified the Convention against Corruption on 31st August 2007⁵²⁴. As per Transparency International's Corruption index, Pakistan is ranked 117 out of 180 countries with a score of 33 out of 100 in 2018⁵²⁵. Corruption and bribery are the widespread practices in public and private institutions of the country. The important public institutions like Judiciary, Police, Land, tax and custom administration are characterized for its corrupt system of working.

Pakistan Judiciary is characterized by corruption, inefficiency and delays⁵²⁶. Offering and paying bribes to judicial officers for favourable judgement is a commonly known practice⁵²⁷. Delays in judgement are caused by antiquated rules, poor case management, unfilled judgeship and weak legal education⁵²⁸. The lower level of ju-

⁵²² United Nations Convention against Corruption (n 518) art 6.

⁵²³ *ibid* art 6(2)(3).

⁵²⁴ Ratification status of the Convention against Corruption (<https://www.unodc.org/unodc/en/corruption/ratification-status.html>).

⁵²⁵ Transparency International, Corruption Perceptions Index 2018 (<https://www.transparency.org/country/PAK>).

⁵²⁶ Pakistan Country Report, (Bertelsmann Stiftung Transformation Index 2016) (<https://www.btiproject.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI.2016.Pakistan.pdf>), 8.

⁵²⁷ World Economic Forum, Global Competitiveness Report 2015-2016 (http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf).

⁵²⁸ United States Department of State, 2018 Country Reports on Human Rights Practices: Pakistan (19 March 2019) (<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/pakistan/>).

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diciary is often being influenced by the nepotism, influential religious and political figures, wealthy persons, and corruption⁵²⁹. Due to the corrupt practices that exists in judicial system, the foreign investors often include the clause for international arbitration in their contracts to avoid taking their legal issues before the local courts⁵³⁰. Similarly, the companies do not trust the independence of the judiciary report low trust in the efficiency of legal framework when it comes to bringing its disputes before the court and challenging regulations⁵³¹. Like Judiciary, Pakistani Police suffers from poor infrastructure, poor training, skilled persons, chronic corruption, poor training and lack of equipment⁵³². Extortion of money by Police and prison official from the prisoners and their families is a common practice⁵³³. Public usually refrain from going to Police in case of minor theft or injury for apprehension of extortion. In Pakistan Public service sectors there is a high risk of corruption⁵³⁴. Inefficient government bureaucracy together with high level of corruption are the main obstruction to business investment in Pakistan⁵³⁵. Exchange of irregular payments and bribes are common while obtaining public services or licenses⁵³⁶. In public administration

⁵²⁹ United States Department of State, 2018 Country Reports on Human Rights Practices: Pakistan (n 528).

⁵³⁰ United States Department of State, 2018 Investment Climate Statements - Pakistan (13 July 2018) <<https://www.state.gov/reports/2018-investment-climate-statements/pakistan/>>.

⁵³¹ World Economic Forum Global Competitiveness Report 2017-2018 <<http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf>>.

⁵³² Transparency International, Pakistan National Integrity Assesment 2014 (25 April 2014) <<https://www.transparency.org/whatwedo/nisarticle/pakistan.2014>> 104.

⁵³³ *ibid* 111.

⁵³⁴ GAN Business Anti-Corruption Portal, Pakistan Corruption Report (2017) <<https://www.business-anti-corruption.com/country-profiles/pakistan/>>.

⁵³⁵ *ibid*.

⁵³⁶ *ibid*.

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corruption is widely widespread. The devolution of certain authorities from federal level to provincial level has also contributed an increase of corruption⁵³⁷. It is widespread belief in a general public that government's officials are corrupt.

5.6.3.1 Status of Implementation of the Convention

For ensuring compliance with the UNCAC the government has adopted the National Accountability Ordinance and set up National accountability bureaus to curb corruption and corrupt practices at institutional level in the country.

National Accountability Bureau(NAB): National accountability bureau was set up through presidential ordinance NO XVIII on 16th November 1999 to eradicate corruption and corrupt practices and hold accountable all such persons accused of such practices and matters related to it⁵³⁸. The provisions of ordinance extend to whole of Pakistan and are applicable to persons who are or have been in service of Pakistan. National Accountability Bureau is headed by the Chairman to be appointed by the President. Section 9 of the ordinance defines the offence of Corruption and Corrupt Practices and authorizes punishment for it⁵³⁹.

All the offences of corruption or corrupt practices under this ordinance are non bailable offences. No court including the high court has the jurisdiction to grant bail to a person accused of any offence under this ordinance. Only the Chairman of the NAB can decide to release a holder of public office or person accused of corruption under this ordinance from custody or detention after considering the gravity of charge against such person. And where the accusation specifies the amount

⁵³⁷ United States Department of State, 2018 Investment Climate Statements - Pakistan (n 530).

⁵³⁸ National Accountability Bureau Ordinance 1999, s 5(k).

⁵³⁹ *ibid* s 9.

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in respect of which offence is alleged to have been committed, a person arrested cannot be released unless he deposits the amount with the NAB⁵⁴⁰. The Chairman of the NAB may impose other condition for release from such custody or detention.

Punishment of Corruption and Corrupt Practices: The punishment for corruption and corrupt practices is imprisonment which may extend to fourteen years, or with fine or with both. The property and assets of such person which is found to disproportionate to the known sources of his income or which is acquired by money obtained through corruption and corrupt practices whether in his name or name of any of his dependants shall be liable to be forfeited⁵⁴¹.

The trial of person accused of the corruption and corrupt practices shall take place before the specially constituted courts established under this ordinance⁵⁴².

The chairman of the NAB or any officer authorized by the Federal government may request the foreign state for mutual legal assistance in accordance with the law of that State a) to obtain and execute search warrants or other lawful instruments authorizing search for things relevant to investigation or proceedings in Pakistan, believed to be located in that foreign country b) freeze assets c) confiscate property d) transfer to Pakistan any such documents, evidence, things, articles, assets or proceeds realized from disposal of such articles and assets e) transfer in custody to Pakistan a person detained in foreign state who consent to assist Pakistan in relevant investigation proceedings⁵⁴³.

Pakistan's current NAB ordinance is in conformity with the requirement of

⁵⁴⁰ National Accountability Bureau Ordinance 1999, s 9(b)(c).

⁵⁴¹ *ibid* s 10.

⁵⁴² *ibid* s 16.

⁵⁴³ *ibid* s 21.

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the UNCAC. Pakistan have participated regularly in conference of parties. Recently Pakistan undertook its 1st review cycle in compliance with UNCAC. The report gave its observations on the implementation of the provisions of Chapter (III)Criminalization and law enforcement and Chapter (iv) International Cooperation of the Convention. The report highlights the progress made by Pakistan to curb the menace of corruption through its legislative and administrative measures and identify those areas which need improvements.

5.6.3.2 Observation on Complying with Provision of Chapter III ‘Criminalization and Law Enforcement’

The review report calls for speeding up adopting the legislation on witness protection with a fully-fledged witness protection programme as well as whistle blower protection system⁵⁴⁴. The report observed that NAB, Federal investigative Agency and Provincial Anti-Corruption Establishments as well as Financial Monitoring unit (FMU) are the main national agencies that are charged with control of corruption in the country. The independence of these institutions, both financial and otherwise, has recently been strengthened to avoid political and other interference in its working. Though these are positive measures, still NAB and other institutions need to strengthen their prosecutorial, investigative and enforcement capacity⁵⁴⁵. These agencies are required to establish more coordinated data collection system and enhance their cooperation⁵⁴⁶. The extension of Chairman NAB powers to enable NAB

⁵⁴⁴ Conference of the State Parties, Review of the implementation of the United Nations Convention against Corruption (UNCAC) (4 August 2017) (<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1705613e.pdf>).

⁵⁴⁵ *ibid* 5.

⁵⁴⁶ *ibid* 6.

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to function independently in comparison to other national institutions concerning non-conviction-based confiscations and power to obtain bank document without the court order was highlighted a good practice and success towards the implementation of chapter III of the convention. The report calls for the consideration of extending similar powers to other national agencies to enhance capacity in the investigation and prosecution of corruption-related offences and the confiscation of proceeds of corruption⁵⁴⁷.

5.6.3.3 Observation on Complying with Provision of Chapter IV ‘International Cooperation’ : Mutual Legal Assistance (Article 46)

On compliance with Article 46 of the Convention, Pakistan reported that legislation on Mutual legal Assistance is still in draft form and national consultation is going on. Provisions on mutual legal Assistance is covered by Section 21 of National Accountability Ordinance (NAO) and section 26-28, 30 & 31 of Anti Money Laundering Act (AMLA) 2010.

It was observed that though section 21 of the NAO allows for the mutual legal assistance request to be made by Pakistan, but it does not address the provision of assistance in response to mutual legal assistance requests received from other states⁵⁴⁸.

It was observed that current legislative framework does not deal with many issues, hence it does not fully comply with all the requirements of article 46 of the convention⁵⁴⁹. For instance, the current legislative framework does not address trans-

⁵⁴⁷ Conference of the State Parties, Review of the implementation of the United Nations Convention against Corruption (UNCAC) (n 544) 6, Article 31 of UNCAC.

⁵⁴⁸ *ibid* 8.

⁵⁴⁹ *ibid*.

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fer of detained persons to provide evidence (art 465, paras 10-12) or safe conduct of witness in Pakistan. The law also does not provide for limitations on use rules or confidentiality, though Pakistan responded that these are observed in practice⁵⁵⁰.

5.6.3.4 Law Enforcement Cooperation: Joint Investigations and Special Investigative Techniques (Article 48,49 and 50)

Concerning law enforcement cooperation measures, Pakistan referred to sections 21 and 336-C of National Accountability Ordinance (NAO) and Anti-Money Laundering Act (AMLO) 2010. Pakistan has established communication channels with other states through Asia-Specific Group of the Financial Action Task Force and International Criminal Police Organization (INTERPOL). Besides that, number of memorandum of understandings has also been concluded and Pakistan extend cooperation informally and on ad hoc basis⁵⁵¹.

Pakistan reported that it can carry out joint investigation on case to case basis by using diplomatic channels. In addition to that, Article 21 of NAO provides for special bilateral agreements for joint investigations. It also makes use of special investigative techniques in practice. For instance, section 19(e) of NAO allows for surveillance of persons through such means as may be necessary under judicial authorization⁵⁵².

5.6.3.5 Conclusion

Pakistan has framed its legal framework to eradicate corruption both in public and private sphere in accordance with the requirement of the UNCAC. After Pakistan,

⁵⁵⁰ Conference of the State Parties, Review of the implementation of the United Nations Convention against Corruption (UNCAC) (n 544) 9.

⁵⁵¹ *ibid* 9.

⁵⁵² *ibid* 9.

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the first review cycle report has appreciated Pakistan's progress made in enacting legislation and setting up independent institution for curtailing corruption in the country. However report has made some important recommendations in order to align its domestic legal and institutional framework in accordance with international standards embodied in the UNCAC. The report made the following important recommendations 1) emphasized the adoption of law on witness protection as well as whistler blower system 2) to strengthen the NAB institution and enhance its prosecutorial, investigative and enforcement capacity 3) to establish training academy for NAB officials 4) to enact guidelines on seized and confiscated assets as well as establish the centralized assets management office. Moreover for strengthening international law enforcement and judicial cooperation with other state parties the Government shall expedite its efforts to adopt Mutual legal assistance law.

The award of the GSP+ status by EU to Pakistan is linked with the essential obligation to promote and protect the human rights, labour rights, environment and good governance standards in the country. To meet this obligation the Government of Pakistan has made considerable efforts through enactment of important legislations, policies and actions to ensure ensure compliance with 27 UN Conventions which are within the scope of GSP + status. The Government has established Treaty implementation Cells (TICs) for the coordination and cooperation between national and provincial institutions in order to carry out the entire GSP programme. The Government has maintained the reporting requirement of all the 27 UN Conventions and has established important institutions and has enacted important legislations and polices for the promotion and protection of human rights, labour rights environment and good governance. However gaps still exists in the implementation of these core 27 UN Conventions as evident by the UN Committee observation reports relevant to

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each Convention which should be addressed by the Government. Nevertheless, in view of Pakistan's satisfactory reports for ensuring satisfactory compliance with 27 UN conventions the European parliament has renewed the GSP+ facility for Pakistan till 2020. For securing the GSP+ status beyond 2020 both national and provincial Governments need to demonstrate strong political will and capacities to fill wide gaps that exists in laws to ensure full compliance with these conventions which are within the scope of GSP+ status.

6 EU and Pakistan Counter Terrorism Engagements

6.1 Introduction

The emergence of the EU as a global actor to fight terrorism can be attributed to 9/11, 2001 terrorist attacks in New York and Washington. These terrorist attacks accelerated a strong show of solidarity from the European countries with the United States to fight international terrorism. Subsequently, the two key events of terrorist attack in Europe first in Madrid in March 2004 and then in London in July 2005 also proved to be instrumental in developing a critical sense of urgency within EU to deal with terrorism. The European governments agreed that terrorism was a serious threat to deal with and, therefore, demanded a strong European cooperation to fight terrorism. It was believed that Al Qaeda style of group operates across the globe and can perpetrate a terrorist attack from anywhere in Europe. Therefore, the need of the hour was to formulate such a strategy which could deal with threats of terrorism not only within the European countries but beyond the European borders

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as well¹. Before 2001, the role of EU in counter terrorism was limited. However, after 2001, the frequent challenges in area of security brought the EU to the tipping point where it has taken an ever-expanding role in countering global terrorism which has become its key priority². In the first European Security strategy (ESS), terrorism was counted as one of the main five threats along with Proliferation of weapons of mass destruction (WMDs), state failure, regional conflicts and organized crime³. All these five threats were considered interwind⁴. The strategy emphasized the need of multilateral and global approach to security in Europe and all over the world. In 2008 implementation report of ESS, terrorism was still considered a threat and was linked more clearly with the organized crime⁵. In European Internal Security Strategy, which was adopted in early 2010, terrorism was once again addressed as a first threat ‘in any form’ that posed a serious threat to the security of the Europe. This strategy set out the common threats and challenges, principles and guidelines for the EU member states and institutions to work together to effectively deal with issues of terrorism, serious and organized crime and cybercrime and natural and man-made disasters to create a safe environment in which people in Europe

¹ Daniel Keohane, ‘The Absent Friend:EU Foreign Policy and Counter-Terrorism’ (2008) 46(1) *Journal of Common Market Studies* 125, 126.

² Peter Wennerholm, Erik Brattberg, and Mark Rhinard, ‘The EU as a counter-terrorism actor abroad:finding opportunities, overcoming constraints’ (2010) 60 *European Policy Center* (http://www.epc.eu/pub_details.php?cat_id=2&pub_id=1152), 8; Alexander MacKenzie, ‘The European Union’s increasing role in foreign policy counterterrorism’ (2010) 6(2) *Journal of Contemporary European Research* 148, 151

³ Council of the European Union, *A Secure Europe in a Better World, European Security Strategy*, Brussels [2003] (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:r00004>).

⁴ *ibid.*

⁵ Council of the European Union, *Report on the Implementation of the European Security Strategy-Providing security in the changing world*, Brussels (11 December 2008) S407/08 (https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/104630.pdf).

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feel protected⁶. Before 9/11, only seven European states had the specific laws to counter terrorism. These states include Germany, France, Italy, Greece, UK, Spain and Portugal⁷. However, the European leaders began a process of accelerated change as a response to a security situation created specifically after 9/11 terrorist attacks on America. The adoption of the European Council Framework decision of 13 June 2002 on combating terrorism, was a progressive development in EU's counter terrorism efforts which contributed in the extension of the counter terrorism laws from these seven states to the rest of the twenty-seven states⁸. Here it is important to mention some main legislative measures that has been adopted at the EU level to combat terrorism in an effective manner.

A plan of action to combat terrorism was adopted in an extraordinary meeting of the European Council on 21 September 2001⁹. This plan affirmed that fight against terrorism is the priority objective of the European Union. This plan was later revised and realigned in 2004¹⁰. This plan gave seven new strategic objectives to combat

⁶ Council of the European Union, Internal Security Strategy for the European Union: "Towards a European Security Model", Brussels (23 February 2010) 5842/2/10 REV 2 (<https://register.consilium.europa.eu/doc/srv?l=EN&f=ST%205842%202010%20REV%202>), paras 4,5,6; See also Commission to the European Parliament and the Council, 'The EU Internal Security Strategy in Action: Five steps towards a more secure Europe' (communication) COM(2010) 673 final Brussels (<https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0673:FIN:EN:PDF>); In Renewed European Union Internal security strategy for 2015-2020 tackling terrorism, radicalization, recruitment and financing to terrorism, cybercrime and organized crime were highlighted as the main security threats to Europe to be effectively dealt with (<http://data.consilium.europa.eu/doc/document/ST-9798-2015-INIT/en/pdf>)

⁷ MacKenzie (n 2) 151.

⁸ *ibid.*

⁹ Council of the European Union, Conclusions and plan of action of the extraordinary European Council meeting on 21 September 2001, SN 140/01 (<https://www.consilium.europa.eu/media/20972/140en.pdf>).

¹⁰ Council of the European Union, EU plan of action to combat terrorism 2001, Brussels (15 June 2004) 10586/04 (<https://www.consilium.europa.eu/media/20972/140en.pdf>).

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terrorism which included (1) to intensify international consensus against terrorism and enhance international efforts to combat terrorism, (2) to reduce terrorists access to financial resources, (3) maximizing the capacity of the EU bodies and member states to detect, investigate and prosecute terrorists and to prevent terrorism, (4) to protect the security of international transport and ensure effective system of border control, (5) increasing the capacity of the European Union and of member states to deal with the consequences of terrorism, (6) to deal with those factors which contribute to support for and recruitment into terrorism, (7) To target action under EU external relations towards the third countries with the objective of enhancing its counter-terrorist capacity or commitment to combat terrorism¹¹. EU was quite successful in making a profound development to counter the terrorism threat within its border and have successfully managed its member states to work and participate in a connected manner in countering terrorism¹². The council Framework decision of 13 June 2002 was considered a corner stone of the Member state's criminal response to curb terrorism. It established a legal framework common to all Member States thereunder the member states were required to align their legislation, in particular the harmonization of the definition of terrorist offences and introducing minimum penalties concerning terrorist offences¹³. This framework decision was also known as the basis of the counter terrorism policy of the European Union and serve as a benchmark for the subsequent council decisions adopted to counter terrorism. This includes the council frame work decision on European arrest warrant and the sur-

¹¹ Council of the European Union, EU plan of action to combat terrorism 2001, Brussels (n 10) 5.

¹² MacKenzie (n 2) 152.

¹³ Council Framework decision of 13 June 2002 on combating terrorism [2002] OJ L164/3 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133168>), art 3-7.

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render procedure between the member states¹⁴ and joint investigation team¹⁵, the Council decision of 20 September 2005 on exchange of information and cooperation concerning terrorist offences between competent national authorities¹⁶, the council framework decision of 18 December 2006 on simplifying the exchange of information and intelligence between the law enforcement authorities of the member states¹⁷, Council decision of 23 June 2008 on stepping up of cross-border cooperation for combating terrorism and cross border crime¹⁸, Council framework of 28 November 2008, which amended the 2002 framework decision and provides for the criminalization of offences linked to terrorist activities in order to contribute to the more general policy objectives of preventing terrorism through reducing the dissemination of those materials which might incite a person to commit terrorism¹⁹. The council common position on the application of specific measures to combat terrorism²⁰.

¹⁴ Council Framework decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member states [2002] OJ L190/1 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:L:2002:190:TOC>).

¹⁵ Council Framework decision of 13 June 2002 on on Joint investigation teams [2002] OJ L162/1 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002F0465>).

¹⁶ Council Decision of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences [2005] OJ L253/22 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2005:253:TOC>).

¹⁷ Council Framework Decision of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union [2006] OJ L386/89 (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006F0960>).

¹⁸ Council Decision of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime [2008] OJ L210/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008D0615>).

¹⁹ Council Framework decision of 28 November 2008 amending Framework decision of 2002 /475/JHA on combating terrorism [2008] OJ L330/21 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008F0919>); See Nicolas Catelan, Sylvie Cimamonti, and Jean-Baptiste Perrier, *La lutte contre le terrorisme dans le droit et la jurisprudence de l'Union européenne* (Presses universitaires d'Aix-Marseille 2014) 17

²⁰ Council Common Position of 27 December 2001 on application of specific measures to combat

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The European Parliament and Council 2015 directive on establishing the common rules on the prevention of the use of Union's financial system for the purposes of money laundering or terrorist financing. It aimed for the criminalisation of the terrorist financing in the member states and provides for the criminalisation not only of the financing of terrorist acts, but also the financing of terrorist group, as well as other terrorist-related offences, which include recruitment and training or travel to terrorist organizations with the objective of destabilizing support structures that facilitate the commission of terrorist offences²¹. In 2017, the European Parliament and Council adopted a directive on combating terrorism with the objective of updating the current framework on criminalising the terrorist offences and bringing the EU legislation in accordance with international developments notably the UN Security Council Resolution 2178 and the Additional Protocol to the Council of Europe Convention on the prevention of terrorism. The Directive exhaustively lists several serious crimes which also includes receiving of terrorist training, travelling and any attempt to travel abroad for terrorism, funding or facilitating such travel. The directive also provides for compensation and support assistance to the victims of terrorism in the Union²².

In area of countering terrorism, two important strategies were adopted; EU strategy for combating Radicalisation and Recruitment to terrorism was first ad-

terrorism [2001] OJ L344/93 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001E0931>).

²¹ Directive (EU) of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [2015] OJ L141/73 (<https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A32015L0849>).

²² Directive (EU) of the European Parliament and of the Council of 15 March 2017 on combating terrorism [2017] OJ L88/6 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0541&rid=6>).

opted in 2005²³ and was later revised in 2008²⁴ and 2014²⁵. The strategy lays the foundations of enhanced involvement of civil society in tackling the issue of radicalisation and has targeted three areas for intervention; first to disrupt the activities of the networks and individual who attract people into terrorism, second for tackling extremist it ensure that voices of mainstream public opinion prevail over those of extremist views and through promotion of democracy, security, justice and opportunity for all the people²⁶.

European Union counter terrorism strategy was adopted in 2005 by the European Council which acknowledged that for countering the threat of terrorism, both internal and external responses are required. This strategy continues to be the main reference framework for the EU action in the field of terrorism²⁷. The Strategy outlines four pillars on which to focus counter terrorism both within the European Union and Internationally. These are

1. **PREVENT:** This pillar entails various actions. It refers to the task of pre-

²³ Council of the European Union, The European Union Strategy for Combating Radicalisation and recruitment to Terrorism, Brussels (24 November 2005) 14469/04/05 Rev 4 (<https://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014469%202005%20REV%204>).

²⁴ Council of the European Union, Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism, Brussels (14 November 2008) 15175/08 (<https://www.statewatch.org/news/2008/nov/eu-council-r-and-r-revised-15175-08.pdf>).

²⁵ Council of the European Union, Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism, Brussels (19 May 2014) 9956/14 (<http://data.consilium.europa.eu/doc/document/ST-9956-2014-INIT/en/pdf>).

²⁶ Council of the European Union, The European Union Strategy for Combating Radicalisation and recruitment to Terrorism, Brussels (n 23); See also European Commission, 'The EU Counter-Terrorism Policy:main achievements and future challenges' COM(2010) 386 final Brussels (<https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0386:FIN:EN:PDF>), 4

²⁷ Council of the European Union, The European Union Counter-Terrorism Strategy, Brussels [2005] (<https://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014469%202005%20REV%204>); See also European Commission, 'The EU Counter-Terrorism Policy:main achievements and future challenges' COM(2010) 386 final Brussels (<https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0386:FIN:EN:PDF>), 2

venting people from resorting to terrorism in Europe and other parts of the world and addressing the root causes of terrorism that promote its development.

2. **PROTECT:** This pillar aims protection of the key targets from terrorist attacks such as citizens and infrastructure, thus overall reducing the Europe's susceptibility to terrorist attacks.
3. **PURSUE:** This pillar covers certain measures such as impeding the planning, travel and communication and financing of terrorist acts and prosecution of the terrorists.
4. **RESPOND:** This is the final pillar of the strategy and involves civil protection mechanism. It focuses on how to deal with terrorist attacks in case of its occurrence and minimise its consequences. Though the strategy notes that provision of emergency services is the primary responsibility of the state hit by an attack, it highlights the need for the European Union to show solidarity and respond collectively in the dire situation of terrorist attacks or extreme emergency²⁸.

Given the Global nature of terrorism, the strategy operates in two dimensions. The four strands of the strategy discussed above broadly cover all those actions and measures required for wider cooperation at the EU level for combating the terrorism within the European borders. On the other hand, the external dimension of the EU counter terrorism strategy covers measures such as enhanced cooperation with the international bodies, strengthening international intelligence, stemming the

²⁸ Council of the European Union, The European Union Counter-Terrorism Strategy, Brussels (n 27).

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flow of terrorist financing and cooperation with third countries to raise their local competence through their capacity building to fight terrorism²⁹. The EU not only offers assistance to third countries for countering terrorism, but also emphasizes on the thematic implementation of the global UN standards to counter terrorism³⁰.

While assessing the global threat of terrorism, it is often argued that a threat of terrorism to EU and USA is much less as compared to other parts of the world. For instance, after 2001, over 80 percent of the terrorist attacks have occurred in India, Pakistan, Iraq, Russia and Thailand-Philippine and Indonesia³¹. According to the Global terrorism Index 2016 report Iraq, Afghanistan, Nigeria, Pakistan and Syria remained the five countries most affected by terrorism. These countries have been at the top of index during the last three years³².

The Global Terrorism Index 2016 report indicated that in 2015 the total number of attacks and deaths from terrorism have decreased by ten percent. This change has mainly linked to the decreased activity of ISIL in Iraq and Boko Haram in Nigeria following their military setbacks³³. For the very first time since 2010, there has been reduction in deaths caused by terrorism³⁴. Despite this decline in deaths rate, year 2015 was still the second deadliest year for terrorism from the last 16 years with a

²⁹ Council of the European Union, The European Union Counter-Terrorism Strategy, Brussels (n 27); See also European Commission, 'The EU Counter-Terrorism Policy: main achievements and future challenges' COM(2010) 386 final Brussels (<https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0386:FIN:EN:PDF>), 11

³⁰ Keohane (n 1) 140,141.

³¹ Aurel Croissant and Nicolas Schwank, *Violence, Extremism and Transformation* (Verlag Bertelsmann Stiftung 2006).

³² *ibid.*

³³ Institute for Economic and peace, Global Terrorism Index 2016 Report: Measuring and understanding the impact of terrorism (2016) (<http://economicsandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf>) 14.

³⁴ *ibid.*

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nine-fold increase in number of deaths caused by terrorism in comparison to 2000³⁵. Similarly, terrorist attacks decreased ten percent to 12, 089 in comparison to 13, 486 in 2014³⁶. Iraq, Afghanistan, Nigeria, Pakistan and Syria accounted for 72 percent of all the deaths from terrorism in 2015³⁷. Although Iraq, Nigeria and Pakistan all had recorded a 30 percent decline in deaths from terrorism in comparison to 2014³⁸. On the other hand, Afghanistan has recorded 18 percent increase in deaths rising from 4, 507 to 5, 312 in 2015. This increase is attributed to the ascendancy of Taliban, which is currently fighting with Afghan Government and NATO Allies³⁹. The decline in death rate from terrorism in Nigeria, Iraq and Pakistan is the outcome of the military interventions against the terrorist groups. Except for Nigeria and Iraq, the deaths from terrorism in the rest of the world have increased by 14 percent from 15, 309 in 2014 to 17,476 in 2015⁴⁰. This means more countries have reported the highest number of incidents in 2015 since 2000. This is attributed to the expansion of the ISIL to 28 countries in 2015 in comparison to its existence in 13 countries in 2014⁴¹. Syria, Yemen and Afghanistan have recorded largest increase in death tolls from terrorism in 2015⁴². Moreover, in 2015 the countries which experienced their highest death tolls from terrorism since 2000 was France, Saudi Arabia and Tunisia⁴³. The

³⁵ Institute for Economic and peace, Global Terrorism Index 2016 Report:Measuring and understanding the impact of terrorism (n 33).

³⁶ *ibid.*

³⁷ *ibid* 16.

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid* 15.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

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OECD countries also recorded a substantial increase in terrorism, with France and Turkey being particularly affected⁴⁴. Similarly in 2015 Germany, Denmark, Sweden and Turkey recorded the most deaths from terrorism in this single year since 2000⁴⁵. Among these countries Turkey recorded the highest increase in deaths rising from 20 to 337 in 2015. Similarly, France also experienced a dramatic increase in deaths due to Paris attacks in November 2015 causing the death of 136 people and Ile de France attack which caused the death of 20 people⁴⁶. In 2016, deadliest terrorist incident took place in France' in its city of Nice which had caused the death of 85 people and over 300 people were injured⁴⁷. According to latest Global terrorism Index Report 2018, the total number of deaths from terrorism declined for the third consecutive year, decreasing to 27 percent to 18, 814 deaths in 2017. This decline in deaths from terrorism is attributed to a fall in intensity of conflict in Middle East, the decline of the international terrorist group ISIL and an increase in counter terrorism activity⁴⁸. The countries most impacted by terrorism on Global terrorism index in 2017 were Iraq, Afghanistan, Nigeria, Syria, Pakistan, Somalia, India, Yemen, and Egypt⁴⁹. The Europe was the region which showed a biggest improvement from the impact of terrorism and recorded a fall from the terrorist activity, despite the threat of returnees and online radicalisation in comparison to terrorism attacks that have

⁴⁴ Institute for Economic and peace, Global Terrorism Index 2016 Report:Measuring and understanding the impact of terrorism (n 33) 17.

⁴⁵ *ibid* 17.

⁴⁶ *ibid*.

⁴⁷ *ibid*.

⁴⁸ Institute for Economics and Peace, Global terrorism index Report 2018:Measuring and understanding the impact of terrorism (2018) (<https://f.hypotheses.org/wp-content/blogs.dir/2725/files/2018/12/Global-TerrorismIndex-2018-1.pdf>) 12.

⁴⁹ *ibid* 18-22.

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occurred during the last three years⁵⁰. The number of deaths fell from 168 in 2016 to 81 in 2017. France, Turkey, Belgium and Germany have recorded the most significant falls, while UK, Spain, Sweden, Austria and Finland recording an increase. Although wholly the number of deaths from terrorism is at the lowest level since 2013, it is still a major global threat⁵¹.

The sporadic events of terrorism that have occurred in member states of EU substantiated the fact that Europe faces a significant and ongoing threat of terrorism. Therefore, Global counter terrorism remained the foremost priority of the EU. It must be pointed out that before 9/11, EU counter terrorism cooperation with the third countries was limited, however its role as a global counter terrorism actor has evolved significantly over the passage of time. It is believed that the initiatives taken under external dimension of the EU counter terrorism strategy would not only help to combat terrorism overseas but in turn will reduce the spill over effects of terrorism in Europe⁵².

These objectives were also emphasized in European Union Counter-Terrorism Strategy 2005 in the following words;

“Much of the terrorist threat to Europe originates outside the EU. [The Counter-Terrorism Strategy pursue strand] must therefore also have a global dimension. The EU will work to reinforce the international consensus through the United Nations and other international bodies and through dialogue and agreements (which include counter-terrorism

⁵⁰ Institute for Economics and Peace, Global terrorism index Report 2018:Measuring and understanding the impact of terrorism (n 48) 2.

⁵¹ *ibid* 12.

⁵² Wennerholm, Brattberg, and Rhinard (n 2) 8.

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clauses) with key partners [...] Assistance will be provided to priority countries to help them introduce and implement the necessary mechanisms to disrupt terrorism, in coordination with the work of other donors.”⁵³

The next part of the chapter will discuss the external dimension of the EU counter terrorism strategy that is built upon the EU distinctive approach to counter terrorism and the factors that lead to its development.

6.2 External Dimension of the EU Counter Terrorism

The ‘external dimension of the EU counter terrorism policy implies ‘an externalisation of policy field that was primarily internally focused’⁵⁴. According to Lavenex and Wichman ‘the external projection of internal polices constitute a new kind of foreign policy, which is usually referred to as the ‘external dimension’ of a policy field’⁵⁵. According to them, ‘nowhere is this more obvious than in the external dimension of JHA’⁵⁶. According to Wolf and others this can be defined as ‘an attempt to provide an overall strategic orientation to punctual measures adopted in policy area of JHA’⁵⁷. Moreover, they comment further that ‘the JHA external dimension

⁵³ Council of the European Union, The European Union Counter-Terrorism Strategy, Brussels (n 27) para 30.

⁵⁴ MacKenzie (n 2) 150.

⁵⁵ Sandra Lavenex and Nicole Wichmann, ‘The external governance of EU internal security’ (2009) 31(1) *European Integration* 83, 84.

⁵⁶ *ibid* 84.

⁵⁷ Sarah Wolff, Nicole Wichmann, and Gregory Mounier, ‘The external dimension of justice and home affairs: A different security agenda for the EU?’ (2009) 31(1) *Journal of European Integration*, 10.

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describes the contours of a policy universe. This policy universe covers the external dimension of various EU Internal security policies in the areas of terrorism, migration and organized crime⁵⁸. The European Neighbourhood policy (ENP) can be quoted as one such example of the EU's efforts to expand its 'acquis' in the nearby third countries⁵⁹. Till certain period of time, the scholars have focused on EU counter terrorism in the Mediterranean⁶⁰, JHA policies in Georgia⁶¹ and JHA influence in Western Balkans⁶². However, unlike EU past focus on threats developing near Europe, its counterterrorism action has evolved on a global scale since 2001 mainly through its counter terrorism engagements with third countries such as Afghanistan and Pakistan⁶³. The EU external action to counter terrorism 'aid projects to third countries in field of governance and rule of law are addressing factors which can contribute to radicalization and recruitment'⁶⁴. Hence, EU external action to counter terrorism in third countries is based on distinctive approach. As pointed out earlier that EU need to 'create a distinct political alternative to America's 'war on terror'⁶⁵. The America's war on terror did not prove to be significant in a long run as the outcome of its military expeditions against the few states after 9/11 have

⁵⁸ Wolff, Wichmann, and Mounier (n 57).

⁵⁹ MacKenzie (n 2) 150.

⁶⁰ Sarah Wolff, 'The Mediterranean Dimension of EU Counter-terrorism' (2009) 31(1) *Journal of European Integration* 137.

⁶¹ Lili Di Poppo, 'The externalization of JHA policies in Georgia:partner or hotbed of threats?' (2009) 31(1) *Journal of European Integration* 103.

⁶² Florian Trauner, 'Deconstructing the EU's routes of influence in justice and home affairs in the Western Balkans' (2009) 31(1) *Journal of European Integration* 65.

⁶³ MacKenzie (n 2) 150.

⁶⁴ Council of the European Union, Factsheet:'The EU and the Fight Against Terrorism', Brussels [2007].

⁶⁵ David Spence, 'Introduction. International Terrorism—the Quest for a Coherent EU Response' in David Spence (ed), *The European Union and Terrorism* (John Harper Publishing London 2008) 3.

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given rise to the scenario in different parts of the world, which could rightly be called the ‘clash of civilization’⁶⁶. This scenario also intensified the division of the world into ‘good’ and ‘evil’⁶⁷. The American ‘war on terror’ was criticized because it has sacrificed the ‘long term progress for the short-term expediency’⁶⁸. Even in the National intelligence estimates of April 2006, report of ‘Trends in Global Terrorism /Implications for the United States’ it was pointed out that ‘the U.S invasion and continued perceived occupation of Iraq has radicalized the Muslim World and potentially generated untold new terrorist recruits’⁶⁹. The Iraq invasion in 2003 has caused a division between Europe and America. Many European states did not believe that invasion of Iraq was about fighting terrorism⁷⁰. This view even led to a division in Europe. UK, Spain and Poland, which were not then members of the EU supported the American invasion of Iraq while on the other hand, Germany and France vehemently opposed the American action. The lack of consensus on military action against Iraq revealed that how susceptible the Europe was to divisions of this kind⁷¹. Finally the US found itself in a ‘quagmire’ by 2007⁷², which indicated that American position was undermined in the middle east and has aggravated the terrorism⁷³. Many Authors remarked that foreign policy decisions and military responses to fight terrorism could not achieve the desirable results and in reaction

⁶⁶ MacKenzie (n 2) 154.

⁶⁷ *ibid.*

⁶⁸ Bruce Hoffman, ‘A counterterrorism strategy for the Obama administration’ (2009) 21(3) *Terrorism and Political Violence* 359, 360.

⁶⁹ *ibid.*

⁷⁰ MacKenzie (n 2) 154.

⁷¹ *ibid.*

⁷² Spence, ‘Introduction. International Terrorism—the Quest for a Coherent EU Response’ (n 65) 20.

⁷³ *ibid.*; MacKenzie (n 2) 154

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these countries were targeted with terrorism⁷⁴. America's experience in Iraq and Afghanistan led the America to revisit its policy of 'war on terror'. Therefore, unlike the US hard power approach to combat terrorism the EU began to 'adopt a series of powers flanking the hard power of the US'⁷⁵. It began to spend increasing amount of money on anti-terrorism assistance in third countries, weapons of mass destruction, security sectors reforms and peace building in general⁷⁶. This indicated that there is an emerging 'distinctive approach to combating terrorism'⁷⁷. Since 9/11, EU has made strides forward in the field of counter terrorism and has emerged as an important global counter terrorism actor. In June 2002 Seville summit, the EU decided to engage in political dialogue with third countries in the fight against terrorism, arms control, non-proliferation and to provide technical assistance to third countries to help them to combat terrorism. It also included anti-terrorism clauses in agreements with third countries. For instance, anti-terrorism clauses have been inserted into agreements concluded with Egypt, Algeria, Lebanon, Chile⁷⁸ and also with countries of the African Caribbean-Pacific Group (ACP) popularly known as Cotonou Agreement⁷⁹. EU has provided Counter terrorism assistance to various countries in

⁷⁴ Manuel R Torres Soriano, 'Spain as an object of jihadist propaganda' (2009) 32(11) *Studies in Conflict & Terrorism* 933; Mark Sedgwick, 'Al-Qaeda and the nature of religious terrorism' (2004) 16(4) *Terrorism and Political Violence* 795

⁷⁵ Spence, 'Introduction. International Terrorism—the Quest for a Coherent EU Response' (n 65) 8.

⁷⁶ *ibid.*

⁷⁷ Kim Eling, 'The EU, terrorism and effective multilateralism' in David Spence (ed), *The European Union and Terrorism* (John Harper Publishing London 2008) 120.

⁷⁸ Joanne Wright, 'The importance of Europe in the global campaign against terrorism' (2006) 18(2) *Terrorism and Political Violence* 281, 295,296.

⁷⁹ The Counter-terrorism clauses included in Cotonou agreement and with Algeria, Lebanon, Egypt and Chile were similar to the following: The Parties reiterate , their firm condemnation of all acts of terrorism and undertake to combat terrorism through international cooperation, in accordance with charter of United Nations and International law, relevant Conventions and instruments and in particular full implementation of the UN Security Council Resolutions 1373(2001) and 1456(2003)and

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different regions of the world. For instance, in South Asia to Pakistan and Afghanistan, Sahel (Mauritania, Niger, Mali), and Nigeria, Horn of Africa and Yemen⁸⁰. The EU has made use of various instruments for providing counter terrorism assistance to third states which needs discussion in present context.

6.3 EU External Assistance Instruments for Counter-Terrorism

The EU external action to counter terrorism in third countries is based on providing assistance in a wide range of areas such as, justice, law enforcement, human rights, de-radicalization, education, media, security, transport and energy, socio-economic and development issues. The means used for providing counter-terrorism assistance in these areas include such instruments and activities as European Security and Defence Policy (ESDP), development aid, missions, political dialogue, counter terrorism clauses and sanctions⁸¹. Similarly, as part of its counter terrorism strategy and to support third countries in their efforts to implement UN Resolution 1373, EU also offers external assistance in the form of ‘targeted technical assistance’ through Commission which is defined by the European court of Auditors as ‘experts contracted for the transfer of know-how and skills and the creation and strengthening of institution’⁸². This technical assistance provided support in institutional and

other relevant UN Resolutions. To this end parties agree to exchange: information on terrorist groups and their support networks; and view on means and methods to counter-terrorist acts, including in technical fields and training, and experiences in relation to the prevention of terrorism.

⁸⁰ MacKenzie (n 2) 160.

⁸¹ Wennerholm, Brattberg, and Rhinard (n 2) 11; See also Keohane (n 1) 140,141

⁸² European Court of Auditors, Special Report No 6/2007 on the effectiveness of technical assistance in the context of capacity development together with the Commission’s replies [2007] OJ C312/3

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capacity building and encompasses areas for instance police and law enforcement work, judicial capacity building and border management capacities⁸³. Such assistance is established on two basic principles often repeated in the EU texts related to counter terrorism. First, assistance should build upon existing cooperation and assistance and be qualified by a collaborative approach with the recipient states, second, assistance should be provided in those areas in which EU has a comparative advantage, both geographically (for example the European Neighbourhood) and thematically⁸⁴. For funding technical assistance, the EU's main instruments are 1) the instrument for stability (IfS), 2) the European Neighbourhood and Partnership Instrument (ENPI) the Development Cooperation Instrument (DCI) and European Instrument for Democracy and Human Rights (EIDHR). These instruments cover the entire scope of the EU's so-called 'financial toolkit' including development, education, poverty reduction. The instrument of stability is exclusively used for helping third states to combat terrorism.

6.3.1 The Instrument for Stability

The Instrument for stability (ifs) is based within a Commission and has purely a third country focus making the externalization of the EU's internal policies⁸⁵. The objective of the ifs is to strengthen "the capacity of law enforcement and judicial

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C..2007.312.01.0003.01.ENG&toc=OJ:C:2007:312:TOC>, para 1.

⁸³ Wennerholm, Brattberg, and Rhinard (n 2) 11; The EU Commission has also identified criminal activities such as money laundering, corruption and drug trafficking as generally qualifying as counter terrorism assistance.

⁸⁴ *ibid.*

⁸⁵ MacKenzie (n 2) 159.

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and civil authorities involved in the fight against terrorism and organized crime, including illicit trafficking of people, drugs, firearms, and explosive materials and in the effective controls of trade and transit”⁸⁶. The instrument of stability has replaced the old RRM (Rapid Reaction Mechanism)⁸⁷. Previously the mission under the RRM could not exceed more than six months, however under the ifs, they can now last up to 18 months. The budget for the ifs during the period 2007-2013 was EUR 2.062 billion⁸⁸. The commission through ifs provide development assistance programmes. The IfS has two components. Under the first component the commission provide development assistance programme, which is called short term crisis response and preparedness’. This aim is to provide rapid and flexible funding to prevent conflict, assistance for post conflict recovery and political stabilization, and assistance after natural disasters⁸⁹. The long-term component is intended for use in more stable context and has long term orientation. For instance, under the long-term component, assistance is given for capacity building by focusing at specific threats both global and trans-regional which has the effect of causing a negative

⁸⁶ Regulation (EC) No1717/2006 of 15 November 2006 Establishing an instrument for Stability [2006] OJ L327/4 (<https://publications.europa.eu/en/publication-detail/-/publication/bb9c16e4-d674-4a1d-947d-4b71e6160a7a/language-en>).

⁸⁷ Council regulation (EC) No 381/2001 of 26 February 2001 creating a Rapid Reaction Mechanism (RRM) [2001] OJ L157/ (<https://eurlex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A3Ar12701>); See also Chantal Lavallée, ‘From the rapid reaction mechanism to the instrument for stability:the empowerment of the European Commission in Crisis Response and Conflict Prevention’ (2012) 9(3) *Journal of contemporary European research*

⁸⁸ As per the European Commission report the breakdown of the instrument for stability budget was as follow: EUR 1.587 billion for crisis response and preparedness, EUR 266 million for non-proliferation of WMDs, EUR 118 for trans-regional and security threats and EUR 91 million for administrative expenditure. For details see European Commission, External relations. From warning to action: Reportage on EU’s Instrument for Stability, 2008 Luxembourg

⁸⁹ Regulation (EC) No1717/2006 of 15 November 2006 Establishing an instrument for Stability [2006] OJ L327/4 (<https://publications.europa.eu/en/publication-detail/-/publication/bb9c16e4-d674-4a1d-947d-4b71e6160a7a/language-en>) (n 86) art 3.

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impact on the third country security and stability. It is also used to strengthen the capacity building of states, international organization and non-state actors in conflict prevention or post conflict peace building. The assistance under the long-term component is directed towards strengthening the capacity of law enforcement, judicial and civil authorities in their counter terrorism efforts and organized crime, nuclear safety and nuclear non-proliferation and combating major threats to public health⁹⁰. In the counter terrorism context it is important as the explicit objective of supporting funding in third states in order to ‘support measures concerning the development and strengthening of counter terrorism legislations, the implementation and practice of financial law, of custom law and of migration law, and development of international procedure for law enforcement’⁹¹. EU had undertaken several important projects to counter terrorism in third states under the IFS. During the period between 2007-2013, the EU funded various important projects to combat terrorism in Sahel region (Mali, Mauritania and Niger), Afghanistan and Pakistan and to combat drug trafficking in Afghanistan. The first instrument for stability Annual Indicative Programme 2007-2008 sets aside 50 percent of budget amounting to EUR 19 million to combat drug trafficking in Afghanistan. Similarly, financial support was given to the African Centre for study and Research on Terrorism (ASCRT)⁹². Under the Instrument for stability sizeable civilian project was funded. The objective was

⁹⁰ Regulation (EC) No1717/2006 of 15 November 2006 Establishing an instrument for Stability [2006] OJ L327/4 (<https://publications.europa.eu/en/publication-detail/-/publication/bb9c16e4-d674-4a1d-947d-4b71e6160a7a/language-en>) (n 86) art 4.

⁹¹ *ibid.*

⁹² European Commission, ‘The Instrument for Stability-Multi-Annual Indicative Programme 2009-2011, Brussels’ (https://reliefweb.int/sites/reliefweb.int/files/resources/F66EDF39EEAABA8E492575F2000ECA23-Full_Report.pdf).

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capacity building of law enforcement capability in Pakistan⁹³. Between 2009 –2011, EU started a global project with EUR 10-14 million funding to support the countries in implementation of Security Council Resolutions, Conventions and Protocols as well UN strategy on counter terrorism⁹⁴. Overall under the Instrument of Stability, several important projects had been undertaken, for countering terrorism as well as against the overlapping threats in many areas of the world overall, which manifests the EU increasing identity and role as a Counter terrorism actor⁹⁵.

6.3.2 The Instrument Contributing to Stability and Peace (IcSP)

The Regulation No 1717/ 2006, which established an Instrument for stability, expired on 31 December 2013 and was succeeded by Instrument contributing to peace and security (IcSP), a new thematic instrument under Heading IV of the EU's Multiannual Financial Framework(MFF) introduced through adoption of a new Regulation of the European Parliament for the period 2014 to 2020 to fund activities in the areas of crisis response, conflict prevention and response to trans-emerging global threats⁹⁶. Articles 209 (development cooperation) and 212 (economic, financial and technical cooperation) of the treaty on the Functioning of the European Union (TFEU) set the

⁹³ For details on project funded under Instrument for Stability see Summary of EU6 Pakistan Co6operation 2011 (http://www.eeas.europa.eu/archives/delegations/pakistan/documents/eu_pakistan/portfolio_november_2011_en.pdf), 10.

⁹⁴ MacKenzie (n 2) 160.

⁹⁵ *ibid* 159,160.

⁹⁶ Julian Bergmann, *A Bridge Over Troubled Water?:The Instrument Contributing to Stability and Peace (IcSP) and the Security-Development Nexus in EU External Policy* (Deutsches Institut für Entwicklungspolitik 2018) 10.

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legal basis of the Instrument contributing to peace and security (IcSP)⁹⁷. The objective was to introduce a revised instrument that was built on the experience of the previous instrument for stability in order to provide direct support for the Union's external policies by increasing the efficiency and coherence of the Union's action in area of crisis response, conflict prevention, peace building and crisis preparedness in addressing global and trans-regional threats and challenges⁹⁸. The specific objectives of the Regulations are a) to provide assistance in a situation of crisis or emerging crisis to contribute to stability in order to preserve, establish or re-establish the conditions essential to the proper implementation of the Union's external policies in accordance with Article 21 of TEU; the description of the assistance provided by the union under this head is covered by Article 3 of the Regulation. b) to contribute to the prevention of conflicts and to ensuring capacity and preparedness to address pre-and post-crisis situations and build peace. The description of the technical and financial assistance provided by the Union under this head is covered by Article 4 of the Regulation. c) to address specific global and trans-regional threats to peace, international security and stability. The technical and financial assistance provided by the Union under this head is covered by Article 5 of the Regulation⁹⁹.

Instrument contributing to Stability and Peace (IcSP) has been adopted as the EU's main thematic instrument to address the security-development nexus. It is designed as a bridge-builder in legal and institutional terms as well as with regards

⁹⁷ Bergmann (n 96).

⁹⁸ Regulation (EU) No 230 /2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace [2014] OJ L77/1 (https://ec.europa.eu/fpi/sites/fpi/files/documents/140311_icsp_reg_230_2014_en.pdf), art 1.

⁹⁹ *ibid* art 1(4).

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to scope of its activities¹⁰⁰. In legal term, it is a jurisdictional bridge-builder between the development and security policy realms¹⁰¹. For instance, the Regulation which established the instrument for stability, translated for the first time in EU external relations, the obligations for EU institutions to ensure external policy coherence from primary law (EU treaty) into secondary law¹⁰². In the same fashion, the IcSP regulation stated that measure supported under IcSP should be complementary and consistent with activities adopted under the Common Foreign and Security Policy¹⁰³. Secondly, in institutional terms, IcSP bridge the division between the Commission and the European External Action Service (EEAS) in the external policy areas as both the institutions are involved in the decision-making and implementation procedures of IcSP funded interventions¹⁰⁴. Further, IcSP comprised both the short- and long-term dimension of the EU's approach to conflict prevention and peace building as determined by Gothenburg programme¹⁰⁵. As discussed above Article 3 of the IcSP regulation cover the short-term crisis response, while Article 4 and 5 of the Regulation cover the long-term interventions with the objective of building the capacities of third states in conflict prevention and addressing the global and trans-regional threats¹⁰⁶.

¹⁰⁰ Bergmann (n 96) 10.

¹⁰¹ *ibid.*

¹⁰² Mark Furness and Stefan Gänzle, 'The European Union's development policy: a balancing act between 'A more comprehensive approach' and creeping securitization' in Stephen Brown and Jörn Grävingholt (eds), *The securitization of foreign aid* (Palgrave Macmillan 2016) 149.

¹⁰³ Regulation (EU) No 230 /2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace [2014] OJ L77/1 (https://ec.europa.eu/fpi/sites/fpi/files/documents/140311_icsp_reg_230_2014_en.pdf) (n 98) para 12.

¹⁰⁴ Bergmann (n 96) 10.

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.*

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The assistance under IcSP Regulation may be through (a) exceptional assistance measures and interim response programme, (b) thematic strategy papers and multiannual indicative programmes or (c) annual action programmes, individual measures and special measures and (d) support measures¹⁰⁷. The total budget for the implementation of this Regulation was EUR 2.3 billion. Seventy percent of the budget is allocated for crisis response activities falling under Article 3 (assistance in response to situations of crisis or emerging crisis), while nine percent of the budget is allocated to measures falling under Article 4 of the Regulations (long terms measures concerning conflict prevention, peace building and crisis-preparedness)¹⁰⁸. The IcSP Regulation has introduced the clause that subject the measures addressing terrorism organized crime / cybercrimes under Article 5 to International law and Human rights standards¹⁰⁹.

In this background setting the next part of the Chapter will take an in-depth analysis of the EU counter terrorism engagements with Pakistan. The financial and technical support provided by EU to Pakistan through instrument for stability and Instrument contributing to peace and stability interventions during the period between 2007 till present. Before embarking on these details, it is necessary to highlight the state of terrorism in Pakistan.

¹⁰⁷ Regulation (EU) No 230 /2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace [2014] OJ L77/1 (https://ec.europa.eu/fpi/sites/fpi/files/documents/140311_icsp_reg_230_2014_en.pdf) (n 98) art 6.

¹⁰⁸ *ibid* art 13.

¹⁰⁹ *ibid* art 5.3(b).

6.4 State of Terrorism In Pakistan

The roots of terrorism in Pakistan can be traced back to the post-soviet war era. The security situation deteriorated mainly after the invasion of American forces in Afghanistan after declaring 'war on terror'. Undoubtedly, Pakistan's policy decision to assist America in its war on terror has brought terrorism in urban areas of Pakistan which has caused loss of human lives and has greatly affected the socio-economic conditions in the country¹¹⁰. The human cost of war on terror has been 60,000 civilian casualties and 5,000 security personnel casualties due to suicide attacks, targeted killings and bomb blasts¹¹¹. Due to the extended conflicts in Federally Administered Tribal Areas (FATA) and northern region along with natural calamities, Pakistan has to dealt with the critical issue of displacement of three million individuals¹¹². Moreover, terrorism has inflicted a colossal damage to Pakistan's economy. According to Pakistan economic Survey 2017-2018 Pakistan suffered a loss of \$126 billion in the 17 years due to terrorism. The survey pointed out that terrorism dented the country's economy by

\$9.8 billion in the year 2008-2009, \$13.56 billion in 2009-2010, \$23.77 billion in 2010-2011, \$11.98 in 2011-12, \$9.97 billion in 2012-2013, \$7.70 billion in 2013-2014, \$9.24

¹¹⁰ Sabein Khan, 'North Waziristan the Ground Realities' (2012) 7 *Journal on Terrorism and Security Analysis*, 5.

¹¹¹ Muhammad Ramzan Shahid, 'Pakistan's Economic Aid and Losses in the War on Terror' (2014) 6(5) *Counter Terrorist Trends and Analyses* 10, 12; John Bingham, 'Bin Laden: 3519 days, 2 wars, \$1.283 trillion Tens of Thousands of Lives' *The Telegraph* (London, 13 May 2011) (<http://www.telegraph.co.uk/news/worldnews/asia/pakistan/8488157/Bin-Laden-3519-days-2-wars-1.283-trillion-tens-of-thousands-of-lives.html>); Sabein Khan, 'FATA'S Political Status' (2011) 10(2) *Strategic Insight*, 39

¹¹² Shahid (n 111) 10; For details on Afghan Refugees in Pakistan see UNHCR, Country Profile Pakistan (www.unhcr.org/pages/49e487016.html)

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billion in 2014-2015,\$6.49 billion in 2015-16,\$5.47billion in 2016-xx and \$2.07billion in the first eight month of ongoing fiscal year 2017-18. Due to terrorism Pakistan could not collect \$3459.67 million tax due to terrorism in last two year, in addition \$383.93 million, has been spent on infrastructure destroyed in terrorism and Government has paid \$129.89 million to affectees of terrorism during this whole period. The Survey indicated that due to security situation of a country the foreign investment up to \$1234.40 could not be attracted to Pakistan further due to war on terror, Pakistan had to bear \$10billion losses per year in trade¹¹³.

Pakistan faced a serious threat of terrorism from terrorist groups like Al Qaeda and Taliban¹¹⁴, besides others national extremist groups are also operating locally. As mentioned in above discussion, Pakistan remained in the list of top five countries on global terrorism index impacted by worst kind of terrorism during the last five years. According to recent Global terrorism index report 2018, Pakistan is ranked on fifth out of 163 countries most impacted by terrorism¹¹⁵.

The factors, which have given rise to state of terrorism in Pakistan, are socio-economic such as poverty, income inequality, access to education, weak political institutions and religious extremism. Moreover, its close geographical proximity with Pakistan has contributed a great deal in rise of terrorism in Pakistan. Pakistan shared its northeast border with its neighbour Afghanistan. The Durand line, which is 2640 kilometre, serve as an official border between the two countries. This border

¹¹³ S Paracha, 'Pakistan suffered \$12bn losses due to terrorism in 17 years/Pakistan Economic Survey' *Pakistan Today* (Lahore, 27 April 2018) (<https://www.pakistantoday.com.pk/2018/04/27/pakistan-suffered-126bn-losses-due-to-terrorism-in-17-yrs-pakistan-economicsurvey/>).

¹¹⁴ Wennerholm, Brattberg, and Rhinard (n 2) 19.

¹¹⁵ Institute for Economics and Peace, Global terrorism index Report 2018:Measuring and understanding the impact of terrorism (n 48).

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consists of harsh mountainous terrain and steep valleys inhabited by ethnically Pashtun and Baloch population. The FATA region of Pakistan (Federally Administered Tribal Area) are located in a narrow belt which runs along the Durand line between Pakistan and Afghanistan and also known as tribal belt¹¹⁶. The FATA Region is inhabited by Pashtun population and is divided into seven agencies namely, Mohmand, Khyber, Bajaur, Khurram, Orakzai, North Waziristan and South Waziristan¹¹⁷. The North Waziristan, which is known for its rugged hills with deep gorges and is largely impassable, has a population of approximately 350,000 people has been used as a shelter by the most terrorists' groups mainly the Haqqani network¹¹⁸. In 2002, Pakistani military carried out combat operations in north Waziristan. However, these military operations came to an end through signing of peace agreement known as Waziristan Accord in 2006 to end conflict in the agency¹¹⁹. Under this agreement, the tribal elders pledged not to attack against the state property and security personnel in Pakistan. In return the Pakistani government committed not to undertake any ground or air attacks in North Waziristan and to resolve the issues according to local customs¹²⁰. The peace deal broke up in 2007 when the militants from Lal Masjid attacked the Ministry of Environment and Army personnel guarding which led to the red mosque siege by the military forces in the capital

¹¹⁶ Khan, 'North Waziristan the Ground Realities' (n 110) 5,6.

¹¹⁷ Rohan Gunaratna and Khuram Iqbal, *Pakistan: Terrorism ground zero* (Reaktion Books 2012) 18-21.

¹¹⁸ K Gannon, 'North Waziristan: new epicenter of terror fight' *Associated Press* (New York, 25 October 2007) (<http://www.navytimes.com/news/2010/10/ap-pakistan-north-waziristan-new-epicenter-of-terrorfight-102510/>).

¹¹⁹ Evagoras C Leventis, 'The Waziristan Accord' (2007) 11(4) *Middle East* 19; Gunaratna and Iqbal (n 117) 86

¹²⁰ Leventis (n 119).

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city Islamabad, which resulted in the death of 150 militants¹²¹. In retaliation, the Taliban carried out the violent attacks against the Pakistan military throughout the country¹²². The north Waziristan has been used as a sanctuary by a web of militant groups and tribes including Al-Qaeda and Taliban. The hideouts of these terrorists' groups are located in the mountains between Miranshah, North Waziristan's capital and the Afghan border¹²³. As per media sources, several hundred foreign Al-Qaeda fighters resided in north Waziristan, who mostly belonged to Arab countries and Uzbekistan as well as others are Chechens, African and Westerners¹²⁴. Apart from that, the two factions from Uzbekistan known as Islamic Jihad Union and Islamic Movement of Uzbekistan are also residing in North Waziristan and have connections with the Al -Qaeda, TTP, and Haqqani Network¹²⁵. The Haqqani Network is an al-Qaeda linked insurgent group in Afghanistan and Pakistan and is close allies with Taliban¹²⁶. These networks have taken out many attacks on American led coalition forces in Afghanistan and is operating to drive out American coalition and Afghan Government forces from Afghanistan¹²⁷. Though the Network claims that it no longer need hideouts in Pakistan and has shifted its base to Afghanistan,

¹²¹ Khan, 'North Waziristan the Ground Realities' (n 110) 6.

¹²² 'Scores killed in Pakistan attacks' *BBC News* (London, 19 July 2007) (http://news.bbc.co.uk/1/hi/south_asia/6905808); Gunaratna and Iqbal (n 117) 9,153

¹²³ Khan, 'North Waziristan the Ground Realities' (n 110) 6.

¹²⁴ 'Qaeda firmly rooted in Pakistan tribal fiefdom:report' *Agence France-Presse* (Paris, 26 August 2001) (<https://www.dawn.com/news/654696/qaeda-firmly-rooted-in-pakistan-tribal-fiefdom>); See also Gunaratna and Iqbal (n 117) 27-29

¹²⁵ J Dressler, A Dangerous Mix:Militant groups in North Waziristan, *AEI Critical Threats* (1 June 2011) (<https://www.criticalthreats.org/analysis/a-dangerous-mix-militant-groups-in-north-waziristan>).

¹²⁶ Khan, 'North Waziristan the Ground Realities' (n 110) 7.

¹²⁷ *ibid.*

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however they still maintain their hideouts in North Waziristan¹²⁸. Tehrik-e-Taliban Pakistan (TTP) was established in 1996 to carry out its terrorists' activities against Pakistan for its support to America, since then it has directed its terrorist activities against Pakistan. The group is operating in Khyber, Orakzai, Bajaur, Mohmand and Dir regions¹²⁹. In 2009, Pakistan Military conducted its operations against the (TTP) headquarters in South Waziristan as a result the TTP leadership was re-located to South Waziristan¹³⁰. It is important to note that TTP maintain close ties with other militant groups including Al-Qaeda, Haqqani Network and Lashkar-e-Jhangvi, which is Punjab based militant group¹³¹. In retaliation to Pakistan's government policy stance to offer its support to America 'war on terror', Lashkar e jhangvi and TTP carried out several terrorist attacks in the country

The American invasion of Afghanistan in 2001 toppled the Taliban Government but has led to the surge of the militant groups in the tribal areas of Pakistan¹³². Former American Chairman Joint Chief of Staff Admiral Mike Mullen called the North Waziristan the 'epicentre of terrorism'¹³³. President Obama have publicly claimed that key to winning war in Afghanistan is North Waziristan. Both America

¹²⁸ 'No sanctuaries in Pakistan:Haqqani network shifts base To Afghanistan' *The Express Tribune* (Karachi, 18 September 2011) (<https://tribune.com.pk/story/254368/no-haqqani-network-sanctuaries-in-pakistan-sirajuddin/>); Gunaratna and Iqbal (n 117) 27-29,44

¹²⁹ C Helmand, 'The Afghan-Pakistan militant nexus' *BBC News* (London, 6 October 2011) (<http://www.bbc.com/news/world-asia-21338263>).

¹³⁰ B Roggio, 'Taliban attack Pakistan Army in North Waziristan' [2011] *Long War Journal* (http://www.longwarjournal.org/threatmatrix/archives/2011/08/taliban_attack_pakistani_army.php).

¹³¹ Khan, 'North Waziristan the Ground Realities' (n 110) 8.

¹³² *ibid.*

¹³³ K Gannon, 'New epicenter of terror fight' *The Washington Post* (Washington, 12 October 2010) (<http://www.washingtontimes.com/news/2010/oct/26/%20pakistan-border-region-becomes-terror-epicenter/?page=all>).

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and Pakistan have different strategic interests in North Waziristan¹³⁴. For instance, Pakistan Military is mainly concerned with the militant hubs in North Waziristan that are used to launch attack in Pakistan and America is concerned about militants who comes from the tribal belt of Pakistan and launched attacks against the coalition forces in Afghanistan¹³⁵. To halt these attacks on Coalition forces in Afghanistan, American started a drone campaign in 2004 to dismantle the terrorist groups operating from North Waziristan. With these Drones attacks, America was successful in disrupting Al-Qaeda network, however these drones' attacks were criticized for violating Pakistan's sovereignty and causing huge collateral damage and caused a negative image of America in Pakistan¹³⁶. Although Pakistan and America shared a mutual understanding of a predator drone programme, which was not acknowledged publicly¹³⁷. This understanding came to an end after the NATO strikes on two Pakistani checkpoints on 26 November 2011. In a reaction, Pakistan closed down its Shamsi Air base for America to conduct its drone attacks in the tribal region¹³⁸. To combat terrorism, Pakistan deployed in total 140,000 troops, which is largest in the world¹³⁹. Pakistan's economy has also incurred direct and indirect loses since it became a frontline state in the 'war against terrorism'¹⁴⁰.

¹³⁴ Gannon, 'New epicenter of terror fight' (n 133).

¹³⁵ *ibid* 8.

¹³⁶ *ibid*.

¹³⁷ *ibid*.

¹³⁸ Salman Masood, 'CIA leaves base in Pakistan used for drone Strikes' *New York times* (New York, 11 December 2011) (<http://www.nytimes.com/2011/12/12/world/asia/cia-leaves-pakistan-base-%5C%20used-for-dronestrikeshtml>).

¹³⁹ S Inskip, 'Pakistan, Militants in Deadly Border Fight' *National Public Radio (NPR) Washington DC* (6 June 2012) (<https://www.npr.org/2011/06/06/136977007/pakistan-militants-in-deadly-border-fight>).

¹⁴⁰ 'War on Terror cost Pakistan \$67.9 billion' *Dawn News* (Karachi, 20 June 2011) (<https://www>).

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Apart from the presence of these international terrorists' groups in FATA region, there exists many local extremist groups. These groups have contributed towards rise of radicalization and extremism in the Pakistani society. The various incidents, that have been reported concerning the confrontation between the local militant groups and security agencies of Pakistan in different parts of the country, revealed that the deteriorating security situation was not only limited to the northern borders in Pakistan, but also existed throughout the country. The religious madrasa in the country has also contributed to a certain extent in rise of extremism in the country. The 9/11 Commission Report describes Pakistan's religious schools, or madrasas, as "incubators of violent extremism"¹⁴¹. There were reports regarding EU nationals travelling to Pakistan to receive terrorist training in camps set up in the remote regions. However, the individuals, who were the perpetrators of terrorist attacks that took place in west in recent years, were highly qualified individuals and have not been to any madrasas. This means that radicalization process occurred elsewhere and is not entirely associated with madrassah education¹⁴².

To fight terrorism, the Government has formulated policies and adopted certain legal measures time to time, however on the whole, the country lacks a cohesive counter terrorism approach¹⁴³. In 2008, the National counter-terrorism authority (NACTA) was set up with the purpose of coordinating the security and law en-

dawn.com/2011/06/20/war-on-terror-cost-pakistan-679-billion.html).

¹⁴¹ Thomas Kean, *National Commission on Terrorist Attacks upon the United States, The 9/11 commission report: Final report of the national commission on terrorist attacks upon the United States* (WW Norton and Company, New York 2011) 367.

¹⁴² Wennerholm, Brattberg, and Rhinard (n 2) 119.

¹⁴³ Charles Tannock, Pakistan's counter-terrorism needs to be aligned with EU, Euractiv (1 February 2018) (<https://www.euractiv.com/section/defence-policy/opinion/pakistans-counter-terrorism-needs-to-be-aligned-with-eu/>).

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forcement apparatus but remained dysfunctional due to delays in legislation. In 2013, the National Counter Terrorism Authority bill was passed by the National assembly, which revitalized the NACTA¹⁴⁴.

On June 14, 2014, Pakistan's Army carried out operation 'Zarb-e-azb' the war of survival' to wipe out the militant's groups located in North Waziristan agency for years. This operation was launched in response to terrorist attack on Karachi Airport, which resulted in killing of thirty-six people. While this operation was going on, the terrorist attack on Army Public School in Peshawar on 16 December 2014, which caused death of 149 people including 132 school children, revealed that security situation in Pakistan was still susceptible to worst form of terrorism. The terrorist attack on school became a tipping point for the government to affirm its commitment to fight terrorism in the country. This led to the adoption of two important initiatives.

The government adopted the first ever National Internal Security Policy (NISP 2014-2018) on 25 February 2014¹⁴⁵. The National Internal Security Policy (NISP) comprised of two main components. The first component presents a soft component approach called the Comprehensive Response Plan (CRP). It stressed on the political participation and voiced public support against extremism. The CRP Plan make use of dialogue, rehabilitation of the IDP's, economic and social reforms as

¹⁴⁴ Ahmad Saffee, 'Pakistan's counter-terrorism policy' [2015] Issue brief, Institute of Strategic Studies, 2.

¹⁴⁵ Ministry of Interior, Government of Pakistan, National Internal Security Policy, 2014-2018 (<https://nacta.gov.pk/wp-content/uploads/2017/08/National-Internal-Security-Policy-2014.pdf>); For dealing with multi faceted threats of terrorism and violent extremism and other security challenges the Government has adopted a second National internal policy for a span of next five years. The new policy emphasized promotion of democracy, rule of law, inclusive growth and respect for diversity for achieving siustainable peace and security. For details see Ministry of interior, Government of Pakistan, National Internal Security Policy 2018-2023 (<https://www.interior.gov.pk/>)

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important strategies to exterminate extremism in the society. It emphasizes on formulating a national de-radicalization programme, national narrative against terrorism and extremism and working for reconciliation amongst the societal forces. CRP also works towards integrating the madrassahs in main stream education system and engaging the youth in healthy and constructive activities, to lessen the risks of falling them into the hands of the extremist groups¹⁴⁶. The second component of NISP represent a hard component approach called the Composite Deterrence Plan (CDP). This component focuses to reinforce the National internal security apparatus and on arms control regime at Centre. Other important measures under this component includes formulating of effective measures for protection against the cybercrimes, establishment of the Directorate of internal security (DIS) for co-ordination of intelligence-based operations, regulation of Afghan refugees as well as developing and integrating the national database. Furthermore, the measures proposed for upscaling the national security apparatus includes modernization of law enforcement agencies and formation of Rapid Response Force and Counter Terrorism Department¹⁴⁷.

Secondly, the National Action Plan was adopted through 21st amendment in the constitution of Pakistan¹⁴⁸. The objectives were to restore death penalty for terrorists, setting up of special military courts, countering terrorist narratives and extremism and tackling terrorist financing¹⁴⁹. The jurisdiction of NACTA was enhanced, which became functional under the National Counter Terrorism Act 2013

¹⁴⁶ Ministry of Interior, Government of Pakistan, National Internal Security Policy, 2014-2018 (n 145).

¹⁴⁷ *ibid.*

¹⁴⁸ Pakistan National Action Plan, 2014 (<https://nacta.gov.pk/nap-2014/>).

¹⁴⁹ *ibid.*

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and was made an independent body. The functions of NACTA includes coordination and formulation of terrorism strategies and actions plans, research and review of the legal reforms, for threat assessment collection and dissemination of information and intelligence report to the relevant stakeholders and establishing links with the international entities for intelligence sharing¹⁵⁰. EU has extended financial and technical expertise in setting up of NACTA.

The National Action Plan addresses the root causes of terrorism in the country, therefore, advocates reforms in FATA through addressing its governance, political and socio-economic issues, rapprochement with separatist forces in Baluchistan, tackling extremism in Punjab province and repatriation of Afghan refugees. Security operations in other parts of the country has also been conducted and 72 organizations have been proscribed to carry out its activities by the interior ministry¹⁵¹. Furthermore 11, 000 madrassahs in the country were identified by NACTA as ‘sensitive’¹⁵². However, in another report the figure of madrassahs is between 18,000 to 33,000¹⁵³. Furthermore, for curbing extremism in the Punjab province, the government of Punjab passed an Act against the hate speech called ‘The Punjab Strategic Coordination Act (2014)’¹⁵⁴. Some 260 people were prosecuted on the charge of hate speech in Punjab and have, so far, resulted in 24 convictions. Other provincial governments are also working to adopt necessary legislation for curtailing extremism

¹⁵⁰ National Counter Terrorism Authority (NACTA) (<https://nacta.gov.pk/Events.htm>).

¹⁵¹ Pakistan National Action Plan, 2014 (n 148).

¹⁵² National Counter Terrorism Authority (NACTA) (n 150).

¹⁵³ Revisiting Counter-terrorism Strategies In Pakistan: Opportunities and Pitfalls, Report No 271/Asia, International Crisis Group (2015) (<https://www.crisisgroup.org/asia/south-asia/pakistan/revisiting-counter-terrorism-strategies-pakistan-opportunities-and-pitfalls>).

¹⁵⁴ The Punjab Strategic Coordination Act 2014.

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in their provinces. The National Action Plan was also successful in dismantling the terrorist and criminal networks in the city of Karachi. The crime rate was decreased by seventy percent in this populated city well known for lawlessness and targeted killing¹⁵⁵.

It is important to understand that National security is wider concept than mere a territorial defence¹⁵⁶. Therefore, for the success of National action plan, it is important to focus on socio-economic and political factors that contribute to the rise of extremist forces in the society. In addition to that, reforms in Police and criminal justice system, strengthening of the civil institution of the country together with involvement of all segments of the society can help to eliminate terrorism and extremism in the country.

It is not surprising that Pakistan has emerged as a key focus for the EU external counter terrorism assistance to combat terrorism in Pakistan. The next part of the section will take stock of the EU-Pakistan counter terrorism engagements and co-operations from 2009-till present. This covers the financial and technical assistance given through various projects in areas such as rule of law and strengthening of democratic institutions, capacity building of law enforcement agencies, criminal justice system reforms, de-radicalization programmes, civilian capacity building and addressing the governance issues and reforms in FATA (Federally administered tribal)region.

¹⁵⁵ Saffee (n 144) 4.

¹⁵⁶ *ibid.*

6.5 EU and Pakistan Counter Terrorism Engagements

The given record of the terrorism in Pakistan and its spill over effects made it extremely important for EU to take an effective and coordinated measures for countering terrorism in Pakistan. Moreover, Pakistan was also identified by the European Commission in 2003 as a priority country for providing technical assistance to support the implementation of security council resolution 1373. The Commission also stressed on the importance and need of reviewing all the policies undertaken towards Pakistan¹⁵⁷. As discussed in the third chapter, the first summit between EU and Pakistan was held on 17 June 2009. One of the pertinent reasons for hosting a summit with the country that was neither its strategic partner nor was of significant economic importance, stems from the urgent concern of security and more particularly counter terrorism¹⁵⁸. This reason was substantiated by the remarks of the EU Counter-terrorism Co-ordinator Gilles de Kerchove in May 2009 that ‘the security threat posed by Afghanistan and Pakistan to Europe is obvious. We had many cases in the recent past where either Pakistani were coming to Europe or young EU citizens were travelling to Pakistan for training and being brainwashed in the madrassas’¹⁵⁹. This view was repeated in EU ‘s General Affairs and External Re-

¹⁵⁷ Council of the European Union, Draft Presidency report to the European Council on EU External Action in the Fight Against Terrorism (including CFSP/ESDP), 10323/02/03 (http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/declarations/108562.pdf).

¹⁵⁸ ARashmi Mukhopadhyay, ‘The First EU-Pakistan Summit’ [2009] Institute for Defence Studies and Analyses (https://idsa.in/idsastrategiccomments/thefirstEUPakistanSummit_armukhopadhyay-120609).

¹⁵⁹ *ibid.*

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lations Council (GAERC) meeting, held on 8 December 2008, which concluded that ‘Following the terrible attacks in Mumbai, the ministers underlined the intrinsic security issues in this region and the necessity for enhanced cooperation between all actors, particularly between India and Pakistan. They indicated their determination to reinforce cooperation between the EU and Pakistan, insisting both on political dialogue and trade. To this end, meetings should quickly be stepped up and a Summit organized under the Czech Presidency’¹⁶⁰. The EU’s decision to hold a summit with Pakistan suggested that EU intended to deal with the terrorism threat originating from Pakistan’s territory in a meaningful manner. Before that EU member countries have its focus on Afghanistan and ongoing military operation there, Pakistan was merely viewed as a trade partner and was given development assistance. However, rise of terrorism in Pakistan and presence of terrorists groups in FATA region led the EU to realize that Pakistan need to be engaged in a structured manner at the summit level where security should be the priority issue apart from their mere engagements in areas of trade and development assistance. In the Pakistan-EU summit, EU re-affirmed its commitment to provide support and extend its cooperation in area of counter terrorism bilaterally as well as under the framework of UN¹⁶¹. On April 2009, the Commission adopted a three-year programme, under the instrument of stability to fight terrorism and support capacity building

¹⁶⁰ Mukhopadhyay (n 158); for details on the Coordinator, see E Saulnier-Cassia, ‘La coordination de l’Union européenne pour la lutte contre le terrorisme :une mission pour un Coordinateur?’ in Nicolas Catelan, Sylvie Cimamonti, and Jean-Baptiste Perrier, *La lutte contre le terrorisme dans le droit et la jurisprudence de l’Union européenne* (Presses universitaires d’Aix-Marseille 2014) 89

¹⁶¹ Council of the European Union, EU – Pakistan Summit-Joint Statement, Brussels [2009] (http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/declarations/108562.pdf).

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including Pakistan¹⁶². Pakistan was identified as a key target for EU counter terrorism assistance due to the continued deteriorated security situation, EU thus showed commitment to support and offered its assistance through development of certain concrete projects under the instrument of stability¹⁶³. The financial assistance for these projects and programmes, had been channelled through European instrument for democracy (EIDHR) and development cooperation Instrument (DCI)¹⁶⁴. It was mentioned in Pakistan's country strategy paper 2002-2006 that Pakistan is a priority country for projects assisted through EIDHR¹⁶⁵. During the period between 2000-2006, thirty projects were funded under the EIDHR, out of these only three projects had direct relevance with counter terrorism. The projects were Capacity-building and social rehabilitation of victims of torture in NWFP', 'capacity-building of relevant stakeholders on counter-trafficking' and 'Rehabilitation programme for victims of torture'¹⁶⁶. Although the projects description had no direct relevance to terrorism but these projects helped in the prevention of illegal migration thereby restricting the terrorists to move freely across the borders. These projects also helped in implementing the measure called for under the security council resolution 1373¹⁶⁷. The projects also aided in preventing the human rights abuses by working on prevention of torture and have dealt with the past grievances of the victims. It was

¹⁶² Council of the European Union, EU Action plan on Combating Terrorism (26 November 2009) 15358/09 (<https://register.consilium.europa.eu/doc/srv?l=EN&f=ST%5C%2015358%5C%202009%5C%20INIT>), 10.

¹⁶³ *ibid* 19.

¹⁶⁴ Wennerholm, Brattberg, and Rhinard (n 2) 20; European Commission, 'Country Strategy Paper Pakistan 2002-2006' (http://eeas.europa.eu/archives/docs/pakistan/csp/02_06.en.pdf)

¹⁶⁵ *ibid*.

¹⁶⁶ EuropeAid, Compendium of Activities funded under EIDHR 2000-2006 (https://ec.europa.eu/europeaid/where/worldwide/eidhr/documents/updated_report_).

¹⁶⁷ Wennerholm, Brattberg, and Rhinard (n 2) 20.

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quite surprising that out of 26 projects funded under EIDHR, only three projects had relevance to counter-terrorism¹⁶⁸.

The financial and technical assistance, which had been provided to Pakistan under the instrument for stability, focused on three broad areas (1) consolidation of democratic process (2) Counter terrorism and countering violent extremism (3) Stabilization and Peacebuilding. The details of the assistance provided in these areas through various planned projects are as follow;

6.6 Strengthening of Democracy Through Support to Electoral Reforms In Pakistan

The biggest challenge of Pakistan is its weak democratic system. The military had derailed the democratic rule of the country four times and was given a legal cover by the Supreme Court of Pakistan. The Military intervention had to a great extent effected the democratic institutions in the country. The civilian government once set up remained under the influence of the military establishment. The occurrence of few important events in 2007 had caused a blow on a weak democratic set up of the country. This included a declaration of the State of emergency throughout the country and suspension of sixty judges from their offices and assassination of Former Prime Minister Benazir Bhutto few months before the general election. All these events severely affected the democratic process in the country, which was started after a ten-year military rule of General Musharraf. The weak democratic system of Pakistan is the area of main concern for the EU. Given the strategic

¹⁶⁸ Wennerholm, Brattberg, and Rhinard (n 2).

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importance of Pakistan in South Asia, it is important that Pakistan should have a strong democratic government to deal effectively with governance issues, human rights, rule of law, terrorism and extremism, as it is said that a successful democracy ‘is a best guarantee against terrorism, injustice and helplessness’¹⁶⁹. In this context the EU’s former EU High Representative Javier Solana has aptly remarked that ‘the best protection of our security is a world of well-governed democratic states’. He believed that this could be the Union’s “tryst with destiny”, as helping to build Pakistan’s institutions and economics is one way to help Islam and the West to coexist harmoniously. This will also enhance the EU’s profile as the world’s donor, an engine for reform and a soft power’¹⁷⁰.

For bringing electoral reforms, the EU provided a substantial amount of financial and technical support to Pakistan. In 2009, under the instrument for stability 400,000 Euros was channelled through a project for the electoral reforms in Pakistan. The project was adopted in December 2009 and was completed in May 2011¹⁷¹. The project aimed at bringing much needed reforms in the electoral process and developing the capacity of parliamentary and election authorities in Pakistan. Initially, the action for these reforms was based on the recommendations made in a report of 16 April 2008 given by the Election Observer Mission in February 2008 election. The report made recommendations and called for improvement of the legislative framework of elections, making election administration independent and for improvement

¹⁶⁹ K Mehmood, ‘Building democracy in Pakistan: a role for the EU and US’ [2008] European Policy Centre, 1.

¹⁷⁰ *ibid.*

¹⁷¹ Summary of EU-Pakistan co-operation 2010, Projects under the Instrument for Stability (2010) (<https://reliefweb.int/sites/reliefweb.int/files/resources/EB563CD4DC7BB1F04925780800253DD5-Full.Report.pdf>) 7.

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of its capacity, improvement and development of polling and result process, transparency in compilation of results, improvement of procedure for complaints and appeals, improving the activities of political parties and candidates and providing them environment in which they can run their free political and election campaign and strengthening the freedom of media. The action build on these recommendations then focused on the following main areas. First, increased electoral reforms activity through the National parliament, (2) improvement of the framework for local elections, (3) sensitizing the public on electoral reforms and local elections through media coverage. The action made contributions in achieving electoral and administrative reforms, and decreased the risk of averting the democratization process, capitalizing on the momentum generated by Election observer Mission and helped in making a ground for the planned Development Co-operation instrument intervention¹⁷². Similarly, in year 2012 under the instrument for stability, few important projects were selected which focused on improving the electoral reforms, capacity building of the election commission of Pakistan and for the appointment of Election observer Mission. Various projects were funded under the instrument for stability for electoral reforms in Pakistan during the period between 2012 to 2014. Brief description of these projects and its achievements are as follow;

¹⁷² European Commission, '2009 Annual report from the European Commission on the Instrument for Stability' COM(2010) Brussels (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0512:FIN:EN:PDF>), 71.

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6.6.1 Supporting Advocacy for Electoral Reforms in Pakistan

This project was implemented by Democracy Reporting International (DRI). This project promoted the stakeholder understanding of Pakistan's international obligation for elections and provided for advocacy for meeting these obligations. May 13, 2013 were the first held National elections since the Pakistan ratified the Covenant for Civil and Political Rights (ICCPR) in June 2010 and committed not regular reporting concerning the implementation of obligations under ICCPR¹⁷³.

6.6.2 Support for Electoral Reforms in Pakistan (SERP)

This project was implemented by International Foundation for Electoral System (IFES). The project aimed at strengthening the democratic legal framework for elections, improving the electoral management by the election commission to conduct free and fair election and educating the general masses on importance of electoral process and worked on increasing the number of voters¹⁷⁴. The programme also provided help in improving the electoral rolls. As a result, the 2012 electoral list was a huge improvement in terms of accuracy. In this list 40 million names were removed and reverified¹⁷⁵. Under the same programme technical and material assistance was given in the development of the election commission first ever voter education plan

¹⁷³ Council of the European Union, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2012 Annual Report from the European Commission on Instrument for Stability in 2012, Brussels (26 July 2013) SWD(2013) 292 final volume 2 (https://eur-lex.europa.eu/resource.html?uri=cellar:04dac675-fde9-11e2-a352-01aa75ed71a1.0001.02/DOC_2&format=PDF), 45,47.

¹⁷⁴ *ibid* 45.

¹⁷⁵ *ibid*.

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2012-2013. In addition, help was given for improving the professionalism of the electoral staff for the 2013 elections and for developing the capacity of the civil society in voter education¹⁷⁶.

6.6.3 Electoral Cycle Support to Election Commission of Pakistan

This project aimed to provide technical support to the election commission of Pakistan for strengthening its capacity to hold fair, free and credible elections as per the international standard¹⁷⁷. During the first year of programme the election commission focused primarily on 2013 election. The major inputs of the programme were the improved performance of the polling staff that was achieved through their upgraded training and development and screening of election results and management system¹⁷⁸.

6.6.4 Appointing Long Term Observation Mission and Oversight in Pakistan

This programme was implemented by the Trust for Democratic education and accountability, free and fair elections network (FAFEN). The project worked on strengthening the democratic institutions and practices in Pakistan through greater public trust in free and fair electoral processes through domestic election obser-

¹⁷⁶ Council of the European Union, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2012 Annual Report from the European Commission on Instrument for Stability in 2012, Brussels (n 173).

¹⁷⁷ *ibid.*

¹⁷⁸ *ibid* 46.

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vation. 369 long term observers were mobilized by thirty partner organisations of FAFEN for providing pre-and post-election monitoring. These long-term observers also supported the work of 43,515 short term observers¹⁷⁹.

Election Observer Mission (EOM) was deployed for 2013 general election in Pakistan headed by Chief Observer Michael Gahler MEP. The EU appreciated the successful transition of governments through 2013 election as first ever transfer of government from one civilian government to another. EOM also made recommendations for bringing reforms for further strengthening the electoral framework in Pakistan¹⁸⁰. Election Follows Mission (EFM), led by former chief observer Michael Gahler, visited Pakistan in February 2016, as a follow up after the 2013 EOM. The report was prepared by EFM on the status of the electoral reform process with recommendations. The report also covered state of play of recommendations made in the 2013 electoral observation Mission's report. The report was welcomed by the government and election commission as the EU's input and support to the electoral process¹⁸¹. The bill on these recommendations was drafted, and was finally enacted on 2 October 2017, including 32 out of 50 recommendations given in 2013 EU's Electoral Observation Mission's report, thus successfully brought much needed

¹⁷⁹ Council of the European Union, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2012 Annual Report from the European Commission on Instrument for Stability in 2012, Brussels (n 173) 47.

¹⁸⁰ Council of the European Union, Main aspects and basic choices of the CFSP, – 2013 – Annual report from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament, Brussels (23 July 2014) 12094/14 (https://www.parlament.gv.at/PAKT/EU/XXV/EU/03/41/EU_34126/imfname_10484850.pdf), 87.

¹⁸¹ Council of the European Union, EU – Pakistan Five Years Engagement Plan 2012, Implementation Report, Brussels (12 July 2016) 10998/16 (<http://data.consilium.europa.eu/doc/document/ST-10998-2016-INIT/en/pdf>), annex 1; See also Council of the European Union, Pakistan-Council Conclusions, Brussels (17 July 2017) 11160/17 (https://www.parlament.gv.at/PAKT/EU/XXV/EU/15/11/EU_151121/imfname_10737262.pdf), 2

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electoral reforms in the electoral process before the 2018 general elections¹⁸².

Several projects for Security sectors reforms in Pakistan, which include capacity building of law enforcement agencies, procurement of equipment for civilian capacity building of Law enforcement agencies, strengthening the capacity of NACTA and projects concerning support to post crisis needs assessment in Pakistan and recovery from floods, have been funded during the period between 2009-2014 under the instrument for stability.

6.7 Civilian Capacity Building for Law Enforcement in Pakistan

The objective of civilian capacity building for law enforcement agencies (CCBLE) is to strengthen their capacities to counter terrorism and violent extremism in the society. The weak police and justice departments cannot effectively combat terrorism and violent extremism in the society. For instance, due to incapacitated police and prosecution, the acquittal rates remained high in terrorism and criminal cases. Through CCBLE measures the aim was to well-trained police and prosecution departments in provinces in order to effectively deal with the terrorist cases.

This project included various important actions. The project provides support, including both training and a limited amount of non-military training and non-lethal equipment (such as, transport and communication) to improve the counter-terrorism capabilities of police forces in the province of Punjab and Khyber Pakhtunkhwa

¹⁸² European Commission, 'The EU special incentive arrangement for Sustainable development and Good Governance ('GSP'+) assessment of Pakistan covering the period 2016-2017' SWD(2018) 29 final Brussels (http://trade.ec.europa.eu/doclib/docs/2018/january/tradoc_156544.pdf), 4.

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consistent with relevant international human rights standards. The police were also trained on the investigation of terrorist crimes. The police units trained under this project are separate from the heavily armed rapid reaction police, which are established with the purpose of providing police forces capacity for immediate armed response against attacks. Respect for human rights is believed to be an important condition for the long-term success of counter-terrorism efforts and was at the core of these trainings' efforts¹⁸³. The Project was successful in achieving its objectives and has produced a substantial pool of technical and human resources for instance police master trainers, prosecutorial decision-making guidelines and a code of conduct. It also produced Standard Operating Procedures, curricula and manuals on subject matter such as crime scene investigation, crime scene management and forensic investigation, terrorism processes, human rights, gender, leadership and management as well as police-media relations¹⁸⁴. This project has contributed in establishing EU as a donor and actor in counter terrorism and the justice and security sectors in Pakistan, especially in Punjab and Khyber Pakhtunkhwa¹⁸⁵.

¹⁸³ European Commission, '2009 Annual report from the European Commission on the Instrument for Stability' COM(2010) Brussels (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0512:FIN:EN:PDF>), 71,72.

¹⁸⁴ Council of the European Union, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2012 Annual Report from the European Commission on Instrument for Stability in 2012, Brussels (n 173) 48.

¹⁸⁵ *ibid* 47.

6.7. CIVILIAN CAPACITY BUILDING FOR LAW ENFORCEMENT IN PAKISTAN

6.7.1 Procurement of Non-Lethal Weapons for Civilian Capacity Building of Law Enforcement in Pakistan

Under this project non-lethal and non-military weapons were provided to the police force in KPK and Punjab to improve their counter-terrorism capacity¹⁸⁶. In addition to that, bomb disposal and other equipment's were also provided with a required training for the use of these equipment¹⁸⁷.

6.7.2 Capacity Building of National Counter Terrorism Authority (NACTA)

National counter terrorism authority (NACTA) was set up in 2009 through the financial assistance of the project funded under the instrument of stability. The objective was to create a national institute that can formulate policies and strategies on countering terrorism and extremism in country and coordinate between all the relevant department and agencies. For the improvement of the institutional capacity of NACTA two high-level advisors were appointed for the duration of the project. The advisors have worked on developing the institutional structure of NACTA, initial training and equipment need analysis and curriculum planning within the framework of Pakistan's Counter terrorism strategy¹⁸⁸. However,substantial results

¹⁸⁶ Council of the European Union, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2012 Annual Report from the European Commission on Instrument for Stability in 2012, Brussels (n 173) 46.

¹⁸⁷ *ibid* 48.

¹⁸⁸ European Commission, 'Report from the commission to the European Parliament, the Council, the European economic and social Committee and the committee of the Regions, 2010 Annual report from the European Commission on the Instrument for Stability' SEC(2011)1000 final Brussels, 81,82; See also European Commission, '2009 Annual report from the European Commission on the

6.7. CIVILIAN CAPACITY BUILDING FOR LAW ENFORCEMENT IN PAKISTAN

could not be accomplished under this project as the status of NACTA remained in limbo¹⁸⁹. Later through the Government through the Act of Parliament in 2013 revitalized the functioning of NACTA and granted an autonomous status to this body to work as a focal national institution¹⁹⁰. Its main function is unifying the state response to terrorism and extremism after receiving and collecting data, information, intelligence reports and disseminate and coordinate between all the relevant agencies and departments. Further to formulate action plans and strategies against terrorism and extremism in a country after in-depth research and implement them through strategic planning¹⁹¹.

6.7.3 Capacity Building of Law Enforcement Agencies to Handle Media Relation

With the development of public and private media in Pakistan over the last few years, its impact on Pakistan's society has significantly increased. Law enforcement authorities faced increasing demand to interact with media representatives, especially during reporting incidents of explosions and assaults. However, the awareness and experience of the law enforcement agencies concerning media interaction was very limited. The need was to train the law enforcement officials on media issues with the objective to professionalize the media/public relations work of law enforcement

Instrument for Stability' COM(2010) Brussels (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0512:FIN:EN:PDF>), 71

¹⁸⁹ Council of the European Union, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2012 Annual Report from the European Commission on Instrument for Stability in 2012, Brussels (n 173) 48.

¹⁹⁰ National Counter Terrorism Authority Act 2013.

¹⁹¹ *ibid* ss 4, Functions of the Authority.

6.7. CIVILIAN CAPACITY BUILDING FOR LAW ENFORCEMENT IN PAKISTAN

authorities, the Police was professionally trained on media relations¹⁹².

6.7.4 Improvement of Criminal Justice System in Punjab Province

The objective of the project was to improve the functioning of the Punjab Criminal Prosecution Service, especially the parts of service in charge of counterterrorism, in accordance with UN guidelines on the role of the prosecutors. The prosecutors were trained to interact effectively with the police and judiciary and aid in improvement of investigation standards through formulating and enforcing case review guidelines or the improving investigation standards of the prosecutors formulating and enforcing review guideline while maintaining the independence and impartiality of the prosecution service¹⁹³.

6.7.5 Improving the Understanding of Governance Issues in Federally Administered Tribal Area (FATA) Region

FATA region, which existed as a semi-autonomous tribal region since Pakistan's independence, was regulated by a special set of laws known as Frontier Crime Regulations through appointments of political agents. As it was not part of mainstream political system of Pakistan, the region remained largely underdeveloped, lacking necessities, and had governance issues. As discussed above the region had been occupied by terrorist groups since start of Afghan-soviet war and later it became safe

¹⁹² European Commission, '2009 Annual report from the European Commission on the Instrument for Stability' COM(2010) Brussels (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0512:FIN:EN:PDF>), 71.

¹⁹³ *ibid.*

6.8. SUPPORT TO POST CRISIS NEEDS ASSESSMENT IN AREAS HIT BY TERRORISM (PCNA)

heaven for foreign terrorists' group during Afghan war. The FATA region was not included in the mainstream political system of Pakistan rather it was administered through appointment of Political agents who governed the area through local customs and traditions with the assistance of local elders or Maliks. The EU has funded this project to understand the governance issues in FATA in order to identify ways how governance can be improved and how effectively the EU can provide support¹⁹⁴.

Recently, FATA region has been merged in Khyber Pakhtunkhwa after the President signed the bill on FATA merger on 31 May 2018. This bring the FATA region into the mainstream political system. The change in its status will pave the way of overall development in FATA.

6.8 Support to Post Crisis Needs Assessment in Areas Hit by Terrorism (PCNA)

For the development, peace building and rehabilitation of Khyber Pakhtunkhwa, FATA and Baluchistan which remained largely under the impact of terrorism, the Government of Pakistan requested the international financial institutions to help in (post conflict recovery) of these regions and people which is also important for the prevention of further conflict in these areas. The PCNA focuses on sectors which have a direct bearing on conflict risks as well as those which are necessary for peace building and stabilization. This includes sectors and cross cutting thematic areas that can bring quick peace dividend to population such as 1) beginning political reforms in

¹⁹⁴ European Commission, '2009 Annual report from the European Commission on the Instrument for Stability' COM(2010) Brussels (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0512:FIN:EN:PDF>), 72.

6.8. SUPPORT TO POST CRISIS NEEDS ASSESSMENT IN AREAS HIT BY TERRORISM (PCNA)

FATA 2) increased participation of civil society in public affairs and management, 3) perception of joint responsibility for local development, 4) security sector reforms, 5) enhancement of provision of basic necessities, 6) creation of effective employment opportunities, 7) access to use of speedy justice, 8) institution building, 9) promotion of national dialogues on peace building and reconciliation, 10) governance and service delivery reforms and institution building¹⁹⁵. As per PCNA guidelines and protocols agreed between the UN, World Bank, and the EU peace building involve range of measures directed to reduce the risk of reverting into conflict, support the necessary local capacities and conditions for sustained peace and set the foundation for sustainable peace and development¹⁹⁶. Therefore, at the call of the government of Pakistan a Multi donor trust fund was formed in August 2010 by the development partners. The main partners of the MDTF is world bank, EU, Asian Development bank. The MDTF has served not only as fund mobilization mechanism, but also as a fund coordinated mechanism for the various projects designed for the implementation of PCNA's development and reconstruction programmes for restoring the devastated areas infrastructure, livelihood and services and addressing the governance issues and other challenges in the region of FATA, KPK and Baluchistan. The main donors of the projects under MDTF are World Bank, EU, Asian Development Bank¹⁹⁷. PCNA began its work in Pakistan on August 10, 2009. EU

¹⁹⁵ European Commission, '2009 Annual report from the European Commission on the Instrument for Stability' COM(2010) Brussels (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0512:FIN:EN:PDF>).

¹⁹⁶ *ibid* 73.

¹⁹⁷ For the detail account of various projects designed for the implementation of PCNA in region of FATA, KPK and Baluchistan see, <https://www.pakistanmdtf.org/who-we-are.html> and https://www.pakistanmdtf.org/images/stories/ppapers/from_recovery_to_sustainable_development_june_2015.pdf, and https://www.pakistanmdtf.org/images/stories/ppapers/from_recovery_to_sustainable_development_june_2015.pdf

6.9. FIVE YEAR ENGAGEMENT PLAN 2012

supports cover part of the cost of PCNA mission and has contributed 72 million Euros for the peace building activities in 2009¹⁹⁸. The Contributions for the PCNA and to the Multi donor trust fund provide a speedy response in contributions to stabilization and peace building following security crisis in western border region and 2009 Malakand militancy. It established the foundation for a 120 million Euros DCI funded package for the restoration and strengthening of local administration and community development which included 7 districts and 234 union council of the Malakand Division. The duration of the package was covering the period 2012-2016¹⁹⁹. Although on smaller scale the programme for Economic Advancement and Community Empowerment (PEACE) was launched in Baluchistan in 2013²⁰⁰.

6.9 Five Year Engagement Plan 2012

EU-Pakistan have adopted a five-year engagement plan on 23 February 2012. This engagement plan provided a framework of cooperation between EU and Pakistan in several important areas including Security. Both the sides have committed to have a comprehensive cooperation on counter terrorism, counter narcotics, fight against the organized crime, disarmament and nuclear non-Proliferation. The engagement plan

¹⁹⁸ European Commission, '2009 Annual report from the European Commission on the Instrument for Stability' COM(2010) Brussels (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0512:FIN:EN:PDF>), 72,73; European Commission, 'Report from the commission to the European Parliament, the Council, the European economic and social Committee and the committee of the Regions, 2010 Annual report from the European Commission on the Instrument for Stability' SEC(2011)1000 final Brussels, 81

¹⁹⁹ Council of the European Union, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2012 Annual Report from the European Commission on Instrument for Stability in 2012, Brussels (n 173) 49.

²⁰⁰ *ibid.*

6.9. FIVE YEAR ENGAGEMENT PLAN 2012

has served as a basis for holding the sectoral dialogues between EU and Pakistan in these important areas²⁰¹. Since then institutional dialogues have been held on counter-terrorism and other related areas. The Five-year engagement plan had expired in the end of 2017. Before its expiration, the negotiations on the adoption of EU-Pakistan strategic engagement plan had begun on the direction of the Council²⁰². On 14 September 2018, a proposal for EU-Pakistan strategic Engagement was transmitted to the Council by EEAS to be signed by the High Representative of the European Union for Foreign Affairs and Security Policy. In the text of the EU-Pakistan strategic Engagement plan both the sides have committed to reinforce the cooperation in the areas of counter terrorism, preventing and countering violent extremism and tackling their root causes, as well as in the field of organized crime, money laundering, cyber security and anti-piracy²⁰³.

²⁰¹ EU-Pakistan Five Year Engagement Plan 2012 (2012) (https://eeas.europa.eu/headquarters/headquarters-homepage/14876_fiveyear_engagement_plan.pdf); See also Council of the European Union, Annual report from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament, Brussels (16 October 2013) 14924/13 (https://www.parliament.gv.at/PAKT/EU/XXIV/EU/12/82/EU_128273/imfname_10419283.pdf), paras 69,104

²⁰² Council of the European Union, Pakistan-Council Conclusions, Brussels (18 July 2016) 11246/16 (<https://reliefweb.int/sites/reliefweb.int/files/resources/st11246.en16.pdf>), para 13; Council of the European Union, Pakistan-Council Conclusions, Brussels (17 July 2017) 11160/17 (<http://data.consilium.europa.eu/doc/document/ST-11160-2017-INIT/en/pdf>), para 15

²⁰³ Council of the European Union, EU-Pakistan Strategic Engagement Plan-Signature authorization, Brussels (28 March 2019) 7857/19 (<https://data.consilium.europa.eu/doc/document/ST-7857-2019-INIT/en/pdf>).

6.10 EU Counter-Terrorism / Security Strategy on Pakistan

The five-year engagement plan 2012 was followed by EU Counter terrorism strategy on Pakistan. The strategy specified position of the EU and its member states on counter terrorism cooperation with Pakistan. The strategy aimed at creating an enabling environment for security related work in Pakistan by disrupting extremist and terrorism threats in the longer term. It aims to channelize Pakistan's counter terrorism efforts in the direction of civilian-led approach to counter violent extremism through engagement with local communities, diaspora and the regional partners. The strategy also aims at addressing security and development nexus by making full and coordinated use of the relevant EU and Member States financial instruments (in particular addressing security, law enforcement, rule of law, criminal justice, preventive measures) and promote the involvement of civil society to prevent and counter violent extremism by focusing on rule of law, promote quality and access to education, vocational training, training of media and journalists, rule of law and improved cooperation with national parliament and human rights²⁰⁴. For accomplishing these objectives, the strategy has given two action plans i.e. criminal justice and rule of law action and countering violent extremism. On July 2013, the drafts of both the plans were presented to Pakistani authorities to determine as to which of the proposed plans they would give priority. However, no further development on the

²⁰⁴ Council of the European Union, EU CT/Security strategy in Pakistan, Brussels (21 August 2012) 11045/1/12 (<http://www.statewatch.org/news/2012/sep/eu-council-psc-pakistan-counter-terrorism-plan-11045-rev1-12.pdf>).

6.11. INSTRUMENT CONTRIBUTING TO STABILITY AND PEACE (ICSP)-LONG TERM

strategy has taken place pending the response of the Pakistani authorities²⁰⁵.

6.11 Instrument Contributing to Stability and Peace (IcSP)-Long Term

The total amount of fund allocated to Pakistan under instrument contributing to Stability and peace (IcSP) during the period between 2012-2017 was EUR 18, 476,748²⁰⁶. The financial and technical support has been provided through funding of various projects in three broad areas which includes 1) criminal justice/ security sector reforms, 2) countering violent extremism,3) countering financing of terrorism²⁰⁷. Brief account of various projects funded through IcSP is as follow;

6.11.1 Counter Terrorism Prosecutorial Reform Initiative (CaPRI)

Under the long-term instrument contributing to peace and stability (IcSP), the EU invested 1.8 million euros in CT related Prosecutorial Reform Initiative (CaPRI) project in Punjab province. The duration of the project was (2013-2015). The project targeted to improve the efficiency of Punjab Criminal Justice system including

²⁰⁵ Council of the European Union, Annual Report on the Implementation of the EU Counter Terrorism Strategy, Brussels (7 December 2012) 16471/12 (<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%5C%2016471%5C%202012%5C%20ADD%5C%201%5C%20REV%5C%201>), para 39.

²⁰⁶ Data on IcSP projects, financial envelopes and implementing partners was retrieved from the “IcSP Map” provided by the NGO “Peace Direct” on the website <https://icsp.insightonconflict.org> in June 2017. The project itself is funded by the IcSP and up to now represents the only database publicly available on IcSP funded projects.

²⁰⁷ Council of the European Union, Report on the Implementation of the EU Counter-Terrorism Strategy, Brussels (10 October 2014) 13971/14 (<http://data.consilium.europa.eu/doc/document/ST-13971-2014-INIT/en/pdf>), 65.

6.12. STRENGTHENING RESILIENCE TO VIOLENT EXTREMISM (STRIVE)

police investigation services, prosecution services and judiciary. The efficient criminal justice system is essential for successful investigations, prosecution, convictions and detention of the terrorists. The aim was to establish an efficient criminal justice system in the province of Punjab, which aid in combating terrorism and provide prompt justice to the citizens in Punjab province²⁰⁸.

6.12 Strengthening Resilience to Violent Extremism (STRIVE)

Another project funded under the long-term instrument contributing to peace and stability (IcSP) was of EUR 5 million to counter radicalization and extremism in Pakistani society. The Project started in 2014 and was of 36 months duration. The project aimed at understanding the causes of extremism in the society through evidence base analysis and targeted interventions to reduce violent extremism. The objective was to strengthen the government, civil society and media capacities at the federal and provincial level to counter violent radicalization and extremism in the society.

Besides that, under the CIS four projects were adopted under the long-term peace building partnership. The peace building projects aimed at tackling radicalization through promotion of culture of tolerance. These projects also helped in developing skills on conflict resolution and dialogues in areas effected by violent extremism. Following the completion of Civilian Capacity Building for law enforcement (CCBLE) programme in KPK and Punjab under the short term IcSP (EUR 15 million) in

²⁰⁸ Council of the European Union, Report on the Implementation of the EU Counter-Terrorism Strategy, Brussels (n 207) 70.

6.13. ENGAGING DIVERSE RELIGIOUS LEADERS TO PROMOTE A CULTURE OF TOLERANCE, RECONCILIATION AND PEACE

2012, an Interim Response Programme was under consideration which could help in focusing on specific aspect of terrorism and follow up the activities undertaken under the CCBLE programme²⁰⁹.

6.13 Engaging Diverse Religious Leaders to Promote a Culture of Tolerance, Reconciliation and Peace

To counter violent extremism in the society, a project was funded through IcSP title ‘engaging diverse religious leader to promote a culture of tolerance, reconciliation and peace’. The duration of the project was 20/1/2016 to 19/7 2018. The objective was to engage and give training to the religious leaders from different sects of Muslims, including mosques imams, Madrassah teachers in enabling social change and addressing religious extremism and prejudice in Pakistan. The project covered 18 districts of Khyber Pakhtunkhwa and Punjab. The innovative component of the project is to create ‘champions’ of peace and combine interfaith dialogue with training of Mosque imams and Madrassah teachers as key educators of the masses in order to promote a culture of peace and tolerance at the grassroot level²¹⁰.

²⁰⁹ Council of the European Union, Report on the Implementation of the EU Counter-Terrorism Strategy, Brussels (n 207) 70.

²¹⁰ European Commission, ‘Instrument Contributing to Stability and Peace (IcSP -funded projects) IcSP map’ (<https://icspmap.eu/pdf/?format=>), 77.

6.14 Building Sustainable Peace Through Developing Internal Community Mechanism

Another project funded under IcSP was of EUR 479, 846 with a duration from 20/1/2016 to 28/4/2019. This project was specifically designed for the Province of Khyber Pakhtunkhwa and FATA region, which have borne the brunt of militancy, natural disasters and poor governance that have led to frustration in local communities. These conditions have caused the promotion of violence and radicalization of young people. The objective of the project was to support 300 young people and 200 women to learn about conflict prevention, mediation and dialogue and to develop their critical thinking, leadership ability, conflict prevention and resolution skills. This theme was based on UN Security Council resolution on Women, Peace and Security (UNSCR 1325). Second, to prevent the youth from becoming extremists, their de-radicalization and reintegration into their communities. Third, to promote and support the inclusion of women in security planning by imparting training to and development of 200 members of NGO and community organizations, activists, media and religious leaders. The project also aims at raising the awareness of UNSCR 1325 among parliamentarians and government departments, and to develop understanding of peace processes and building in Pakistan²¹¹.

²¹¹ European Commission, 'Instrument Contributing to Stability and Peace (IcSP -funded projects) IcSP map' (<https://icspmap.eu/pdf/?format=>), 84.

6.15 Counter-Terrorism Dialogues Between EU-Pakistan

Both EU and Pakistan have committed in their first summit held in June 2009 to hold regular counter-terrorism dialogues. The five years engagement plan provided a framework for holding a political dialogue on counter terrorism and security issues for both the partners. These dialogues reflect the enhanced political engagements from both sides in area of counter terrorism. Since then both the sides have been holding the political dialogues on counter terrorism yearly and have been exchanging the results of these dialogues under the framework of EU-Pakistan five-years engagement plan. Overview of these political dialogues that have been held so far between EU and Pakistan is as follow;

6.15.1 Forth EU and Pakistan Counterterrorism (CT) Dialogue and Cooperation

The fourth round of CT dialogue between EU and Pakistan took place on 24 February 2014. The key objective of the meeting was to receive commitment from the Pakistani government to work further with the EU on Counter terrorism issues. In this context the dialogues between EU-Pakistan was a significant step forward in securing EU-Pakistan counter terrorism engagement signalling political commitment from both sides to work together in key priority areas such as rule of law, criminal justice, law enforcement/security countering financing of terrorism and countering violent extremism and its root causes. Moreover, in the same meeting, a formal response from Pakistan to an EU on CT cooperation from July 2013 was received.

6.15. COUNTER-TERRORISM DIALOGUES BETWEEN EU-PAKISTAN

However, it was recognized that due to limited availability of MS agencies difficulty exists in carrying out concrete co-operation activities in this area²¹².

On the Operational side, the EU continued to give its support and assistance on rule of law by means of various projects. For instance, in KPK the project named ‘Citizen, Justice and Peace’ began in January 2015. The project focused on improving the police service, judicial system and the deliverance of their service as well as its relations with the public at community level. It also worked on bringing the organizational reforms and on the ability of the civil society to monitor the services of the police. Another programme in KPK title “Pakistan’s Action to counter terrorism (PACT)” targeted the development of the criminal justice institution, its technical capacity and modus operandi in anti-terrorism cases, and the provincial and inter provincial coordination²¹³.

Similarly, several important projects were initiated in the province of Punjab, which dealt with strengthening the provincial capacity to deal with the terrorism incidents and at the district level the programme aimed at improving the judicial and legal empowerment for the purpose of improving the overall judicial performance. Parallel to these programmes another project on ‘Access to Justice in Punjab’ works on enhancing the quality and efficiency of the judicial process and focus on providing the readily available legal service. The project STRIVE, which started in October 2014, focused to counter violent extremism in the country. Similarly, the two peace building projects were completed in October 2014 and in March 2015. Call for another peace building projects was launched in March 2015. The objective

²¹² Council of the European Union, EU-Pakistan five years engagement plan Implementation Report, Brussels (14 July 2015) 10749/15 (<http://data.consilium.europa.eu/doc/document/ST-10749-2015-INIT/en/pdf>), 11.

²¹³ *ibid* 11,12.

6.16. FIFTH EU AND PAKISTAN COUNTER –TERRORISM DIALOGUE AND COOPERATION

was to achieve the desired results of peaceful environment through engagement with religious minorities, youth and women at the community level in the province as well as through art and heritage²¹⁴.

6.16 Fifth EU and Pakistan Counter –Terrorism Dialogue and Cooperation

Under the Framework of EU-Pakistan engagement Plan, the fifth EU-Pakistan political dialogue on counter terrorism was held in Brussels on 20 April 2016. In that meeting, a joint declaration was adopted setting the direction of cooperation on terrorism for both the partners. The two sides agreed to adopt comprehensive approach to counter terrorism and to establish cooperation to prevent and counter violent extremism (CVE), radicalization and recruitment while working on the root causes of terrorism. The two sides also resolved to extend their support to the International forums such as Global Counter Terrorism Forum (GCTF) and Financial Action Task Force (FATF) for its fight against terrorism. In areas of criminal justice and rule of law, law enforcement and security, countering violent extremism and financing of terrorism, the two sides agreed to explore ways to strengthen cooperation through mutual consent and exchange of best practices and initiatives for achieving the substantive results in areas like law enforcement and security, criminal justice and rule of law and countering financing of terrorism and violent extremism²¹⁵. At

²¹⁴ Council of the European Union, EU-Pakistan five years engagement plan Implementation Report, Brussels (n 212).

²¹⁵ EU and Pakistan hold Political Counter-Terrorism dialogue (<https://eeas.europa.eu/headquarters/headquarters-homepage/5152.en>); Council of the European Union, EU – Pakistan Five Years Engagement Plan 2012, Implementation Report, Brussels (n 181) 6

6.17. SIXTH ROUND OF COUNTER-TERRORISM DIALOGUE

the same time, the EU stressed on strengthening a civilian justice system in Pakistan and expected that the military courts set up for trying the civilian terrorism cases will come to an end after completion of its two years mandate in January 2017. The Programme started in KPK under the name of ‘Citizen, Justice and Peace’ for the improvement of police and justice system in the province. Similarly, in Punjab several actions are taken to build up the provincial capacity to deal with terrorism, provision of legal services at the community level and making effective the justice process²¹⁶.

6.17 Sixth Round of Counter-Terrorism Dialogue

The sixth-round of counter-terrorism dialogues between EU-Pakistan was held on 23 November 2017 within the framework of Five-year Engagement plan. In this round of dialogues, both the sides discussed their ongoing cooperation and collaboration in area of counter terrorism and agreed to explore further avenues of mutually agreed cooperation including exchange of best practices in areas such as criminal justice and rule of law, law enforcement / security, preventing violent extremism and countering terrorism financing. Both the sides agreed on adopting a comprehensive approach to terrorism based on rule of law, to enhance cooperation to tackle violent extremism in all its forms and to address the root causes of these issues and reaffirmed their commitment to work together in promoting international cooperation through forums such as Global Counter Terrorism Forum(GCTF) and Financial Action Task Force (FATF). Once again EU and Pakistan expressed their support

²¹⁶ Council of the European Union, EU – Pakistan Five Years Engagement Plan 2012, Implementation Report, Brussels (n 181) 7,8.

6.18. SEVENTH-ROUND OF COUNTER-TERRORISM DIALOGUE

for the United Nations counter-terrorism strategy and its four pillars and call for the implementation of the strategy in an integrated and balanced manner in all its aspects. They also reaffirmed that terrorism should not be associated with any religion, nationality, civilization or ethnic group and emphasized the importance of enhancing inter-religious and inter-cultural dialogues and understanding to promote the harmony and tolerance²¹⁷.

6.18 Seventh-Round of Counter-Terrorism Dialogue

The seventh round of counter-terrorism dialogue between EU-Pakistan was held in Brussels on 29 November 2018. In this meeting, both the sides once again reaffirmed that terrorism pose a threat to states and societies across the globe and reiterated their commitment to fight jointly terrorism in all its forms and manifestations. The EU appreciated the Pakistan's efforts to combat terrorism within its states and stressed for increased engagement on countering radicalisation. Moreover, they underscored their joint commitment regional peace and security. Reviewing their ongoing cooperation in area of terrorism, both the sides agreed to explore further avenues of bilateral collaboration including exchange of best practices and potential co-operation projects in mutually agreed areas²¹⁸.

²¹⁷ Sixth Round of EU-Pakistan Counter-terrorism dialogue (23 November 2017); Pakistan-EU Joint declaration issued after Counter-Terrorism Dialogue, Islamabad (28 November 2017) (https://eeas.europa.eu/delegations/pakistan_uz/36350/Pakistan-EU%20Joint%20Declaration%20issued%20after%20Counter-Terrorism%20Dialogue)

²¹⁸ Seventh Round of EU-Pakistan Counter-terrorism dialogue (29 November 2018) (https://eeas.europa.eu/delegations/pakistan/54707/eu-and-pakistan-hold-regular-counter-terrorism-political-dialogue-joint-press-release_en).

6.19. PAKISTAN ACTION TO COUNTER TERRORISM (PACT)

6.19 Pakistan Action to Counter Terrorism (PACT)

To strengthen a criminal justice system in response to counter-terrorism, a three year technical assistance project ‘Pakistan’s action to counter-terrorism with a special reference to Khyber Pakhtunkhwa’ (PACT) was developed in April 2017 by NACTA (National counter-terrorism authority) on behalf of the government in collaboration with United Nations Office on drugs and crimes (UNODC) with a financial support of seven million Euros by the European Union. The duration of the project is three years (2017-2019) and its objective is to fight terrorism through improved criminal justice system in the Province of Khyber Pakhtunkhwa (KPK). The three specific objectives under the programme are 1) to enhance the investigation process and promote the use of forensic evidence by KPk police counter terrorism department for preparation of terrorism cases, 2) to strengthen the capacity of the KPK prosecution directorate and judiciary to effectively prosecute and adjudicate the terrorism cases, 3) to improve provincial and inter-provincial coordination on counter terrorism i.e. KPK home department, police and prosecution, Islamabad capital territory police (ICT) and NACTA. The programme, which was initially started in province of KPK, will be extended to other parts of the country. EU Ambassador to Pakistan remarked about the programme that “more than ever there is a need for a strong international collaboration to counter terrorism. Counter terrorism will remain a top priority in the EU’s security dialogue with Pakistan and PACT is a logical next step in this long-standing partnership”²¹⁹.

²¹⁹ Pakistan’s Action to Counter Terrorism (PACT) (2017) (<https://www.unodc.org/brussels/en/pakistan-pact.html>); EU for strong international collaboration to counter terrorism (25 April 2017)

6.20 Anti-Money Laundering and Countering Financing of Terrorism

Pakistan is identified as one of the key countries which faces the significant risks of money laundering and terrorism financing. Money laundering and terrorism financing is criminalized through Anti-Money laundering ordinance 2007(AMLO) later adopted as Anti-Money Laundering Act 2010 and Anti-terrorism act, 1997 are the key legislations which provide the framework for criminalizing these offences. Besides that, Financial monetary units (FMU) were set up in 2007 through AMLO at State Bank of Pakistan to counter money launderers and terrorism financiers²²⁰. But these units don't have the authority to take action against the offenders. It can only forward the relevant information to agencies authorized to prosecute the offenders. Pakistan has also implemented the UN SCR 1267 in banking sector and has reported to freeze the equivalent of 10 Million USD²²¹. Similarly action has also been taken against domestic entities in the banking sector pursuant to UNSCR 1373. This is done through using powers under the ATA to 'proscribe' entities considered to be 'concerned in terrorism'²²². The agencies which have the powers to investigate Money laundering are Federal investigation agency (FIA), Anti-Narcotics Force and National accountability bureau and terrorism financing is investigated by FIA and

<https://www.pakistantoday.com.pk/2017/04/25/eu-for-strong-international-collaboration-to-counter-terrorism/>

²²⁰ Safiya Aftab, 'Terrorism financing' [2019] Pakistan Institute of Peace Studies <https://nacta.gov.pk/counter-financing-ofterrorism/>.

²²¹ 'Anti Money Laundering and Combating the Financing of Terrorism Pakistan Mutual Evaluation report', (Asia Pacific Group on Money Laundering 2009) , 3.

²²² *ibid.*

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provincial police. Despite the present of legal regime to curtail money laundering and combat terrorism financing there has been very few convictions for money laundering and none for terrorist financing²²³. This is the main reason that Pakistan continue to appear in the list of those countries, prepared by Financial Action Task Force (FATF) for not taking enough action to regulate money laundering and terrorism financing. Pakistan is the member of the FATF which tracks countries on their obligations to fulfil international commitments on regulating money laundering and terror funding²²⁴. Pakistan was identified was one of the jurisdictions that have AML/CFT deficiencies²²⁵. In response Pakistan has provided its written commitment to address the identified deficiencies. The FATF call on Pakistan to implement the recommendations within the required time frame to address the deficiencies in its legal regimes concerning ML/CFT. In response to these recommendation Pakistan has adopted new rules to choke terrorism financing. These rules were reviewed by FATF delegation who have expressed satisfaction that these rules adopted by State bank of Pakistan and Security Exchange Commission of Pakistan (SECP) will barred the financial assistance of the terrorists to some degree still the government need to adopt stringent practical measures²²⁶.

EU and Pakistan have reinforced their commitment to work together to promote international cooperation through forums such as Global Counter Terrorism Forum (GCTF) and Financial Action Task Force (FATF). However Pakistan has

²²³ Aftab (n 220).

²²⁴ FATF-GAFI.ORG-Fianacial Action Task Force(FATF) (<https://www.fatf-gafi.org/>).

²²⁵ FATF, Improving Global AML /CFT on-going Compliance (29 June 2018) (<http://www.fatf-gafi.org/countries/di/iraq/documents/fatf-compliance-june-2018.html>).

²²⁶ M Faizan, 'FATF expresses satisfaction SBP and SECP measures regarding money laundering' *The Dawn* (Karachi, 29 March 2019).

been included in list of 23 countries adopted by the European Commission with strategic deficiencies in their money laundering and counter-terrorist financing network posing risks to EU financial system²²⁷. However the Commission reiterate that it is committed to assist these countries and to provide technical assistance in the implementation of FATF's recommendations and relevant Security Council Resolutions. Pakistan need to engage effectively with EU to seek its financial and technical support to address the deficiencies in its ML /CFT laws.

6.21 Conclusions

Terrorism in several forms poses a threat to the EU, therefore, to combat terrorism becomes its top priority. Much of terrorist threat to Europe originates from outside the Europe, thus it has resolved to offer assistance to third states to combat terrorism not only for the security of the Europe but as well for these states struggling with the challenges of terrorism. EU provided its financial and technical support to third states to combat terrorism through its financial instrument e.g. instrument of stability and instrument contributing to peace and stability. The overall objective of EU assistance to third states in countering terrorism is based on security-development nexus. The EU offered technical and financial assistance to these states in areas such as criminal justice reforms, strengthening of rule of law and democracy, education, human rights, de-radicalization, development of socio-economic sectors which not only help in strengthening of the institutional capacities of main institutions in these states but also help in addressing the root causes of terrorism. As far EU-Pakistan

²²⁷ European Commission, 'European Commission has adopted its new list of 23 countries with weak anti-money laundering and terrorist financing regimes, Presse Release Strasbourg' (http://europa.eu/rapid/press-release_IP-19-781_en.htm).

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counter terrorism engagements hold significant importance. EU has provided financial and technical assistance to effectively curtail the terrorism in the country. The assistance given through various projects emphasized the attainment of security, which is the necessary requirement for the socio-economic development of the country. During the period between 2007-2012, the EU provided financial and technical assistance under its instrument for stability through various projects to build up the institutional capacities of various institutions. For instance, support was provided to strengthen the institutional capacity of Pakistan election commission which resulted in successful adoption of electoral bill, incorporating important electoral reforms, through recommendation of European Observation Mission a pre-requisite for the smooth transition of the democratic processes.

Similarly, in area of security reforms, the assistance provided for Civilian capacity building for law enforcement agencies in provinces of Khyber Pakhtunkhwa and Punjab to counter terrorism have proved for successful trained police and prosecution departments to effectively deal with terrorism cases to decrease the acquittal rates in terrorism and criminal cases. Separate Police units were trained in these two provinces, the focus was to improve their counter-terrorism capabilities. For the very first-time police officials were trained on media interaction and on media issues. Projects have also been funded for acquiring the first-hand knowledge about the governance issues in FATA, which remained out of the mainstream political system since Pakistan's independence. EU remained the main donor in post conflict recovery of FATA, Khyber Pakhtunkhwa and Baluchistan region. This has contributed a great deal in rehabilitation of locals, development of infra structure and peace building in these regions. EU-Pakistan counter terrorism engagements hold a significance in combating terrorism and violent extremism in country. Undoubtedly, EU has

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established itself as a main donor and actor in countering terrorism in Pakistan.

7 The EU WMD Strategy and Challenge of Pakistan's Nuclearization

This chapter overview the development of the EU WMD strategy and its emergence as a prominent actor in non -proliferation matters. In that setting, this chapter analyzes the role of EU security governance towards South Asia nuclearization and its role in resolving the security crisis between post -nuclear Pakistan and India over the issue of Kashmir, which had risked the security of the whole region multiple times . This chapter will also examine Pakistan's stance over the nuclear non -proliferation regime and so far how effectively the EU has dealt with challenge of Pakistan's nuclearization as a non-proliferation actor. This Chapter is divided into three parts.

The first part of the chapter takes the historical overview of the development of EU strategy on non-proliferation of WMD and its emergence as a leading actor in security matters. The introduction of the WMD clause as a policy tool in partnership agreements with third States for averting proliferation is analyzed in detail.

7.1 Introduction

7.1.1 The EU's WMD Strategy and its Policy Framework: Background

The Council of the European Union adopted the EU's strategy against the Proliferation of Weapons of Mass Destruction (WMD Strategy) in December 2003¹. However, the preliminary work towards adoption of a common external non-Proliferation policy was already begun in 1980. Within the framework of the European Political Cooperation (EPC) a working party on non-proliferation was established in 1981. This working group worked as a secretive body in the beginning and was later validated by Single European Act in 1986². In 1990 the Dublin Declaration on the non-proliferation was the first public high-level document by the 12 European community heads of state and government³. The efforts that were initiated by EU in 1980 led to the establishment of the stable policy framework on non-proliferation.

Two important factors impetuously intensified and consolidated the EU efforts in area of non-proliferation. The novel strategic environment which emerged after the end of the cold war necessitated the need for developing new initiatives and policies to deal with new security challenges and opportunities. Secondly, through a Gulf war in 1990-91 it was disclosed that Iraq was developing its clandestine nuclear program which have warned the international community that the existing

¹ Council of the European Union, EU Strategy against Proliferation of Weapons of Mass Destruction, Brussels (10 December 2003) 15708/03.

² Single European Act [1987] OJ L169/1 (https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf).

³ Peter Van Ham, *The European Union's WMD strategy and the CFSP: a critical analysis* (EU Non-Proliferation Consortium 2011).

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non-proliferation regimes and treaties were flawed⁴. Besides that, in 1992 France as a last EC member State also joined the 1968 Non-Proliferation Treaty (NPT) which have finally removed the obstacle towards developing a common EU stance on non-proliferation matters⁵.

More significantly, the legal establishment of the Common Foreign and Security Policy (CFSP) in 1993 under Treaty of the EU through title V provided a solid and institutional framework for closer cooperation among the member states on foreign and security matters which also included WMD non-proliferation. Though the CFSP did not give the common defense policy rather it provides for the ‘eventual framing of the common defense policy which might in time lead to a common defense’. (Article J4)⁶. In this regard, the CFSP did not address the link between WMD and national defense thus left certain questions unaddressed such as nuclear arsenals belonging to United Kingdom and France. Later with the help of reform treaties of Amsterdam (1999) and Nice (2003) all the EU institutions managed to strengthen their policies on a wide range of issues, including foreign and security policy. This led to the establishment of European Security and Defense Policy (ESDP), now known as Common Security and Defense Policy (CSDP) under the CFSP⁷. The European Council started discussing the non-proliferation matters and issuing pres-

⁴ Clara Portela, ‘The role of the EU in the non-proliferation of nuclear weapons: the way to Thessaloniki and beyond’ [2003] Research Collection School of Social Sciences, 2.

⁵ *ibid* 3.

⁶ Consolidated Version of the Treaty on European Union [1997] OJ C340/145 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11997M/TXT&from=EN>), J4; Douglas Hurd, ‘Developing the common foreign and security policy’ (1994) 70(3) *International Affairs* 421

⁷ Van Ham (n 3) 3; Portela (n 4) 3; Lars van Dassen and Harald Müller, ‘From cacophony to joint action: successes and shortcomings of the European nuclear non-proliferation policy’ in Martin Holland, *Common foreign and security policy: The record and reforms* (London Printer 1997) 52-72

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idency statements. In the Maastricht Treaty the Chapter on CFSP introduced a new instrument called ‘joint action’ for the unanimous implementation of the policy that was initially agreed among then 12-member States⁸. The European Council and Parliament both got engaged on non-proliferation topic. The European Council started taking up discussions non-proliferation and issued presidency statements. Similarly, the European Parliament adopted various resolutions and multitude of written and oral questions on the subject⁹.

During 1990s the EU made some positive contribution on the non-proliferation matters. First, during the NPT Review and Extension Conference which was held in 1995 the EU’s gave its first joint action on non-proliferation matters which clearly showed that EU is finally overcoming its strategic disunity¹⁰. Secondly, the EU has made positive contribution to the negotiation of the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT) as well as contributed its efforts to strengthen 1972 Biological and Toxin Weapons Convention (BTWC) and the 1993 Chemical Weapons Convention (CWC)¹¹. The EU provided its financial support to the Korean Peninsula Energy Development Organization (KEDO) for sorting out the 1993-94 nuclear crisis with North Korea. The EU not only supported the so-called six party Talks but also imposed sanctions on north Korea specifically after it conducted its second nuclear test in May 2009¹². Being shaken by its inability to form a common stand towards the Iraq invasion by American and its allies in 2003, it was determined to

⁸ Van Ham (n 3) 3.

⁹ *ibid.*

¹⁰ Portela (n 4) 3.

¹¹ Van Ham (n 3) 3.

¹² Ferial Ara Saeed, *Redefining Success: Applying Lessons in Nuclear Diplomacy from North Korea to Iran* (INSS Strategic Perspect 2010).

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forge a common and independent approach to dealing with proliferation threats¹³. For the attainment of this objective, during the term of Belgian presidency several Council conclusions dealing with non-proliferations were adopted in the second half of 2001 which laid the basis of 2003 WMD strategy¹⁴. Moreover, an article published in a Swedish newspaper by Swedish Minister for Foreign Affairs and a Greek Minister for foreign Affairs also emphasized on the use of preventive measures rather on the use of military action in case of potential proliferation crisis¹⁵. These articles also proposed the adoption of the EU Strategy on WMD proliferation¹⁶. After four days of these publications, the General Affairs and External Relations gave instruction to Javier Solana the HR for CFSP, and his council Secretariat to bring forth the draft document which outlines the EU's aims and interests concerning WMD non-proliferation¹⁷. The EU 's strategy on WMD non-proliferation was drafted along with EU's first ever security strategy, and both the documents were presented at the Thessaloniki European Council in June 2003¹⁸. After the intensive debate of the Member States on the draft document a final version of the WMD strategy

¹³ Oliver Meier and Gerrard Quille, 'Testing Time for Europe's Nonproliferation Strategy' (2005) 35(4) Arms control today 4.

¹⁴ Council of the European Communities, 2397th Council meeting, General Affairs, Brussels (10 December 2001) 15078/01 (Presse 460).

¹⁵ George A Papandreou, 'No more Iraqs!' *Dagens Nyheter* (Stockholm, 10 April 2003).

¹⁶ C Ahlstrom, 'The EU Strategy against Proliferation of Weapons of Mass Destruction' in Shannon N Kile (ed), *Europe and Iran: perspectives on non-proliferation* (Oxford University Press 2005) 32-33.

¹⁷ General Affairs and External Relations, 2501st Council meeting, External Relations, Luxembourg (14 April 2003) 8220/03 (Presse 105) (http://europa.eu/rapid/press-release.PRES-03-105_en.htm).

¹⁸ Council of the European Union, Action Plan for the Implementation of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction (13 June 2003) 10354/1/03 Rev 1 (<http://www.sussex.ac.uk/Units/spru/hsp/documents/2003-0616%5C%20Action%5C%20plan.pdf>).

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was adopted beside the European Security Strategy (ESS) ‘a Secure Europe in a better world’, in December 2003¹⁹. The adoption of these two strategic documents helped in establishing the base of CFSP of Europe on a solid foundations of shared threat perceptions, strategic priorities along with preferred policy options²⁰. The ESS identified WMD proliferation as one of the ‘key threat’ to Europe while the WMD strategy consider this threat as ‘growing and putting at risk the security of our states, our peoples and our interests around the world’²¹. The WMD strategy also consider the possibility of obtaining WMD by terrorists which can add ‘new critical dimension to this threat’, which was also conceived by the ESS as the ‘most frightening scenario’²² The EU stressed on multilateral approaches to security issues and strengthening of the existing treaties and regimes on non-proliferation through its political and financial assistance, with this EU set the tone of its non-proliferation policy on weapons of mass destruction²³.

7.1.2 The Nature of EU’s WMD Strategy

The EU’S WMD strategy is based on a ‘effective multilateralism’ approach which is considered the cornerstone of the strategy for combating the proliferation of the WMD’ and Nuclear non proliferation treaty (NPT) is the key treaty of the EU’s

¹⁹ European Council, A Secure Europe in a Better World: European Security Strategy [2003] (<https://europa.eu/globalstrategy/en/european-security-strategy-secure-europe-better-world>).

²⁰ Van Ham (n 3) 4.

²¹ European Council, A Secure Europe in a Better World: European Security Strategy (n 19) 6.

²² Council of the European Union, EU Strategy against Proliferation of Weapons of Mass Destruction, Brussels (n 1); European Council, A Secure Europe in a Better World: European Security Strategy (n 19) 4

²³ Van Ham (n 3) 4.

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WMD strategy²⁴. The effective multilateralism aimed to promote the stable regional and international environment and for close cooperation with partner states as well as it also worked for strengthening the EU own structures²⁵. In addition to that, the strategy also has the objective to promote the universalization and strengthening of existing non-proliferation treaties, conventions and other instruments and their implementation. For its achievement the EU offered political, technical and financial support through Common Foreign and Security budget, the instrument contributing to peace and stability (IcSP) for supporting the regimes which have ensured compliance through verification of the non-proliferation regime but also to maximize the impact of the EU 's activities in pursuits of its foreign policy objectives²⁶. The WMD strategy although lay emphasis solely on the use of preventive measures however in extreme situation of nuclear proliferation it has acknowledged the use of force by the EU. However, the strategy recognized the United Nations security council as the last arbiter in the extreme cases of proliferation of WMD²⁷.

Since 2003 the EU has worked to a considerable extent to strengthen its institutional frame work on WMD proliferation. The council gave biannual reports

²⁴ Council of the European Union, EU Strategy against Proliferation of Weapons of Mass Destruction, Brussels (n 1); Council Decision (CFSP) 2017/809 of 11 May 2017 in support of the implementation of United Nations Security Council Resolution 1540 (2004) on the non-proliferation of weapons of mass destruction and their means of delivery [2017] OJ L121/39 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0809&from=EN>)

²⁵ Van Ham (n 3) 4.

²⁶ The guiding principles are also highlighted in the reports of the implementation of the EU Strategy against Proliferation of Weapons of Mass destruction. Annual progress report on the implementation of the European Union strategy against the proliferation of weapons of mass destruction [2017] OJ C136/1 ([https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XG0428\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XG0428(01)&from=EN)); See also MA Verdugo, 'Missing tools against proliferation: The EU's strategy for dealing with weapons of Mass Destruction' (2006) 11 European Foreign Affairs Review 417

²⁷ Adrian Hyde-Price, 'European security, strategic culture, and the use of force' (2004) 13(4) European security 323.

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on WMD proliferation along with inputs on proliferation matter from the Director General for the External Relations. Besides that, the EU keeps on updating its WMD-related priorities on regular basis²⁸. The progress report published the EU achievements and progress on WMD matters, despite all this the EU efforts in area of non-proliferation fall short by the objectives laid out in the basic document in 2003²⁹.

The Council in its 2008 conclusions endorsed the ‘statement on international security that have identified specific actions to enable EU to play a more active role in combating terrorism, proliferation of weapons of mass destruction, organized crime and cyber-attacks’³⁰. The Council in its conclusion called upon the Member States to adopt appropriate policies and instruments required by the international security which has then resulted in the introduction of the New Lines for Action³¹. The New lines of Action highlighted the fact that WMD Proliferation as well as chemical, radiological, biological and nuclear terrorism posed an extreme threat to Europe since 2003. It has helped in raising the awareness regarding the growing challenge of WMD proliferation within the Member States thus called on the governments scientific and academic circles to be aware on non-proliferation matters as well as to

²⁸ Hyde-Price (n 27).

²⁹ *ibid.*

³⁰ Council of the European Union, Presidency conclusions (13 February 2009) 17271/1/08 Rev 1 (<http://data.consilium.europa.eu/doc/document/ST-17271-2008-REV-1/fr/pdf>), 18; See also Council of the European Union, Implementation of WMD Strategy: updated list of priorities (17 June 2008) 10747/08 (<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%5C%2010747%5C%202008%5C%20INIT>)

³¹ Council of the European Union, Statement on tighter international security (3 December 2008) 16751/08 (<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%5C%2016751%5C%202008%5C%20INIT>); Council of the European Union, Council Conclusions and New Lines for Action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems (17 December 2008) 17172/08 (http://trade.ec.europa.eu/doclib/docs/2008/december/tradoc_141740.pdf), 5

be aware of the potential risk of their own activities if any undertaken in that sphere. Therefore, it calls for ‘the close coordination between EU institutions and Member States which will be necessary to ensure coherence and synergies between ongoing and future activities and actions’³². Critically the New lines of action did not help in giving new initiative neither influence the EU policy approach on non-proliferation. However, one of the positive contribution it has made was to make a request to Joint Situation Centre (Sit Cen) to draft a document which should evaluate trends, risks and threats regarding proliferation³³. This document was intended to help EU to better target and calibrate its non-proliferation policies and to focus its geographical priorities regarding cooperation with third countries. New lines of action can be called a modest update of EU WMD strategy which lag in achieving its promises therefore it necessitates the coherence and effectiveness of the EU WMD Strategy³⁴.

7.1.3 WMD Clause of the Strategy

The WMD strategy entails the WMD clause which is used by the EU as a coercive measure to promote its non-proliferation objectives. The WMD clause was adopted during the preparatory work on first ever European security strategy and the EU strategy against the proliferation of mass destruction³⁵. The non-proliferation is used by the EU as a benchmark for considering whether to maintain or develop

³² Council of the European Union, Council Conclusions and New Lines for Action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems (n 31) 6.

³³ Van Ham (n 3) 5.

³⁴ *ibid* 5.

³⁵ European Council, A Secure Europe in a Better World: European Security Strategy (n 19); Council of the European Union, EU Strategy against Proliferation of Weapons of Mass Destruction, Brussels (n 1)

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its partnership agreements with the third States. Therefore ‘Non-proliferation of the WMD is a major concern for the EU and constitutes a fundamental element for the EU when it considers the decision of entering into negotiations with a third country or assess the advisability of progressing towards a contractual relationship’³⁶. The June 2003 basic principles also suggested that ‘EU will consider the introduction of an effective carrot and stick policy linked to non-proliferation commitments in its relations with the third countries. This will be done in the context of co-operation agreements or assistance programmes’³⁷.

Thus, by incorporating the WMD clause in the partnership agreement the provision of EU’s assistance and cooperation in trade, development assistance and other areas to third states is made directly conditional on the fulfillment of certain commitments and obligations in area of non-proliferation. Thus, the use of WMD clause by EU in its dealing with third states has transformed the EU as a full fledged strategic actor, willing to use its economic and financial influence to further its non-proliferation interest around the globe³⁸.

7.1.4 WMD Clause to Achieve EU Non-Proliferation Goals

The adoption of the WMD clause helped the EU in taking a common position on the ‘universalization and reinforcement of its multilateral agreements in the field

³⁶ Council of the European Union, Fight against the proliferation of weapons of mass destruction—mainstreaming non-proliferation policies into the EU’s wider relations with third countries (19 November 2003) 14997/03 (<http://ue.eu.int/uedocs/cmsUpload/st14997.en03.pdf>), annex,4.

³⁷ Council of the European Union, Action Plan for the Implementation of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction (n 18) 6.

³⁸ Van Ham (n 3) 4.

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of non-proliferation of weapons of mass destruction and their delivery system³⁹. It also reflects the EU's combined stance on its strategic objective that is to accomplish the universalization of the 1968 Non-proliferation treaty (NPT) and to bring into force the 1996 comprehensive Test Ban Treaty (CTBT) to strengthen the multilateral non-proliferation regime⁴⁰. By incorporating the WM clause in its partnership agreement with third states the EU for the very first time made use of non-proliferation criteria not only for assessing its previous partnership agreements with the other states but also for the new partnership agreements with the third states. As a general rule the clause was to be included in all the new and mixed agreements under the CFSP. The mixed agreements were those agreements concluded between EU and other countries pertaining to issues concerning EU and competence of the member states. Though the Clause was introduced as a general policy while making agreements with third states, still the council consider the use of taking extra measures in cases involving 'specific WMD related concerns'⁴¹. In those instances where the existing contracts cannot be revised, the European Commission and the EU member states can 'propose an amendment of the agreement to the third party if specific WMD related concerns warranted such action. If no agreement can be reached on such proposed amendment, the EC and its Member

³⁹ Council Common Position 2003/805/CFSP of 17 November 2003 on the universalisation and reinforcement of multilateral agreements in the field of non-proliferation of weapons of mass destruction and means of delivery [2003] OJ L302/34 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003E0805&from=EN>)

⁴⁰ *ibid*; Treaty on the Non-Proliferation of Nuclear Weapons, opened for signature 1 July 1968; entered into force 5 March 1970 Comprehensive Nuclear-Test-Ban Treaty (CTBT), opened for signature at New York on 24 September 1996 [1996] (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009IP0333&from=EN>)

⁴¹ Lina Grip, *The European Union's weapons of mass destruction non-proliferation clause: a 10-year assessment* (EU Non-Proliferation Consortium 2014) 1.

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States should examine the opportunity of appropriate measures which could include denunciation of the agreement⁴². Such discussions could either result in bringing amendment to the agreement or either result in creating a separate legally binding instrument between the parties which also include a link to the previous agreement⁴³. In certain instances, the WMD related behavior could also result in the termination of the agreements, notwithstanding taking the option of including the WMD clause. Especially for the EU development assistance agreement the use of same extra measure was recommended⁴⁴. The Council invites the Commission to work on introducing the non-proliferation conditionality in EU assistance programmes with third states which establish a link between non-compliance with a non-proliferation commitments required from the states and in return suspension of community assistance⁴⁵. Further the question on inclusion of non-proliferation clause was taken up in GAERC (General Affairs and External Relations Council) as part of its debate on the coherence of the EU external action⁴⁶. A policy clause to determine the nature of the existing agreements and possibility of including a non-proliferation clause in future agreements thereby recommended ‘A complete examination of existing mixed agreements might be engaged with a view to generalizing as far as possible the essen-

⁴² Council of the European Union, Fight against the proliferation of weapons of mass destruction—mainstreaming non-proliferation policies into the EU’s wider relations with third countries (n 36) 3.

⁴³ *ibid.*

⁴⁴ Grip (n 41) 3.

⁴⁵ *ibid.*

⁴⁶ Council of the European Union, Fight against the proliferation of weapons of mass destruction—mainstreaming non-proliferation policies into the EU’s wider relations with third countries (n 36) Annex 3.

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tial clause and determining the way to do so⁴⁷. The clause policy was endorsed by the European Council through the adoption of the EU WMD strategy in December 2003⁴⁸. Whether the WMD clause is incorporated in the 2004 EU-Pakistan Cooperation agreement development will be discussed in fourth Part of this chapter.

The second part of the chapter will overview the historical account of the development of Pakistan's nuclear programme. Following the acquisition of nuclear weapons, its declaration of nuclear policy based on the doctrine of minimum nuclear deterrence is critically analyzed. Also, the current organization of Pakistan nuclear programme in recent years and its control by Pakistan army which clearly manifest the Pakistan stand on maintaining its nuclear capability and the army decisive role in taking a final decision on use of nuclear weapons is discussed in detail.

7.2 An Overview of the Development of the Pakistan's Nuclear Programme: Background

Pakistan commenced its nuclear program under the patronage of the then Prime Minister Zulfikar Ali Bhutto. His determination for developing a nuclear programme for a country was very strong. Pursuing his serious objective for acquiring nuclear weapons for a country he once famously declared in 1965 that 'his compatriots would eat grass and will suffer other deprivations to possess nuclear weapons'⁴⁹. Security

⁴⁷ Council of the European Union, Fight against the proliferation of weapons of mass destruction—mainstreaming non-proliferation policies into the EU's wider relations with third countries (n 36) 2.

⁴⁸ Grip (n 41) 3.

⁴⁹ Feroz Khan, 'Eating grass: The making of the Pakistani bomb' (2012) 4 *Journal of Strategic Studies*, 624-630.

7.2. AN OVERVIEW OF THE DEVELOPMENT OF THE PAKISTAN'S NUCLEAR PROGRAMME: BACKGROUND

and deterrence were the main factors for developing the nuclear programme in the backdrop of the Pakistan's historical enmity with its arch rival India. Specifically, after the 1971 war with India, the priority for acquisition of the nuclear weapons became even more focused. Although Pakistan had been working on developing its nuclear facilities for peaceful purposes, the country policy on its nuclear program became clearer in 1970's due to two subsequent wars with India in 1965 and then in 1971 which caused a huge loss to Pakistan in the fall of its western part, now Bangladesh. Besides that, the India nuclear testing in 1974 also drift Pakistan to work conscientiously towards developing its nuclear programme⁵⁰.

Apart from Zulfikar Ali Bhutto, President Ghulam Ishaq Khan played a prominent role in supporting the Country nuclear programme. He became associated with the development of nuclear programme while serving as Defence Minister during the Premiership of Zulfikar Ali Bhutto in 1975. Later after becoming a President of Pakistan for two consecutive terms from 1983-1993 he greatly patronaged a country nuclear programme which he termed as a national asset. Along with premiere patronage the 'first generation scientists' also played a key role in making successful the nuclear programme of the country most notably, Samar Mubarakmand and Munir Khan of Pakistan's Atomic Energy Commission and Abdul Qadeer Khan of the Khan Research Laboratories⁵¹. Their dedicated efforts helped Pakistan in successfully achieving the nuclear capability.

⁵⁰ M Krepton, 'Pakistan's Nuclear Strategy and Deterrence Stability' in Michael Krepon and Julia Thompson (eds), *Deterrence Stability and Escalation Control in South Asia* (The Stimson Center 2013) 41.

⁵¹ *ibid*; Rai Muhammad Saleh Azam, 'When Mountains Move: The Story of Chagai' [2000] *Defence Journal*

7.3. THE NUCLEAR TEST CONDUCTED BY PAKISTAN AND ITS SIGNIFICANCE FOR PAKISTAN

7.3 The Nuclear Test Conducted by Pakistan and its Significance for Pakistan

In response to India five underground nuclear test which it conducted on May 11 and 13, 1998 and officially declared itself a nuclear state, Pakistan demonstrated its nuclear capability on May 28 and 30 when it conducted total six nuclear test in district of Chagai located in Province of Baluchistan on May 28 and 30, 1998 as an act of deterrence⁵². The then Pakistani Prime Minister Muhammad Nawaz Sharif in his televised address to the Nation said that ‘Pakistan has been obliged to exercise the nuclear option due to the weaponization of India’s nuclear programme’ and that as a ‘self-respecting nation we had no choice left to us We could not have ignored the magnitude of the threat’⁵³. He further said, ‘No matter whether we are recognized as a nuclear weapons state or not, we are a nuclear power’⁵⁴. In its long history of nuclear development, the acquisition of the nuclear capability can be termed a turning point from initially running its programme for peaceful purposes to military purposes⁵⁵. Domestic, regional and international facts together played a role in the development of Pakistan’s nuclear programme, however the regional security factor was predominant in this whole process. While responding to the international pres-

⁵² Šumit Ganguly, ‘India’s Pathway to Pokhran II: The Prospects and Sources of New Delhi’s Nuclear Weapons Program’ (1999) 23(4) *International Security* 148, 149-61; Zafar Khan, ‘Pakistan’s Nuclear Weapons Testing May 1998: External and Internal Pressures’ (2012) 12(1) *IPRI Journal* 28, 29

⁵³ N Sharif, Text of Prime Minister Muhammad Nawaz Sharif Statement at a Press Conference on Pakistan Nuclear Tests, 29 May (1998) (<http://www.acronym.org/uk/sasis/sppak2.htm>).

⁵⁴ Samina Ahmed, ‘Pakistan’s nuclear weapons program: Turning points and nuclear choices’ (1999) 23(4) *International Security* 178.

⁵⁵ Khan, ‘Pakistan’s Nuclear Weapons Testing May 1998: External and Internal Pressures’ (n 52) 29.

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sure on Pakistan's nuclearization, one of the famous Pakistanis strategist analysts remarked that 'the west could not dissuade Pakistan's to acquire nuclear weapons because they do not understand the actual cause of Pakistan's struggle for the acquisition of nuclear weapons'⁵⁶. The significance of Pakistan nuclear test in response to India which first conducted its nuclear test in the region cannot be ignored. After India conducted the nuclear tests, Pakistan had three policy options. First to dismiss the India's nuclear test as a challenge to its security and territorial integrity, second to receive international guarantee and assistance in form of economic and military support in case Pakistan opt not to go nuclear, third to opt for the nuclear test and achieve a strategic parity in the region despite international and domestic pressures⁵⁷. For Pakistan's perspective the test was inevitable not only because the India's nuclear test had resulted in altering the strategic balance in favor of India and had caused a serious implication on Pakistan's security and territorial integrity but mainly due to India hegemonic design in the South Asia region⁵⁸. Pakistan strongly condemned the India nuclear test and accused it for starting an arm race in the region. The Pakistan's Foreign Minister in its statement said that 'Pakistan strongly condemn this Indian act and the entire world should condemn it. It has sucked Pakistan into an arm race'⁵⁹. Later Pakistan come forth on its stance for

⁵⁶ Feroz Hassan Khan, 'Nuclear Proliferation Motivations: Lessons from Pakistan' (2006) 13(3) Non-proliferation Review 501.

⁵⁷ Khan, 'Pakistan's Nuclear Weapons Testing May 1998: External and Internal Pressures' (n 52) 30.

⁵⁸ Rabia Akhtar, 'Nuclearization of Pakistan: Motivations and Intentions' (Master Thesis, Eastern Illinois University 2003).

⁵⁹ For Pakistan's Foreign Minister's statement in response to India's May 11, 1998 nuclear test see, May 1998 Pakistan Special Weapons News', Federation of American Scientists (FAS) (<http://www.fas.org/news/pakistan/1998/05/index.html>). Other Pakistan's officials' statements against the Indian nuclear weapon tests can also be seen. Also see 'Pakistan's Foreign Minister Gohar Ayub Khan' *The News International* (Islamabad, 12 May 1998)

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conducting not only the nuclear tests but also declared its nuclear policy based on the doctrine of ‘minimum credible nuclear deterrence’ on May 20, 1998 against the its arch rival India⁶⁰.

7.3.1 Pakistan’s Doctrine of Nuclear Deterrence

The Pakistan’s nuclear policy based on doctrine of minimum credible deterrence was an offshoot of the nuclear test conducted by Pakistan. The doctrine is now part of Pakistan nuclear policy and organization⁶¹. The policy based on ‘minimum credible deterrence’ has four strategic objectives, First, to deter all forms of external aggression against the country’s security, Second, establishing an effective combination of strategic and conventional forces, third, to nullify any pre-emptive strike through threat of nuclear retaliation, fourth to achieve strategic deterrence in South Asia⁶². Pakistan formulated a long-term plan for the development of its nuclear force after it conducted its nuclear test in 1998. currently it can be said that the program is in its second ten-year plan⁶³. Though Pakistan claimed that it is against the nuclear race in South Asia and does not want to acquire the nuclear arsenals equal to India. However, it firmly believes in the deterrent aspect of its nuclear power thereby

⁶⁰ The former Pakistan’s Prime Minister statement on Pakistan’s nuclear deterrence posture, in Bhumitra Chakma, *Pakistan’s nuclear weapons* (London: Routledge 2009) 48; See also Rodney W Jones, *Minimum Nuclear Deterrence Postures in South Asia: An Overview* (US Defence Threat Reduction Agency: Advance Systems and Concepts Office 2001) 36; Rizwan Zeb, ‘David Versus Goliath? Pakistan’s Nuclear Doctrine: Motivations, Principles and Future’ (2006) 22(4) *Defense & Security Analysis* 387

⁶¹ Bruno Tertrais, *Pakistan’s nuclear and WMD programmes: status, evolution and risks* (EU Non-Proliferation Consortium 2012) 2.

⁶² Mahmud Ali Durrani, *Pakistan’s strategic thinking and the role of nuclear weapons* (Cooperative Monitoring Center, Sandia National Laboratories 2004) 23.

⁶³ Tertrais (n 61) 2.

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detering the large state like India through the threat of damage which can be even disproportionate with the stakes of the conflict⁶⁴. Therefore, in event of aggression from the Indian side Pakistan plan to inflict unacceptable damage on India. However, the Pakistani planners accept the difficulty in defining the term unacceptable damage accurately. However, one of the quasi-official report remarks that ‘because of the difficulty in predicting unacceptable damage, overkill by necessity be built into the response’⁶⁵.

The President Pervaiz Musharraf claimed in one of his statement given in 2005 that Pakistan’s has acquired the threshold of minimum deterrence of its nuclear force. However, his statement can be construed as acquiring the initial capability to launch an attack on Indian cities through small number of weapons with some guarantee of success⁶⁶. Since the 1998 the Pakistani official statement has consistently remarked that ‘minimum deterrence cannot be quantified in static number’⁶⁷. Therefore, the required level of deterrence force can be changed over a period in proportion to the evolution of threat⁶⁸. The India-United states strategic partnership which also covered the nuclear cooperation have raised the Pakistan concern regarding India increasing its nuclear capability through this partnership. The NCA in its official statement emphasized this fact that ‘India-USA agreement would enable India to

⁶⁴ Tertrais (n 61).

⁶⁵ Durrani (n 62) 26-32.

⁶⁶ President of the Islamic Republic of Pakistan, Excerpt from President Speech reported on National TV (19 March 2005) (<http://www.presidentofpakistan.gov.pk>).

⁶⁷ A Sattar, ‘Address by the Foreign Minister to the “Pakistan Response to the Indian Nuclear Doctrine” seminar’ *The Acronym Institute for Disarmament Diplomacy* (25 November 1999) (<http://www.acronym.org.uk/41pakis.htm>); Andrew Bast, ‘Pakistan’s Nuclear Calculus’ (2011) 34(4) *The Washington Quarterly* 73, 78

⁶⁸ *ibid.*

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produce significant quantities of fissile material and nuclear weapons from unsafe-guarded nuclear reactors, The NCA expressed firm resolve that credible minimum deterrence requirements will be met⁶⁹. A former SPD wrote that for achieving the country's minimum deterrence force the type of calculations that Pakistan planners might make would be like for a set of 10 possible targets, the country should have 68-70 warheads⁷⁰. This calculation is irrespective of considering the risk of preemptive strikes⁷¹.

7.3.2 Pakistan's Nuclear Threshold

The Pakistan's policy on the use of its nuclear weapon is that the nuclear weapons are solely intended for deterring any military aggression against its territory. The state officials through their statements several times affirmed that 'the use of nuclear weapons as a war fighting tool is not a contemplated doctrine in Pakistan strategic thinking'⁷². Pakistan's has made efforts to integrate the nuclear dimension of its nuclear doctrine into its defense strategy⁷³. However, in instance of conventional attack from India, Pakistan claimed to use its nuclear weapons in response to the Indian attack as a last resort. Pakistan's has made several statements since 1987 regarding its nuclear threshold. In 1999 the then General and later president Pervez

⁶⁹ President of the Islamic Republic of Pakistan, 'Pakistan satisfied with nuclear deterrence capability: expresses firm resolve to meet future challenges', Press release (12 April 2006) (www.presidentofpakistan.gov.pk).

⁷⁰ Naeem Salik, 'Minimum Deterrence and India-Pakistan Nuclear Dialogue: Case Study on Pakistan' [2006] *Landau Network-Centro Volta* 32, 14.

⁷¹ *ibid.*

⁷² Feroz Hassan Khan, 'Comparative strategic culture: The case of Pakistan' (2005) 4(10) *Strategic Insights*.

⁷³ *Tertrais* (n 61) 3.

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Musharraf said, ‘that nuclear weapons would only be used if national integrity of the state is threatened’. Similarly, in 2001 the General Khalid Kidwai said ‘only if the very existence of Pakistan as a state is threatened’⁷⁴. The four threshold situations which can evoke a nuclear response were described by General Khalid Kidwai as follow⁷⁵;

In instance of spatial threshold wherein the Indian army penetrating the Pakistan’s territory on a large scale can result in a nuclear response. Second in instance of military threshold which can result in the destruction of Pakistan land and air forces can lead to a nuclear response when Pakistan’s believed that it will lose the cohesiveness of its defense and will face imminent defeat, third the economic threshold can lead to nuclear response wherein India attempts to weakened Pakistan’s through economic strangulation. This can involve the cut of Indus river water flow, blockade of Karachi or the capture of main arteries of Pakistan like Karakoram highway or Indus river, fourth in instance of political destabilization of Pakistan fomented by India can result in a nuclear response if Pakistan believed that its political integrity is at stake⁷⁶. These threshold marks can be construed as a message to the four-main institution of India namely Indian army in instance of spatial threshold, to the army and air force in instance of military threshold, to the Indian navy in instance of economic threshold and to its intelligence agency RAW

⁷⁴ A Levy and S Das, ‘Nuclear Alert Sounded in Pakistan’ *Sunday Times* (London, 30 May 1999); Paolo Cotta-Ramusino and Maurizio Martellini, ‘Nuclear safety, nuclear stability and nuclear strategy in Pakistan: A concise report of a visit by Landau Network-Centro Volta’ [2002] Pugwash Conferences on Science world Affairs (<http://www.pugwash.org/september11/pakistan-nuclear.htm>)

⁷⁵ *ibid.*

⁷⁶ *ibid.*

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(Research Analysis Wing) for the political threshold⁷⁷.

However, the Pakistani planners emphasized on the indicative nature of these threshold thus should not be viewed in isolation. Further they negate all those statements which suggests that Pakistan is planning for an early use of the nuclear weapons⁷⁸. It is very important to note that the Pakistan's nuclear policy is in line with negative security assurances given by the nuclear weapon states that it will not use or threaten to use nuclear weapons against non-nuclear countries⁷⁹. As part of its nuclear deterrence, Pakistan has warned India that it can respond with nuclear retaliation in case of pre-emptive or preventive strike. Pakistan has even warned India in 1998 after it has conducted its nuclear test, that it will respond with a 'swift and massive retaliation with unforeseen consequences' if India attacked against its nuclear installations⁸⁰. These nuclear installations are now the subject of non-aggression agreement signed between the two countries⁸¹.

⁷⁷ Tertrais (n 61) 3.

⁷⁸ *ibid.*

⁷⁹ Durrani (n 62) 23.

⁸⁰ United Nations Information Service, Pakistan warns in disarmament conference of massive retaliation if nuclear installations attacked, Press Release (29 May 1998) DCF/335 (http://www.fas.org/news/pakistan/1998/05/19980529_dcf335.html).

⁸¹ India-Pakistan Non-Nuclear Aggression Agreement 'The Prohibition of Attack against Nuclear Installations and Facilities'. The treaty was drafted in 1988 and was signed by both the states on 21 December 1988 & entered into force on 1 January 1991. The agreement works as a confidence building measure between the two countries. The agreement was renewed between the two countries on 1 January 2002. https://media.nti.org/documents/india_pakistan_non_attack_agreement.pdf

7.4. THE ORGANIZATION OF THE PAKISTAN'S NUCLEAR PROGRAMME, ITS COMMAND AND CONTROL

7.4 The Organization of the Pakistan's Nuclear Programme, its Command and Control

After the demise of President Muhammad Zia-ul-Haq in 1988 the Pakistan's army has acquired the control of Pakistan's nuclear programme and since then the programme has been kept highly secretive. The reorganization of Pakistan's nuclear programme took place after Pakistan became a nuclear power in May 1998 nuclear and military take over of the civilian government on 12 October 1999.⁸² For achieving that an institutional national command and control system was put in place for ensuring the safety of nuclear assets, materials, facilities and personnel and secure under the tightest state control impregnable to any kind of proliferation⁸³. Pakistan successfully institutionalized all aspects related to management of its nuclear capability by 1999 i.e. within one year of having conducted the nuclear tests⁸⁴. The Pakistan's command and control structures also known as C2 is constituted as follow;

⁸² Zafar Iqbal Cheema, 'Pakistan's Nuclear Use Doctrine and Command and Control' in Peter René Lavoy, Scott Douglas Sagan, and James J Wirtz (eds), *Planning the Unthinkable: how new powers will use nuclear, biological, and chemical weapons* (Cornell University Press 2000) 158-181.

⁸³ KA Kidwai, 'The Pakistani National Perspective on Nuclear Non-Proliferation' in Peter René Lavoy, Scott Douglas Sagan, and James J Wirtz (eds), *Planning the Unthinkable: how new powers will use nuclear, biological, and chemical weapons* (Cornell University Press 2000) 131.

⁸⁴ *ibid* 132.

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7.4.1 National Command Authority

The National Command Authority (NCA) was approved by National Security Council (NSC) on 2 February 2000⁸⁵. NCA is comprised of nine important decision makers of the country and includes the civilian and military leadership. It is apex body responsible to take major decision regarding nuclear and space policy. It holds its meeting two or three times a year. The Prime Minister holds the position of the chairperson in NCA and thus ultimately hold the decision on the use of the nuclear weapons⁸⁶. The legal framework of NCA was formalized through the adoption of NCA Act in March 2010 which was retroactively in force since December 2007⁸⁷. A decision to use nuclear weapons would require the 'consensus within the NCA, with the chairperson casting the final vote'⁸⁸. If consensus is impossible to achieve the majority vote would prevail⁸⁹. In November 2000 all the important strategic organizations working for nuclear and missiles programs, namely the KRL, PAEC, NESCOM, Pakistan Space and Upper Atmosphere Research Commission (SUPARCO) were brought under the control of NCA.

The NCA has two important committees namely, Employment control committee (ECC) AND Development Control Committee (DCC); The Employment Control Committee (ECC) is another important structure of the organization. It works

⁸⁵ Tanvir Ahmad Khan, 'Command and Control: A Pakistani Perspective' [2000] (3) Strategic Issues (http://www.issi.org.pk/Nuclear%5C%20Issues/N_NCA.htm); See 'National Command Authority Established' *Associated Press of Pakistan* (Islamabad, 3 February 2000); 'National Command Authority Formed' *Dawn* (Karachi, 3 February 2000); Amit Baruah, 'Pak Signal to U.S. on N-command' *The Hindu* (Chennai, 3 February 2000)

⁸⁶ Khan (n 85).

⁸⁷ *ibid*; See also Tertrais (n 61) 7

⁸⁸ Durrani (n 62) 24.

⁸⁹ Jones (n 60) 33.

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for the development and acquisition of nuclear weapons, delivery system and other related equipment. The committee comprised of main ministers and the military chiefs while the foreign minister holds the position of the deputy chairman of the committee. The composition of the ECC committee is predominantly military in makeup which consists of the service chiefs, Chairman Joint Chiefs of Staff Committee(CJCSC), director general of the strategic plan division and representative of the government strategic organization (R &D and production). However, it would be ensured that civilians also contribute in a decision to use nuclear weapons⁹⁰.

Besides that, the development control committee (DCC) is another body which function for the weapon development and oversight. The chairman of the Joint Chief of Staff Committee which is a symbolic position in Pakistan head the DCC as the deputy chairman. The committee comprised of scientists and military officials excluding any political leaders⁹¹.

7.4.2 Strategic Plan Division(SPD)

The SPD function as a NCA'S secretariat. It is headed by three star General from Army and consist of 70 members. This body has evolved into a true nuclear enclave in the Pakistani defense system. It conceive, develops, monitor and manages Pakistan's nuclear and space programme for the NCA⁹². Besides that, the SPD has four directorates. (1) the operations and strategic plans directorate, (2) the strategic Weapons Development Directorate, (3) the C4 I Directorate and (4) arms control and disarmament directorate. The representatives from three military ser-

⁹⁰ Jones (n 60); See also Tertrais (n 61) 7

⁹¹ Jones (n 60).

⁹² *ibid*; Kidwai (n 83) 132

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vices works together in the functional area of these directorates. It is also involved in the selection and training of candidates in the military complex⁹³. With the help of its Security and intelligence divisions the SPD has incorporated stringent physical and technological solutions, runs a strict Personnel Reliability Programme and has evolved security and intelligence capabilities to deal with all aspects concerned to nuclear security, non-proliferation and all threats and accidents⁹⁴.

7.4.3 Strategic Forces Command

The strategic force command (SFCs) has been assigned the charge of technical training and administrative control. The position of the army in (SFC) is most powerful as it oversees all missiles in service and is headed by the three-star general in comparison to other commands led by two-star generals⁹⁵.

The bureaucratic structure of the Pakistan's nuclear command and control shows the dominant position of the army and its hold on the country's nuclear programme as well as the seriousness of the continuity of the country nuclear programme. This arrangement also shows that there is civilian involvement neither in nuclear planning, nor in operational or service matters. Thus, it would not be wrong to say the Pakistan army would be the ultimate decision maker on any matter of the nuclear use.

Pakistan's nuclear security architecture is built on Multi layered defense and deploys a variety of physical and technological systems. A comprehensive nuclear regulatory regime was created that encompasses not only physical protection of materials and facilities, but also fissile control and accounting, transportation, security,

⁹³ Jones (n 60).

⁹⁴ Kidwai (n 83) 132,133.

⁹⁵ *ibid.*

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prevention of illicit trafficking, border controls and design to deal with possible radiological emergencies. Pakistan Nuclear Regulatory Authority(PNRA) is one such example; This body was created in 2001 and has evolved a sustainable nuclear safety regulatory system for power reactors, and set up a response and recovery capabilities for radiological sources. The National Institute of Safety and Security(NISAS) is another body created in March 2014 that works under the PNRA and impart training in nuclear safety, security and radiation safety to trains professionals, technicians, and managers⁹⁶. Besides that Pakistan created a comprehensive export control regime in 2004.The legislative, regulatory, administrative and enforcement measures are equal with the multilateral export control regimes⁹⁷. On the basis of the European Union integrated system Pakistan has also revised its National Export Control Lists and harmonized them with the controls maintained by Nuclear Supplier Group(NSG), MTCR and Australia Group⁹⁸. To prevent illicit trafficking of nuclear and radioactive materials the National Detection Architecture use detection devices at several entry and exist points. The integrated Container Control (IC-3) is a Container Security Initiative (CSI) at Port Qasim near Karachi⁹⁹. Pakistan is also implementing its Nuclear Security Action Plan (NSAP) in collaboration with IAEA in order to manage radioactive sources, secure orphan sources and detect radiation¹⁰⁰. Pakistan has also been regularly submitting reports to the UN Security Council 1540 Committee that lists the measures it has taken for nuclear and radiolo-

⁹⁶ Kidwai (n 83).

⁹⁷ *ibid.*

⁹⁸ *ibid.*

⁹⁹ *ibid.*

¹⁰⁰ *ibid.*

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gical security and well as on controls over all forms of transfer of sensitive materials and technologies. All these developments in the domain of nuclear security revealed that Pakistan has been conducting its overall nuclear programme as a responsible nuclear state.

The third part of the Chapter will overall critically evaluate the role of the EU's security governance during the Pakistan-India nuclear crisis in South Asia region. In context of EU WMD non-proliferation strategy and its claim to be a key actor in a security matters, the effectiveness of the EU responds towards the Pakistani and Indian nuclear test and how efficaciously it has engaged with Pakistan to bring it within the nuclear security framework will be critically analyzed. Further, Pakistan's political and legal policy stance on maintaining its nuclear capability and status notwithstanding the Nuclear Non-Proliferation treaty (NPT) and other international nuclear regimes is critically evaluated in detail.

7.5 The European Union Reaction to the Pakistan's Nuclear Tests

Many policy makers before 1998 have regarded South Asia as a probable site for a nuclear war, these prospects have come to be all that more likely specifically in a post nuclear South Asia¹⁰¹. This risk became more imminent specifically after 1998 nuclear tests by India and Pakistan. The EU in response to Pakistan and India nuclear tests declared that it 'considers these tests a grave threat to international peace and security and to the global efforts towards non-proliferation and

¹⁰¹ Peter R Lavoy, 'Managing South Asia'S Nuclear Rivalry: New Policy Challenges For The United States' (2003) 10(3) The Nonproliferation Review 84.

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nuclear disarmament'. Therefore, it reaffirmed its commitment to the NPT (Nuclear non-proliferation treaty) as the 'cornerstone of the global nuclear non-proliferation regime and the essential foundations for the pursuit of nuclear disarmament' thus by urging 'India and other states which have not yet done so to become parties to the treaty'¹⁰². The EU in its assessment of the security situation created by the nuclear tests India and Pakistan expressed that, the 'EU is gravely concerned by the developments that have brought renewed tension and security to the South Asia. The Commission calls upon Pakistan and India not to embark on an arm race. It urged them to direct their efforts at reopening the dialogues with each other and with the international community' keeping in view the socio-economic level of the two countries the EU also remarked that both the countries should devote their resources primarily to tackle their economic and social problems¹⁰³. The EU Presidency followed these remarks and in its other declaration on June 16 it further expressed its 'dismay' and 'disappointment' and set out its 'condemnation' with India and Pakistan nuclear tests running counter to the will expressed by 149 signatories to the Comprehensive Test Ban Treaty(CTBT) to cease nuclear testing' and 'efforts to strengthen the global non-proliferation regime'. The EU contend that while 'India nuclear test have undermined the stability of the region. Pakistan's nuclear test have made the situation worse'¹⁰⁴. Within this context the EU once again reaffirmed its

¹⁰² Council of the European Union, 2097th Council meeting–General Affairs–Brussels (22 May 1998) 8687/98 (Presse 162) (<http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/98/162&format=HTML&aged=0&lg=nl&guiLanguage=en>).

¹⁰³ European Commission, 'Commission reaction to Pakistan's nuclear tests' IP/98/486 (<http://europa.eu/rapid/pressReleasesAction.do?reference=PESC/98/47&format=HTML&aged=0&language=EN&guiLanguage=en>).

¹⁰⁴ Council of the European Union, Declaration by the Presidency on behalf of the European Union on Pakistan nuclear tests, Brussels (29 May 1998) 9031/98 (Presse 175) P. 47/ 98 (http://aei.pitt.edu/54622/1/CPR_946.pdf).

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commitment to the implementation of NPT and CTBT and maintained that it has a 'strong interest in the peace and stability of South Asia, and is deeply concerned about the threat posed to this region by nuclear and missile proliferation'¹⁰⁵. The EU went further than its previous declaration and urged India and Pakistan to commit to the following conditions;

To ratify CTBT

To maintain stringent control over export of material, equipment and technology, whose supply is restrained under the Nuclear Supplier Group Trigger and Dual-Use Lists and Missile Technology Control Regime Annex,

Urge both the States to make commitment not to assemble the nuclear devices and neither to deploy them on delivery vehicles and to stop development and deployment of ballistic missiles capable of delivering nuclear war heads

In a Disarmament conference in Geneva, to give their contribution towards the opening negotiations for a treaty banning the production of fissile materials for nuclear weapons¹⁰⁶.

By putting these condition, this can be termed one of the clear attempt of the EU to bring both India and Pakistan within the multilateral security governance framework, that is cornerstone of the EU approach to non-proliferation.

In its further comments, the EU stated 'that it will closely monitor the evolution of situation and will take all necessary measures should India and Pakistan did not accede and move to ratify the relevant international non-proliferation agreements

¹⁰⁵ Council of the European Union, Declaration by the Presidency on behalf of the European Union on Pakistan nuclear tests, Brussels (n 104).

¹⁰⁶ *ibid.*

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the Comprehensive Test Ban Treaty without conditions'¹⁰⁷.

Apparently, these and many other EU statements on the nuclearization of South Asia presented a common sense of agreement and clarity within a union¹⁰⁸. The common position of the Union was released in October after five months of the nuclear tests¹⁰⁹. However, the individual responses of the member states were at variance then the common position adopted by the union. For instance Denmark, Sweden and Germany suspended their development aid, while countries like Spain and France 'abstained from any measures beyond, condemnation, because they believed that, as non-signatories to NPT, these countries were 'under no obligation to refrain from acquiring nuclear weapons'¹¹⁰. Furthermore, in response to Pakistan nuclear tests Germany though cancel its talks on economic developments, but refused to back the EU announced sanctions by stating that 'the nuclear genie has escaped from the bottle again. Imposing sanctions cannot put it back again'¹¹¹. The French was even critical of the economic sanctions imposed by the Clinton Government by reasoning because these were 'surely not the right method for attempting

¹⁰⁷ Council of the European Union, Declaration by the Presidency on behalf of the European Union on Pakistan nuclear tests, Brussels (n 104).

¹⁰⁸ Oz Hassan, 'Securitising proliferation, failing security governance: the European Union's role in India and Pakistan's nuclear rivalry' (2013) 11(2) *Asia Europe Journal* 93, 98.

¹⁰⁹ Common Position of 26 October 1998 defined by the Council on the basis of Article J2 of the Treaty on European Union on the European Union's contribution to the promotion of non-proliferation and confidence-building in the South Asian region [1998] OJ L290/1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998E0606&from=EN>).

¹¹⁰ Portela (n 4) 16; See also Oliver Meier, *Involving India and Pakistan: Nuclear Arms Control and Non Proliferation After the Nuclear Tests* (Berlin Information-Centre for Transatlantic Security (BITS) Research Report 1999)

¹¹¹ Kinkel Klaus, 'World Reaction to the Pakistani Nuclear Tests' *MIIS* (1998) (http://cns.miis.edu/archive/country_india/wreactpk.htm#EU); Warren Hodge, 'Nuclear Anxiety: The Reaction; the Wealthy Nations cut Aid to Pakistan over Nuclear Tests' *New York Times* (New York, 29 May 1998)

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to assure that India joins those nations wishing to sign the non-proliferation treaties'¹¹². Thus, the individual states responses reflect the inner lack of unanimity on a policy response against the South Asia nuclearization despite the EU condemning declarations. This also revealed the difficulty of incorporating the non-proliferation policy within a larger regional strategy. Besides that, the EU declarations for most of the part was mere declaratory rather than being substantive thereby limiting its effectiveness to negative policy actions thereby postponing the third trade agreement with Pakistan¹¹³. Secondly the EU declarations also masked the differences between those group of EU members who were against the much stronger American reaction, and a group of states who follow the US lead in name of Atlantic solidarity¹¹⁴.

The testing of the nuclear weapons by both India and Pakistan though marked a highly symbolic historical moment, even at this crucial time the EU's failure to translate its declarations into anything more than a tepid and largely superficial response clearly demonstrate its limited security governance capabilities¹¹⁵. The Outbreak of Kargil crisis between India and Pakistan which took place within one year of the nuclear testing of Pakistan and India nullify the notion that the traditional rivalry between the two countries would dissipate under the threat of nuclear confrontation. The Kargil crisis was a product of over three decades of avoided serious confrontation when the India launched air strikes against the Pakistan backed forces in the Kargil District of Kashmir. The Direct confrontation between the two arch rivals

¹¹² Vaillant Daniel, 'South Asia Nuclear Crisis: France opposes US sanctions on India over tests' *Reuters* (London, 13 May 1998) (<http://www.acronym.org.uk/sasia/spint2.htm>).

¹¹³ Hassan (n 108) 98.

¹¹⁴ PM Kamath, 'India not interested in a US "Europe" Asia' *Times Online* (Hong Kong, 26 June 2002) (<http://www.atimes.com/ind-%20pak/DF26Df01.html>).

¹¹⁵ Hassan (n 108) 98.

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ensued when Pakistan put its forces on high alert in a response. It jeopardized the trust building process initiated by the then Prime minister Nawaz Sharif and Indian Prime Minister Vajpayee in February 1999¹¹⁶. The Kargil crisis between the two rivals marked the 'watershed in India-Pakistan security' relations. This conflict 'demonstrated that even the presence of the nuclear weapons might not appreciably dampen security competition between the region's largest states'¹¹⁷. Many analysts have argued that Pakistan rather than relying on its nuclear weapons as its deterrent force, it intends to exploit its conventional weapons capabilities in Kashmir, 'secure the knowledge that India's fear of conventional conflict going nuclear would deter it from escalating the conflict'¹¹⁸. Thus, Pakistan's believed that's its acquisition of nuclear capabilities has ensured them 'the immunity required to prosecute a range of military operations short of all-out war'¹¹⁹. However, it would not be wrong to imply that both Pakistan and India have followed this strategy keeping in view the record since their acquisition of nuclear capabilities. This strategy though intended to have a deterrent effect is fraught with the risk of escalation with which the EU struggle to pursue with¹²⁰.

¹¹⁶ Ken Booth and Nicholas Wheeler, *The security dilemma: Fear, cooperation, and trust in world politics* (Palgrave Macmillan 2011).

¹¹⁷ Ashley J Tellis, C Christine Fair, and Jamison Jo Medby, *Limited conflicts under the nuclear umbrella: Indian and Pakistani lessons from the Kargil crisis* (Rand Corporation 2001) 1.

¹¹⁸ Booth and Wheeler (n 116); See also Sumit Ganguly and Devin T Hagerty, *Fearful symmetry: India-Pakistan crises in the shadow of nuclear weapons* (University of Washington Press 2012) 286

¹¹⁹ Tellis, Fair, and Medby (n 117) 1.

¹²⁰ Hassan (n 108) 99.

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7.6 The Assessment of the EU's Security Governance Role During Pakistan-India Security Crisis

7.6.1 Kargil Crisis

While assessing the overall EU'S response towards the Kargil crisis it would not be wrong to say that it was quite weak. EU response was merely confined to a policy of declaration, by making statement that 'the conflict gives reason for deep concern'¹²¹. Although later it gives some definitive statements calling for the 'immediate withdrawal of the infiltrators' and 'respect the line of control', the immediate cessation of fighting' and barred of 'further trans-border infiltration'¹²². During this period of kargil crisis the EU was mostly involved with events in Kosovo so the role of EU security governance in Kargil crisis was quite limited while the America played a lead role in Kargil Summit in July 1999¹²³. It would not be wrong to conclude that the EU missed the opportunity for being purposely engaged in de-escalation of the Kargil conflict. American President Bill Clinton played a mediating role which resulted in the withdrawal of the Pakistani troops behind the line of control¹²⁴. Immediately after the Kargil crisis the Pakistani military coup in 1999 was also a cause of concern

¹²¹ GAER, 2186th Council meeting – General Affairs, Brussels (31 May 1999) 8657/99 (Presse 171) (https://europa.eu/rapid/press-release.PRES-99-171_en.htm).

¹²² The European Council, Declaration by the Presidency on behalf of the European Union on Kashmir, Brussels (24 June 1999) 9407/99 (Presse 204) (http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/ACF67.htm).

¹²³ Hassan (n 108) 99.

¹²⁴ *ibid.*

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for the EU. The EU in its response called for an immediate return to a civilian rule, at the same time it also asked the Pakistani authorities 'to respond to the calls of the European Union and the international community for global non-proliferation measures and to sign and ratify the CTBT'¹²⁵.

It is important to note that during this whole period of security crisis between India and Pakistan, the EU have not directly engage with Pakistan and India. Its EU action was merely limited to declarations which exhibit its limited role in a Kargil military conflict bonded with a danger of nuclear cataclysm.

7.6.2 Pakistan-India 'Twin Peak' Crisis 2001-2002s

Since America's start of war on terror , the importance of Pakistan has increased both for America and EU, particularly for achieving security and stability in Afghanistan. In response to Pakistan's role as a front line state in America's 'war on terror' the America lifted the sanctions imposed on Pakistan after it conducted nuclear tests and declared its nuclear status in 1998. Similarly EU also promised to grant humanitarian aid to Pakistan for its front-line support on the 'war on terror'. During this time the European Commission announced a trade concession of 1.4 billion to Pakistan. Giving the reason for this concession the EU Trade Commissioner Pascal Lamay said that 'Trade is a weapon of peace' and that through trade and fostering of greater economic ties with Pakistan, the EU can contribute to alleviating in some measures its current difficulties'¹²⁶. Pakistan by providing the great logistic and stra-

¹²⁵ GAER, 2217 Council-General Affairs, Brussels (15 November 1999) 12642/99 (Presse 344) (http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/12642.EN9.htm).

¹²⁶ Guerrera Francesco, 'Islamabad rewarded by Brussels trade package' *Financial Times* (London, 16 October 2001); See also 'EU pledges aid' *The Guardian* (London, 9 October 2001)

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tegic support to American led forces, had acquired a strong influence in a war on terror. As far India was concerned, it took the war not only against its long-standing aversion for foreign involvement of forces in the region, but at the same time it was being done in a manner where it could not fully secure its interests¹²⁷. This resulted in the renewed set of tensions between India and Pakistan at the end of 2001 to 2002, which has once again caused a fear of nuclear escalation in the region. The Jihadist group Lashkar-e-Taiba, and Jaish-e-Mohammad based in Pakistan after committing various provocative attacks in and beyond Indian-occupied Kashmir, have attacked the Jammu and Kashmir legislature complex in Srinagar on October 1, 2001 and causing the death of 38 people¹²⁸. Consequently, the Indian officials brief the EU about the Pakistan's 'collusion and conspiracy with the fundamentalist group' and demand that the European commissioner for external relations should make a special reference to the difficulties created by these groups, thereby asserting that such attacks needed to be condemned by the global community¹²⁹. After the increased level of violence that took place on 25 October 2001, the European Parliament adopted a resolution calling for a 'peaceful negotiated solution to the Kashmir question' while making appeal to the European Council 'to use its influence to help bring about the resolution'. The Resolution states that, 'EU to take the initiative by offering its services as an honest broker to both India and Pakistan, with a view to facilitating the process and demonstrating the European Union's wish to see a resolution of the

¹²⁷ Hassan (n 108) 100.

¹²⁸ 'Militants attack Kashmir assembly' *BBC* (London, 1 October 2001) (http://news.bbc.co.uk/1/hi/world/south_asia/1574225.stm).

¹²⁹ 'Pak cannot escape responsibility of encouraging terrorism—Omar' *Press Trust of India* (New Dehli, 15 October 2001).

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dispute, and to assist in the fight against terrorism'¹³⁰.

The attacks in October and November 2001, were followed by a terrorist's attack on Indian Parliament in New Delhi on 13 December 2001, leaving 14 dead including six terrorists as well¹³¹. Although Pakistan condemned the terrorist attack on Indian Parliament, the Indian Home Minister L.K.Advani described the attacks as the 'most audacious and most alarming act of terrorism' and termed it a Pakistan sponsored terrorism in India. After the Indian parliament attacks a series of coercive diplomacy was followed. while India making demands of the handover of those terrorists involved in the attack on Indian Parliament, it also responded by launching Operation Parakarom on December 18, 2001 and started building up its troops on border¹³². It was reported that both the sides moved nuclear capable ballistic missiles to positions closer to the Punjab border¹³³. India roughly moved half a million troops to border areas in Rajasthan, Punjab and Gujrat¹³⁴. Pakistan in response also moved its armor and 300,000 military force to the adjacent border of Sindh and Punjab¹³⁵. During the crisis the Pakistani General Khalid Kidwai, director of Strategic Plans Division of Pakistan give a public statement that nuclear

¹³⁰ European Parliament resolution on the progress achieved in the implementation of the common foreign and security policy (C5-0194/2001 - 2001/2007(INI)) [2001] (<https://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P5-TA-2001-0576&format=XML&language=EN>).

¹³¹ '12 die in India Parliament attack' *The Guardian* (London, 14 December 2001) (<https://www.theguardian.com/world/2001/dec/14/kashmir.india>).

¹³² DT Hagerty, 'India-Pakistan crisis, 1999-2016' in Devin T Hagerty (ed), *Nuclear Weapons and Deterrence Stability in South Asia* (Palgrave Mcmillan 2002) 18.

¹³³ *ibid*; Chakma (n 60); Jones (n 60); Zeb (n 60); Polly Nayak and Michael Krepon, *US crisis management in South Asia's twin peaks crisis* (The Stimson Center, Washington DC 2006) 52

¹³⁴ Durrani (n 62); John Lancaster, 'Pakistan to Follow India in Removing Troops from Border' *Washington Post* (18 October 2002)

¹³⁵ Durrani (n 62); John Lancaster, 'India to Remove Some Forces from Border with Pakistan' *Washington Post* (17 October 2002). The oft-quoted figure of one million Indian and Pakistani soldiers facing off against one another included troops in Kashmir

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weapons would be used against India 'if the very existence of Pakistan as a state is at stake'¹³⁶. The India defense Minister also hinted that 'India had prepared its nuclear assets for retaliatory use in the event of Pakistani first strike'. He further added that 'India could take a nuclear strike, survive and then hit back. Pakistan would be finished'.¹³⁷

Pakistan although denied any state sponsored act of terrorism but gave in to the increased diplomatic pressure from America and UK who devised a coordinated strategy of back to back visits to the region to defuse tension and postpone decisions to launch hostilities¹³⁸. On 29 December 2001 American President Bush called the Prime Minister of India and President of Pakistan General Pervez Musharraf and requested them to urge restraint. He implored the Pakistani President 'to take additional strong decisive measures to eliminate the extremist who seek to harm India, undermine Pakistan, and provoke war'¹³⁹. Eventually Pakistan detained the founder of the jihadist group Lashkar-e Taiba and Jaish-e-Muhammad¹⁴⁰. However, Pakistan refused to extradite the wanted terrorists to India making it explicit that though Pakistan will crack down the terrorist group on its territory but will continue to ex-

¹³⁶ Sattar (n 67); Devin T Hagerty, 'The Nuclear Holdouts: India, Israel, and Pakistan' in Stephen Burgess and others (eds), *Slaying the nuclear dragon: disarmament dynamics in the twenty-first century* (University of Georgia Press 2012) vol 14, 223-224

¹³⁷ President of the Islamic Republic of Pakistan, 'Pakistan satisfied with nuclear deterrence capability: expresses firm resolve to meet future challenges', Press release (n 69); Kanti Bajpai, 'To War or Not to War: The India-Pakistan Crisis of 2001-02' in Sumit Ganguly and S Paul Kapur (eds), *Nuclear Proliferation in South Asia: Crisis behaviour and the bomb* (Routledge 2008) 165

¹³⁸ Khan (n 72); Nayak and Krepon, *US crisis management in South Asia's twin peaks crisis* (n 133) 24-25

¹³⁹ Hagerty (n 132) 19.

¹⁴⁰ 'Indian fury over freed militant' *BBC* (London, 14 December 2002) (<http://news.bbc.co.uk/1/hi/world/southAsia/2575199.stm>).

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tend its support on the Kashmir issue¹⁴¹. As in Kargil crisis, Pakistan expected that the latest crisis would cause America to play more active role in resolving Kashmir dispute. However India's strategy was more successful evident from the America decision to put Jaish-e-Muhammad and Let jihadist groups on the State Department's list of foreign terrorist organization¹⁴².

Soon after the Indian Parliament terrorists attack Indian tested its Agni-2 intermediate-range nuclear-capable ballistic missile¹⁴³. EU issue a statement of concern and urged Pakistan and India to seek a peaceful solution on the issue of Kashmir. The EU adopted a declaratory stand during this period of crisis between the two arch rivals. While condemning the Indian missile nuclear test EU Representative Javier Solana stated that it run 'the risk of negative signals to the region and to the entire international community at a time when containment is of maximum importance'¹⁴⁴, at the same time Pakistan's 'announcement to curb extremism' was approved¹⁴⁵. Although some members of the European parliament have demanded for some immediate action for instance, Elizabeth Lynne, Chairman of the All-Party Kashmir Group, have called the EU to establish a mediation mission between Indian and Pakistan and to 'take an initiative to stop this dispute sliding into a catastrophic, possibly nuclear war'¹⁴⁶.

¹⁴¹ Ganguly and Hagerty (n 118); See also 'Musharraf declares war on extremism' *BBC News* (12 January 2002) (http://news.bbc.co.uk/2/hi/south_asia/1756965.stm)

¹⁴² Levy and Das (n 74); Cotta-Ramusino and Martellini (n 74); Hagerty (n 132) 19; Stephen Tankel, *Storming the world stage: The story of Lashkar-e-Taiba* (New York, Columbia University Press 2011) 112

¹⁴³ M Sanjeev, 'India tests Agni ballistic missile' *Reuters News* (25 January 2002).

¹⁴⁴ 'EU's Solana calls for Pakistan, India peace talks' *Reuters News* (12 January 2002); 'EU says Indian missile test a risk at time of tension' *Reuters News* (25 January 2002)

¹⁴⁵ *ibid.*

¹⁴⁶ Lynne Elizabeth, 'Let's end conflict' *Evening Mail* (9 January 2001).

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After a few peaceful months the tension between the two arch rivals escalated in May 2002 due to the two main incidents. First on 14 May suicide bomber attack on an Indian army base in Kaluchak which caused thirty-three casualties, secondly on May 21, a Kashmiri separatist leader Abdul Ghani Leon was shot dead by a group who opposed his decision of holding talks with the Indian government¹⁴⁷. Soon after these events Pakistan also conducted its 'routine' short and medium range ballistic missile tests which was widely condemned by the international community¹⁴⁸.

The EU responded that these tests 'run counter to the readiness expressed many times by the Pakistani leaders to act together with the international community to seek a political settlement of the crisis'¹⁴⁹.

The Pakistan Defense secretary briefed the EU member states that the negotiations over the Kashmir issue with India has broken down and requested the European community to play its mediating role¹⁵⁰. However, the EU responded that India and Pakistan should solve this issue bilaterally. Following this Chris Patten, the former EU's External Affairs Commissioner went on a 'south Asian tour' but he makes it explicit that his tour shall not be considered a 'shuttle diplomacy' or a 'peace mission'. During his tour he announced a 50 million euros aid package to Pakistan¹⁵¹. Assessing the tension in the region, by the end of May, the

¹⁴⁷ Ganguly and Hagerty (n 118) 175-177.

¹⁴⁸ Harding Luke and Jason Burke, 'Pakistan's missile test stacks odds against Kashmir peace' *The Observer* (26 May 2002).

¹⁴⁹ 'Moscow, EU condemn Pakistani missile tests' *Agence France-Presse* (29 May 2002).

¹⁵⁰ 'Defence-EU Ambassadors briefed on Pakistan's regional security' *Pakistan Press International* (17 May 2002).

¹⁵¹ Commissioner Patten Visits Afghanistan and Pakistan, Brussels (15 May 2002) IP/02/718 (https://europa.eu/rapid/press-release_IP-02-718.fr.htm?locale=en); See also EC launches Euro 50 million programme to build banking and business in Pakistan, Brussels (22 May 2002) IP/02/738 (https://europa.eu/rapid/press-release_IP-02-738_en.htm)

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EU presidency issued warning that the region had the potential to enter 'a spiral of confrontation where there could be untold consequences'¹⁵². By the end of June, the EU even warned its citizens to stay out of the region due to the high risks of prevailing tensions, and maintain that 'at this time, the risk is unfortunately very high'¹⁵³. During this high period of tension between the two nuclear powers it was through a facilitation of a serious diplomatic efforts of America, Russia and China along with other which result in diffusing the tension between the two by early July. As a result, the India withdraw its forces from its borders in October 2002¹⁵⁴. During this heightened period of tension between India and Pakistan, the EU presence was noticeable through its declaratory statements only, for sorting out the crisis between India and Pakistan it was not willing to be directly involved and play a mediating role despite being requested by Pakistan to directly intervene. The American as usual taking a lead and have used its influence on both the states to diffuse the tension in the region. Thus, the EU played a marginalized role during these crisis unlike its claim of becoming a main actor in global security governance. No doubt these crises can be considered a missed opportunity for EU to bring its two partners into a security governance framework¹⁵⁵. While America taking the lead in de-escalation of crisis in the region and the EU role was limited to a declaratory statement with promises of aid, it won't be wrong to say that 'European security governance' failed in deescalating the crisis between the two nuclear powers. Regard-

¹⁵² 'EU's Patten to visit India amid regional tension' *Reuters News* (22 May 2002); 'EU urges India-Pakistan to avoid "spiral" of violence' *Agence France-Presse* (22 May 2002)

¹⁵³ 'European Union urges nationals to stay away from India, Pakistan' *Agence France-Presse* (3 June 2002).

¹⁵⁴ 'Editorial: Back from the Edge on Kashmir' *The New York Times* (New York, 12 June 2002).

¹⁵⁵ Hassan (n 108) 102.

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less of EU's own assessment of the crisis was that Pakistan and India came 'within a silver of new war'¹⁵⁶. Although there was a greater scope for the EU to engage in security governance by mediating on the issue of Kashmir, but it did not choose to do so. Despite securitizing the issue of non-proliferation in the aftermath of September 11, 2001, EU's decision not to engage directly in India and Pakistan crisis was not in conformity with its ambition of building a security governance framework¹⁵⁷.

On the other hand, the EU stand was that both Pakistan and India were a non-state signatory to NPT and are in possession of the nuclear weapons which is incompatible with its nuclear non-proliferation policy, rather than a Kashmir issue which required an outside mediation to prevent war between the two nuclear rivals.

As already discussed that EU consider NPT as the cornerstone of its nuclear non-proliferation policy. The policy is based on the use of multilateral means to achieve the objectives of preventing, deterring, halting and where possible eliminating nuclear programmes worldwide¹⁵⁸. The EU reaffirmed its policy stand after the Pakistan India 2002 crisis by stating explicitly that 'NPT must be preserved in its integrity. The possession of nuclear weapons by States outside the NPT and non-compliance with treaty's provisions by states party to the Treaty, risk undermining non-proliferation and disarmament efforts'¹⁵⁹.

¹⁵⁶ European Commission, EC-India Country Strategy Paper 2002-2007 [2002] (http://www.eeas.europa.eu/india/csp/02_06_en.pdf), 7.

¹⁵⁷ Hassan (n 108) 102.

¹⁵⁸ Council of the European Union, EU Strategy against Proliferation of Weapons of Mass Destruction, Brussels (n 1).

¹⁵⁹ *ibid.*

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7.6.3 Mumbai Terrorists Attacks 2008

After the 2001-2002 'Twin Peak' crisis both the states have maintained the fragile cease fire across the contested border, still there has been regular fire exchanges across the the line of control which is the contested border between them. The security crisis erupted once again between India and Pakistan when ten terrorists linked to lashkar-e-taiba (LeT) attacked the Indian metropolitan city Mumbai on 26 November 2008 and killed the civilians at luxury hotels, a busy rail station and other soft targets in a 60 hour rampage.¹⁶⁰ The total number of casualties in this deadliest terrorist attack were 170 including foreign nationals as well¹⁶¹. The India blamed Pakistan's inter service intelligence for backing the terrorist group lashkar-e-taiba who carried out proxy attacks on Indian territory as directed. These terrorists attacks once again ensued a near war crisis between the two nuclear armed neighbours reminding the statement of U.S President Bill Clinton who termed this region the word 'the most dangerous place' on earth at the turn of the century¹⁶². The Indian Policy makers demanded to carried a punitive military strikes against Pakistan but then Prime Minister of India Manmohan Singh decided to show restraint¹⁶³. The EU High Representative Javier Solana condemned in the strongest possible term

¹⁶⁰ On lashkar-e-taiba(LeT) and its link with Pakistan see C Christine Fair, *In Their Own Words: Understanding Lashkar-e-Tayyaba* (Oxford University Press 2018); Tankel (n 142)

¹⁶¹ For details on Mumbai terrorist attacks see Myra MacDonald, *Defeat is an Orphan: How Pakistan Lost the Great South Asian War* (Oxford University Press 2017) 189-207; Polly Nayak and Michael Krepon, *The Unfinished Crisis: US Crisis Management after the 2008 Mumbai Attacks* (Stimson Center 2012)

¹⁶² Peter Poham, 'The world's most dangerous place already at war' *Independent* (London, 18 March 2002) (<https://www.independent.co.uk/news/world/asia/the-worlds-most-dangerous-place-is-already-at-war-282458.html>).

¹⁶³ Hagerty (n 132) 12.

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this act of terrorism throughout the city of Mumbai and urged the International community to stand united against terrorism and fight it with determination¹⁶⁴. The security crisis ensued as result of these terrorist attacks between Pakistan and India was resolved mainly through America's involvement.

7.6.4 URI Camp Crisis 2016

In September 2016, armed militants attacked a remote Indian military camp at Uri near the Line of resulted in killing of 19 soldiers. The India accused Lashkar-e-Taiba for attacking the military base. This time India responded by launching the surgical strikes against the terrorist 'launch pads' on Pakistan's side of Line of control¹⁶⁵. The EU also approved these surgical strikes on terrorists camps inside the territory of Pakistan. In a signed article by the European Parliament the vice President of European Parliament Ryszard Czarnecki stated that 'India's cross border action against the terrorists should be commended and supported by the international community. He further added that India deserves global support in its fight against terror emanating from Pakistan, for, if left unchecked, these individuals and groups would be attacking Europe and west soon'¹⁶⁶.

¹⁶⁴ 'World Leaders condemn Mumbai attacks' *The CNN* (Asia, 27 November 2008) (<http://edition.cnn.com/2008/WORLD/asiapcf/11/27/mumbai.world.reaction/index.html>).

¹⁶⁵ For details on Uri attack see Sameer Lalwani and Hannah Haegeland, *Investigating Crises: South Asia's Lessons, Evolving Dynamics, and Trajectories* (Stimson Center Washington, DC 2018)

¹⁶⁶ DR Chaudhury, 'European Parliament backs Indian Army's surgical strikes on PoK' *The Economic Time* (5 October 2016).

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7.6.5 Pulwama Attack 2019

Pulwama attack is another recent incident which have brought India and Pakistan once again on the verge of conventional war. The incident took place on 14 February 2019, when a vehicle-borne suicide bomber attacked a convoy of busses carrying Indian security forces known as Central Reserve Police Force (CRFP) on the Srinagar Jammu national highway at Lathpora (Pulwama District) in India occupied Kashmir¹⁶⁷. This terrorist attack resulted in the killing of 40 CRFP personnel. The Islamist militant group Jaish-Muhammad accepted the responsibility of this terrorist attack. This led to the flare up of security situation once gain between the two nuclear states. The India responded by air strikes on Jaish Muhammad camp in Balakot (Pakistan). The India through these strike violated the air space of Pakistan. The strategic experts evaluated the situation between the two states towards the escalation of nuclear exchange. Finally due to unexpected chain of events that included the downing of Pakistani F-16, release of India pilot by Pakistan Prime Minister peace approach prevented the deteriorating of security situation between the two states and brought a quick fix peace in the world's most militarized flash point¹⁶⁸. The Pulwama incident that resulted in escalation of security crisis between India and Pakistan can be termed a game changing event in South Asia. The violation of Pakistan air space through by India air strikes revealed that that gone are the days of status quo and classic strategic restraint exercised by India and Pakistan during their previous security crisis. This incident brought to centre stage the Kashmir con-

¹⁶⁷ Abhinav Pandya, 'The Future of Indo-Pak Relations after the Pulwama Attack' (2019) 13(2) Perspectives on Terrorism 65.

¹⁶⁸ *ibid.*

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flict as a core issue between the two states¹⁶⁹. Further, as demonstrated by Indian response which have carried out these strikes inside Pakistan's territory have lowered the threshold of conflict, and Pakistan's willingness to retaliate.¹⁷⁰ This caused an alarming situation for the International community keeping in view the nuclear capabilities of both the states. In response to Pulwama security crisis the EU had urged both the states to de-escalate the tension in the region and sort out the issues through dialogues. The High Representative of EU Mogherini highlighted the need to 'continue addressing terrorism, including clear and sustained actions targeting not only all United Nations-listed transnational terrorist groups but also individuals claiming responsibility for such attack'. The High Representative said that EU's policy has always been to promote a dialogues policy for solving out conflicts.

Despite the EU keen policy interest in ensuring the regional stability, non-proliferation of nuclear weapons and minimizing the potential of a war between the two nuclear armed states its role during all these crisis between India and Pakistan which run the risk of escalation of nuclear war between the two armed nuclear forces, its role as security governance actor has remained quite marginal. Although EU responded in a timely fashion to these security crisis but it never get actually engage with Pakistan and India over the Kashmir issue that remained the root cause of tension between the two arc nuclear rivals and which cannot be resolved without third party intervention.

Apart from EU limited security role in Pakistan-Indian security crisis, EU as a leading non-proliferation actor has also to deal with the challenges of Pakistan's

¹⁶⁹ Mohammed Sinan Siyech, 'The Pulwama Attack' (2019) 11(4) Counter Terrorist Trends and Analyses 6.

¹⁷⁰ *ibid.*

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nuclearization.

7.7 International Non-Proliferation Regime and Pakistan's Approach Towards it

The international non-proliferation regime has been the focus of the EU non-proliferation policy, both rhetorically as well as in practice¹⁷¹. As a non-proliferation actor the EU always emphasized the universalization and implementation of non proliferation treaties specifically NPT which it considered the cornerstone of its non-proliferation strategy. However, Pakistan holds its reservations against the NPT. It has always have objected against the way the NPT has acquired not only a global status quo but also has been supported by the neo colonial assumptions of have and have not. To Pakistan the EU policy of non-proliferation is also embodied on this assumptions and have divided the states between those which are trust worthy and the ones that cannot be trusted with possession of a nuclear weapons. Dividing the states on this ground the NPT policy reflects its colonial overtones which is classified on 'civilization' and 'barbarianism' dichotomy¹⁷². Due to this reason Pakistan did not well receive the EU non-proliferation policy which reflects the double standard of its policy. The international security governance need to understand the security issues faced by the Pakistan in relation to India and, India in relation to China. In this context the EU also need to reevaluate its non-proliferation strategy in context

¹⁷¹ Kienzale B, *Intergrating without quite breaking the Rules: The EU's and India's acceptance within the non-proliferation regime* (EU Non-Prolifeartion Consortium 2015) 5.

¹⁷² Hassan (n 108) 103; See for India Stance against.... NPT M Fey, 'Established and rising great powers: The United States, Russia, China, and India' in Harald Muller and Carmen Wunderlich (eds), *Norm dynamics in multilateral arms control: Interests, conflicts, and justice* (University of Georgia Press 2013) 191-194

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of South Asia. The NPT cannot solve the security issues of these rival states, and non-proliferation policy which has colonial overtones seems not to convince them at all. In this backdrop it would be important to analyze in detail the Pakistan stand on the NPT which is the cornerstone of the EU non-proliferation policy.

7.7.1 Non-Proliferation Treaty (NPT) and a Shift in Pakistan's Stance Towards Joining NPT

In the beginning Pakistan was one of those leading states which fully supported the negotiations for the formation of the NPT. Since long Pakistan have declared a shared interest in working towards the objectives of accomplishing the goals of non-proliferation of weapons of mass destruction and their means of delivery and the universal disarmament¹⁷³. The NPT treaty was opened for signatures in 1968 and was enforced in 1970 had the ultimate objective of global disarmament¹⁷⁴. The treaty has total 190-member states till today. Pakistan chose to lie outside the non-proliferation regime despite being one of the early NPT enthusiast which have supported arms control and disarmament by taking part in NPT negotiations but also have proposed recommendations to it during its formation stages. Besides Pakistan, India and Israel are also the non-signatories of the NPT.

The NPT is considered a landmark treaty which have a nuclear non-proliferation objective. It is believed that had there been no NPT, more than 40 states would have been in possession of the nuclear weapons¹⁷⁵. Since after 40 years of its inception

¹⁷³ Zafar Khan, 'Pakistan and the NPT: Commitments and Concerns' (2012) 5 Margalla Papers

¹⁷⁴ *ibid* 1

¹⁷⁵ George Bunn, 'The World's Non-Proliferation Regime in Time' *IAEA Bulletin* 46/2 (2005) (<http://www.iaea.org/Publications/Magazines/Bulletin/Bull462/46203590809.pdf>); Roland Timerbaev, 'What Next for the NPT: Facing the Moment of Truth' *IAEA Bulletin* 46/2 (2005) (<http://www.iaea.org/Publications/Magazines/Bulletin/Bull462/46203590809.pdf>).

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the treaty endeavors for the verified non-proliferation, arms reduction and complete disarmament of its members. It also aims for bringing the smaller nuclear states (Pakistan, India and Israel) to join the non-proliferation regime¹⁷⁶. The foundation of the NPT treaty is laid on the principle that states which have acquired the nuclear weapons before the January 1, 1967, which includes UK, France, China and Russia will remain only the nuclear weapon states, also known as P-5 states while the rest of the treaty signatories would be considered as Non-Nuclear Weapons States (NNWSs) or in other words those states had agreed not to acquire the nuclear status, while the states who are willing to join the NPT have to give up its nuclear status unconditionally as NNWSs¹⁷⁷.

Pakistan was born economically and militarily as a weak state. Since its inception it must face serious threat for its survival as an independent state and for the protection of its territorial integrity in the region. Pakistan formulated its policy on arms control and disarmament over a period which was greatly shaped by its foreign and security policy. Today its approach towards the non-proliferation regime is predominantly based on its security interests. To critically assess the Pakistan's present stand on NPT, despite being a serious aspirant for arm control and disarmament in its initial days of formulation, it would be necessary to consider the political and security factors which have proved instrumental in shifting its stand from normative to strategic approach on NPT¹⁷⁸.

Initially Pakistan believed that major powers could sort out the solution for the

iaea.org/Publications/Magazines/Bulletin/Bull462/46203590407.pdf)

¹⁷⁶ Timerbaev (n 175).

¹⁷⁷ Oliver Thranert, 'The Crisis of the NPT: Ahead of the 2010 Review Conference' (2009) 65 *CSS Analysis in Security Policy*, 1,2; See also Fey (n 172) 191-194

¹⁷⁸ Khan, 'Pakistan and the NPT: Commitments and Concerns' (n 173) 3.

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then fast growing conventional and nuclear weapons¹⁷⁹. This was evidenced by a statement made by Pakistan representative K.Sarwar Hassan in the fourth session of the General Assembly where he stated that, 'the constantly increasing anxiety of the people of the world could be allayed only by a genuine agreement providing for effective guarantee amongst the nations possessing atomic energy and atomic weapons'¹⁸⁰.

Similarly, on the 6th session of the United Nations General Assembly Pakistan remains committed on its stand on arm control and disarmament by proposing resolutions and have urged the member states to play its role not only on arm control but also helped in eradicating the atomic and weapons of mass destruction¹⁸¹. During this period Pakistan approach towards the process of world's complete disarmament was realistic and pragmatic. Pakistan fully supported the western powers parameters established for arms control and disarmament based on inspection, detection and verification necessary for verification of proliferation and arms control¹⁸². However, there was a dramatic shift in Pakistan approach towards arm control and disarmament when it joined the US based military alliance SEATO & CENTO in 1954-55 for bolstering its military defense in South Asia. Pakistan felt abandoned and isolated when Pakistan was sidelined by the US backed security alliance and India was preferably given more economic and military support over Pakistan despite being a South East Asia Treaty Organization(SEATO) and Central Treaty Organization

¹⁷⁹ K Sarwar Hasan, *Pakistan and the United Nations* (Manhattan Publishing Company 1960) 257.

¹⁸⁰ UN General Assembly Official Records, 4th Session, Ad Hoc Political Committee, 34th Meeting (11 November 1949) 196.

¹⁸¹ The General Assembly Official Records (GAOR), 4th Session, Ad Hoc Political Committee, 6th Session, Agenda Items 16 and 66, (1951/1959) (11 November 1949) annexes 6,8.

¹⁸² Khan, 'Pakistan and the NPT: Commitments and Concerns' (n 173) 4.

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(CENTO) member¹⁸³. Secondly Pakistan being a member of security alliance must face an arm embargo in its war against India in 1965. During this period India has increased all its efforts to acquire nuclear technology. Concerned with that Pakistan has expressed its fear that a cold war rivalry between the two super powers have increased the risk of 'not only vertical proliferation but also horizontal proliferation'¹⁸⁴. This can result in spread of nuclear weapons technology to non-nuclear states. This concerned was emphasized by the Pakistan's first military leader in his address to the 17th session of the UN General Assembly in September 1961 that

'An aspect of disarmament which is of deep concern to Pakistan is the clear and present danger of the spread of nuclear weapons and the knowledge of their technology to states which do not possess them'¹⁸⁵.

Later when India did its first nuclear test which it labelled as a 'peaceful nuclear explosion' (PNE) brought a change in Pakistan's normative paradigm on arms control and disarmament that was replaced by strategic and realistic paradigm which prioritize and emphasized the country's national interest and national security. This was a turning point where Pakistan's felt that despite its previous stance on arms control and disarmament it must formulate its security policy which should reflect the strategic realities of the region¹⁸⁶. Pakistan's security concerns as well India non-availability in to NPT and indifference attitude of the nuclear power states realized Pakistan to take a decisive decision of not compromising on its security and to become a member of NPT. All these main political factors contributed to

¹⁸³ Khan, 'Pakistan and the NPT: Commitments and Concerns' (n 173) 4.

¹⁸⁴ *ibid* 5.

¹⁸⁵ Speeches Delivered by Zulfiqar Ali Bhutto (1957-1965) (<http://www.scribd.com/doc/14560791/Speeches-Delivered-by-Zulfiqar-Ali-Bhutta>), 75.

¹⁸⁶ Khan, 'Pakistan and the NPT: Commitments and Concerns' (n 173) 5.

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cause a change in the security perception of Pakistan when it decided to conduct nuclear tests for establishing a deterrence force against nuclear India for protecting its territorial and sovereign integrity. Pakistan's security based perception also well explained Pakistan's policy approach towards CTBT and Fissile Material Cut-off Treaty (FMCT)¹⁸⁷. While reiterating Pakistan stand on FMCT, A Pakistani representative stated in a Conference on Disarmament that “along with the commitments to build up its (India's) strategic and conventional capabilities have encouraged its hegemonic ambitions, which are aimed at charting a course of dangerous adventurism whose consequences can both be unintended and uncontrollable. . . Pakistan would not move forward with negotiations on the FMCT, and by extension, it would continue to expand its stockpiling of fissile material'¹⁸⁸. Pakistan not only wants its arch rival India to sign NPT but also wants the nuclear legitimacy before joining NPT. Thus, the Pakistan's earlier traditional normative approach towards NPT is replaced by its national security interests.

Besides Pakistan's political stand towards joining NPT which is primarily security based, Pakistan also hold some serious reservations on the structure of treaty which it has highlighted from time to time.

For instance, Under Article 1, 1V, VI of the treaty five countries are regarded as a nuclear weapons states known as P-5, while the other signatories are regarded as a non-nuclear weapons states (NNWS) which are also barred from acquiring nuclear weapons. This means that the current arrangement of the NPT into nuclear and non-nuclear states intend to focus mainly on safeguarding the interests of the P5 states¹⁸⁹.

¹⁸⁷ Bast (n 67) 79; Hassan Khan (n 56)

¹⁸⁸ Bast (n 67).

¹⁸⁹ Zafar Khan and Rizwana Abbasi, Pakistan in the Global Nuclear Order 1 (2016), Institute of

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This 'Special' arrangement legitimizes the possession of the nuclear weapons for the P5 states and seek non-acquisition of nuclear weapons by the non-nuclear states without a quid pro quo for the nuclear disarmament¹⁹⁰. This arrangement overall nullifies the principle of the equality of the states.

No significant progress has been made under article VI of the treaty which prescribe disarmament by the Nuclear Weapon State (NWS). In 1995 when NPT was given an indefinite extension, Specific reference was made to article VI, when obligates the P5 member states to work towards the global disarmament. However no substantive progress thus perpetuated a status quo and crisis of trust among the states concerned¹⁹¹.

The universality and efficacy of the NPT is another issue of concern which effects the objective of the nuclear disarmament. For instance, states adhered to the provisions of the treaty from the greater to the lesser extent since its inception. However, the states like Pakistan, India and Israel never became its member which can be called a de facto nuclear state. Similarly, the North Korea withdrew from the treaty in 2003 after challenging the treaty provisions. This shows that any country can withdraw from a treaty once it acquired the nuclear weapons. Thus, the states can have two options, either to run its clandestine nuclear programme while continues to be a treaty member, or seeks withdrawal from a treaty on the pretext of facing a severe security threat thus necessitated for the country's security and interest¹⁹². These scenarios thereby questioned the efficacy of the treaty attempt to control

Strategic Studies Islamabad (ISSI) Nuclear Paper Series , 30.

¹⁹⁰ Pakistan in the Global Nuclear Order 1 (2016), Institute of Strategic Studies Islamabad (ISSI) Nuclear Paper Series (n 189).

¹⁹¹ *ibid.*

¹⁹² *ibid.*

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disarmament and non-proliferation of the nuclear weapons.

Pakistan had propose to establish a Nuclear free zone (NWFZ) in South Asia in 1974 and proposed a series of measures to India for the disarmament in 1978 which were declined. The measures include a joint declaration by Pakistan – India for renouncing the acquisition and manufacture of the nuclear weapons, mutual inspection of the nuclear facilities by both the states, the simultaneous acceptance of the IAEA's safeguards measures as well as simultaneous adherence to NPT¹⁹³. Pakistan interest in establishing a Nuclear Free Zone (NWFZ) in South Asia became redundant when India tested its nuclear device. All these factors well explained the development of Pakistan's policy from its past normative stand to strategic based security oriented policy.

7.8 Pakistan's Policy Stance On FMCT and CTBT and Issues Associated with it

As per Stimson report, for Pakistan's to be mainstreamed in the global nuclear order and for securing a membership in the Nuclear Supplier Group (NSG), it should remove its veto, which it has hold on the negotiations in the Fissile Material Cutoff Treaty (FMCT), to include the existing stocks in its scope. Besides that, it shall unilaterally sign the Comprehensive Nuclear Test-Ban treaty. Through this, it will ultimately put a pressure on India to sign the CTBT and join the FMCT negoti-

¹⁹³ Rizwana Abbasi, *Pakistan and the New Nuclear Taboo: Regional Deterrence and the International Arms Control Regime* (Oxford & New York 2012); Ghulam R Malik, 'Nuclear Non-Proliferation and the NPT Review Conference: The Pakistani Perspective' (2000) 29 *Nuclear Disarmament and Non-Proliferation: the Role of the Nuclear Non-Proliferation Treaty* 43

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ations¹⁹⁴.

However just like NPT, Pakistan's has maintained a principle diplomatic stance on FMCT. Pakistan has vetoed the negotiations on FMCT for the reason that it should covered all the four items in negotiations to be pursued simultaneously that were agreed in Shannon Mandate of 1995 Nuclear Disarmament namely, Prevention of Arms Race in Outer space (PAROS), a FMT, and Negative Security Assurances (NSAs)¹⁹⁵,. From the Pakistan's perspective certain important factors are responsible for creating a deadlock on the FMCT negotiations.

First, FMCT to be executable it should be non-discriminatory and universally verifiable treaty. In the Conference on Disarmament (CD) Pakistan has repeatedly made its statement that 'a ban on the production of fissile material should be promoted through a universal non-discriminatory treaty in the CD and through universal measures'¹⁹⁶. Secondly, Pakistan believed that the term 'cut off' does not cover the existing stocks of fissile material therefore it does not agree with the term¹⁹⁷. Thirdly, Pakistan finds itself in an imbalanced and a disadvantageous position against its adversary India, due to the non-inclusion of 'existing stockpiles' of fissile materials. Pakistan has also stressed on eliminating the asymmetries in existing stockpiles of fissile materials. Regarding this, Pakistan has also given its statement in 2006, by stating that '[a] cut-off in the manufacturing of fissile ma-

¹⁹⁴ Michael Krepton, Normal Nuclear Pakistan, Stimson Report (27 August 2017) (<https://www.stimson.org/content/normal-nuclear-pakistan-0>); Pakistan in the Global Nuclear Order 1 (2016), Institute of Strategic Studies Islamabad (ISSI) Nuclear Paper Series (n 189) 32,34

¹⁹⁵ Zafar Khan, 'Pakistan's Minimum Deterrence and its Policy Approach toward Fissile Materials: Security Concerns and the Regions Changed Strategic Environment' (2014) 26(1) Korean journal of defense analysis 51.

¹⁹⁶ Fissile Material Treaty, Pakistan' Ambassador Munir Akram Statement at the Conference on Disarmament (11 August 1998).

¹⁹⁷ *ibid.*

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terials must be accompanied by a mandatory programme for the elimination of asymmetries in the possession of fissile material stockpiles by various states ... a fissile material treaty must provide a schedule for a progressive transfer of existing stockpiles to civilian use and placing these stockpiles under the safeguards'¹⁹⁸.

Fourth, Pakistan has shown its concern about US India nuclear deal and a special waiver given to India by the Nuclear Supplier Group despite being a non-signatory to NPT. The nuclear deal and a NSG waiver would facilitate India in the expansion of its fissile material, which would have helped it in increasing its conventional forces. This will create an imbalance in the region and would indirectly undermine the Pakistan's deterrence credibility¹⁹⁹. Pakistan believed that the US-India nuclear deal and a special NSG waiver to India will not only changed the Asian strategic environment but due to these favors India will build up its conventional forces which is dangerous for the regional stability²⁰⁰.

As far CTBT is concerned, Pakistan maintained a similar policy stand as it has on NPT. Pakistan will not sign CTBT unless India sign it first keeping in view its security concern against India. By maintaining this stance Pakistan do not agree with the Stimson report which suggest that Pakistan shall take a unilateral move to sign a CTBT to impress India to put a strategic pressure on it. Pakistan do not see any logic in signing a CTBT which is not yet enforced. It is also viewed by some in Pakistan as a stagnating treaty which still needs to be ratified by eight coun-

¹⁹⁸ Riffat Hussain, 'Prospects for peace between India and Pakistan' (2001) 9(3) National Development and Security 40.

¹⁹⁹ Adil Sultan, 'Fissile Material Treaty: Prospects and Challenges' (2011) 49 The International Relations Security Network, SASSI Research Reports and Papers (<http://www.css.ethz.ch/en/services.html>).

²⁰⁰ Leonard Weiss, 'US-India nuclear cooperation: Better later than sooner' (2007) 14(3) Nonproliferation Review 429.

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tries including China and US and NPT nuclear weapons countries²⁰¹. Although a non-signatory to CTBT, Pakistan has declared a unilateral moratorium for not conducting a nuclear test thus conforming to the core purpose of the treaty. Therefore, for more than a decade and a half Pakistan has not conducted a nuclear weapons tests. However, it can revisit its voluntary moratorium if India goes for the nuclear testing²⁰².

In context of its security interest there are several important reasons for Pakistan that it is not taking a unilateral approach to sign CTBT. Pakistan's stance on signing the CTBT is correlated with India decision on signing the treaty. Presently, India interest in building its arsenal and desire for its power projection even beyond South Asia clearly shows that it will not impress India even if Pakistan goes unilaterally to sign CTBT.

Secondly, even if Pakistan sign CTBT, it will still not be given a recognition of the nuclear weapon state by the NPT member states, thus signing of treat does not serve Pakistan's policy interests. Thirdly, unlike India who has been awarded a NSG waiver despite non-signatory to NPT and CTBT, Pakistan may not win a substantial support for its peaceful nuclear programme. Fourthly Unilateral move to sign CTBT will not serve Pakistan's policy interest when there is always a chance that India can go for more nuclear tests in an urge to build its supremacy in a region. This will place Pakistan's in a paradox position when it must quit CTBT in response to India nuclear test if any. Pakistan must face a negative and costly impact of the

²⁰¹ A statement by Dr Shireen Mizari Director Strategic Studies Institute Islamabad (SSII) in Round table, Pakistan's Nuclear Program: Towards a Holistic Approach and Towards Disinformation and Propaganda (30 September 2015)

²⁰² Pakistan in the Global Nuclear Order 1 (2016), Institute of Strategic Studies Islamabad (ISSI) Nuclear Paper Series (n 189) 32,34.

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strategic pressure because of such a reversal from the treaty, or either must face the punitive sanctions²⁰³. However, such a move does not serve either its strategic nor security interest at a moment. The best Pakistan can do is to reaffirm unilateral moratorium on nuclear testing and become a part of a multilateral approach (along with 43 other states mentioned in Annex 11)²⁰⁴.

Though not willing to join NPT, FMCT and CTBT for its obvious security and political policy interest, Pakistan has been conducting itself as a responsible nuclear state through its participation on international forums and gave its policy statement which shows its full commitment on the promotion of nuclear non-proliferation, nuclear security and safety.

Keeping in views, EU's strong commitment to international non-proliferation regime, this part of the chapter will analyze the EU's response over the disclosure of Pakistani nuclear scientist Abdul Qadeer Khan networks involved in buying and selling the key nuclear weapons capabilities for more than two decades. This case once again have brought into focus the challenge of Pakistan's nuclearization for EU as a non-proliferation actor. This part will also overview the development of EU and Pakistan linkage in area nuclear non-proliferation.

²⁰³ Pakistan in the Global Nuclear Order 1 (2016), Institute of Strategic Studies Islamabad (ISSI) Nuclear Paper Series (n 189).

²⁰⁴ *ibid.*

7.9 EU Response Over Disclosure of AQ Khan Networks

The disclosure of the AQ Khan network has not only brought forth the serious issue of the proliferation of the weapons of mass destruction and means of their delivery system involving states but has also highlighted the challenge of Pakistan's nuclearization as a de facto nuclear state to the existing non-proliferation regime due to the involvement of its prominent nuclear scientist Dr. Abdul Qadeer Khan who admitted running a clandestine international network for transfer of nuclear weapons technology from Pakistan to North Korea, Libya and Iran. This disclosure not only raised a serious international concern on role of non-state actors in WMD proliferation but have also put a question mark on the responsibility of Pakistan as a nuclear state and have also exposed the gaps in Pakistani export control. Dr Abdul Qadeer Khan confirmed the allegation that he headed the global proliferation network which was involved in smuggling of the secret centrifuge designs and nuclear hardware for enriching the uranium outside Pakistan. The network worked as a global operation where parts were made by Scomi Precision Engineering in Malaysia and were sold through the Dubai based Gulf Technical industries. Though Pakistan was central to the network, but it also had its links around Asia, Middle east, US and Europe²⁰⁵. The AQ Khan network was discovered shortly after few months when EU has adopted its strategy on the WMD. The disclosure of the AQ Khan network was

²⁰⁵ Gordon Corera, *Shopping for bombs: Nuclear proliferation, global insecurity, and the rise and fall of the AQ Khan network* (Oxford University Press 2006); See also David Rohde, David E Sanger, and David E Washington, 'Key Pakistani Is Said to Admit Atom Transfers' *The New York Times* (New York, 2004)

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a serious issue which not only tested the effectiveness of the EU security governance but has also brought the challenge of Pakistan's nuclearization to be dealt with after the Pakistan initial testing of its nuclear weapons in 1990s. On the proliferation of the weapons of mass destruction the EU WMD strategy asserted that;

‘The Proliferation of weapons of mass destruction and their means of delivery are a growing threat. Proliferation is driven by a small number of countries and non-state actors, but presents a real threat through the spread of technologies and information and because proliferating countries may help one another’²⁰⁶

After the AQ khan confession the EU troika visited Pakistan and raised the issue of AQ khan Network's proliferation. The former European External Relations Commissioner Chris Patten gave out the EU stance on the issue and said that ‘the allegations have to be thoroughly investigated. Those responsible have to be brought to the book’. He also raised the issue regarding Pakistan signing of NPT and contended²⁰⁷ that

‘All of us understand the importance of the NWS nations behaving responsibly in relation to export controls. . . . We also agree on dangers faced by the world from the nuclear weapons falling into the hands of the terrorists and some states in danger of becoming terrorist's heavens terrorist's organizations like Al Qaeda are so dangerous that everybody has a night mare of these people lying their hands on nuclear weapons’²⁰⁸

His statement expressed the EU genuine concern about issue of non-proliferation.

²⁰⁶ Council of the European Union, EU Strategy against Proliferation of Weapons of Mass Destruction, Brussels (n 1) 3.

²⁰⁷ Hassan (n 108) 104.

²⁰⁸ EU/India: EU Welcomes Peace Talks with Pakistan, European Report (18 February 2004).

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However apart from that the EU could not engage further in a meaningful manner with Pakistan on issue of non-proliferation. During this period Pakistan was playing a leading role in an America war on terror in Afghanistan. Being an American ally, the EU also had to bring a change its security agenda, by prioritizing terrorism. This issue of non-proliferation with Pakistan had to be shelved for a time being due to a change in its strategic position brought by America's war on terror. Although this was a high time to brought to proceed effectively on the issues of non-proliferation with Pakistan and India and to exert its efforts to brought them within the nuclear security framework, but the EU could not proceed to do so.

The EU could not take effective steps to engage with Pakistan on non-proliferation issues in the back drop of the AQ khan network which was a source of onward global proliferation. The limited response of the EU to the AQ khan network in fact masked the important problems with its non-proliferation strategy²⁰⁹. This is also evident by the fact that a cooperation agreement signed between EU and Pakistan did not include any WMD clause nor there was any language on non-proliferation. Although the EU could have added that clause in the agreement while taking advantage of the timings of the agreement which was ratified on 29 April 2004, that was only few months before, the AQ Khan confessed running a clandestine international network of proliferation of the nuclear technology²¹⁰.

In February 2005 the EU was informed that khan network was dismantled²¹¹. The AQ khan who was put under the house arrest was later pardoned and released

²⁰⁹ Hassan (n 108) 105.

²¹⁰ Grip (n 41) 9.

²¹¹ Jan Sadaqat, 'Pakistan says secretive nuclear network of disgraced scientist dismantled' *Associated Press Newswires* (New York, 5 January 2006).

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in February 2009 by Pakistani authorities. In response to his released the Javier Solana responded that, ‘I don’t think it’s appositive signal, this is the message that I transmitted to the authorities in Pakistan. I think thatin the moments we are living with the problems of proliferation, it’s not a good signal²¹².

The environment created by America war on terror in which Pakistan was playing the leading US ally, limited the scope of the EU security governance. Following the US, the EU also prioritized the terrorism on its security agenda thus failing to effectively engage with Pakistan on the non-proliferation issue. Although Dismantling of the khan network and all the others nuclear programmes that stem from it was emphasized by both the US and EU in their policy agenda, but Pakistan role in the issue was not directly questioned due to the position it gained in America’s war on terror which led the EU to only brought forth Iran and North Korea on its non-proliferations efforts.

7.10 The Omission of WMD Clause in the Pakistan Cooperation Agreement and Emergency Autonomous Trade Practices

The cooperation agreement that was concluded between EU and Pakistan on 29 April 2004 does not contain any WMD clause neither any reference was made to non-proliferation²¹³. Though the timings of agreement could be taken as an opportunity

²¹² ‘Interview update 1-EU voices concern over Pakistan scientist’ *Reuters News* (London, 11 February 2009).

²¹³ Cooperation Agreement between the European Community and the Islamic Republic of Pakistan on partnership and development fields [2004] OJ L378/23.

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to impel Pakistan to join the nuclear multilateral regime. The reason given by the European External Action Service (EEAS) for the omission of the clause by stating that

‘Given the lengthy and complex process and preparation that it requires to agree on a negotiating mandate in the Council before the start of the proper negotiations of any cooperation agreements and then all the subsequent steps involved, this was simply not an option’²¹⁴.

In 2010 when Pakistan was hit by severe calamity of flood, which affected the 20 percent of the area, the European Council adopted the resolution, which extended the EU support to Pakistan in two areas, first through humanitarian assistance and secondly to support the Pakistan’s economy. This exempted the EU imports from the custom duties and have lowered the tariff quotas on Pakistan export products from the core sectors to EU²¹⁵. Later in October 2012, EU adopted the regulation for autonomous trade preferences for Pakistan although the nature of the autonomous trade preferences fall within the category of the ‘mixed agreement, the regulation did not touch a non-proliferation issue²¹⁶. Mainly because of the EU policy on humanitarian crisis which is given free from all kind of political objectives and in Pakistan case due to the specific context of its humanitarian crisis the proposal for the regulation at first was exempted from tall form of political conditionality. However, the subcommittee of the European’s Parliament on Human rights impelled to make the assistance conditional on the observance of the basic human rights and democratic

²¹⁴ Grip (n 41) 9.

²¹⁵ Regulation (EU) No 1029/2012 of the European Parliament and of the Council of 25 October 2012 introducing emergency autonomous trade preferences for Pakistan [2012] OJ L316/43 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1029&from=EN>).

²¹⁶ Grip (n 41) 9.

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principles in a country. It reads ‘Pakistan not engaging in serious and systematic violations of human rights, including core labor rights, fundamental principles of democracy and the rule of law’²¹⁷. After its approval the text later become part of the agreement.

It is important to highlight the reasons why WMD clause does not become part of the EU humanitarian assistance. First the non-proliferation clause cannot be a part of the humanitarian assistance whose recipients are civilian while the obligations concerning non-proliferation falls within the government domain. Secondly, the severity of the calamity requires quick action, thus the disagreements on the political issue can delay the humanitarian assistance. Third the host government, receiving the humanitarian assistance may not be the partner to which the EU would want to commit itself²¹⁸. However, the regulation in its opening passage gave a reference to the 2004 agreement in which observance of human rights, covering the core labour rights and democratic principles were considered essential.

However as already discussed above the changed political scenario after 9/ 11 terrorists attack on America also caused the EU to prioritize terrorism on its foreign policy. Pakistan while taking the advantage due to its strategic position and leading a front-line state in war on terror could not be confronted on the issue of non-proliferation. The agreement also thus referred to these facts in the following words

‘The severity of this natural disaster demands an immediate and substantial response, which would consider the geostrategic importance of Pakistan’s partnership

²¹⁷ Position of the European Parliament adopted at first reading on 13 September 2012 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs Annex to the legislative resolution [2013] OJ C353E/254 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012AP0344&from=EN>), art 11.

²¹⁸ *ibid.*

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with the Union, mainly through Pakistan's key role in the fight against terrorism, while contributing to the overall development, security and stability of the region'²¹⁹

The above paragraph is strikingly contradictory to the opening statement of the non-proliferation clause, where the 'proliferation of weapons of mass destruction and their means of delivery, both to state and non-state actors, represents one of the most serious threats to international stability and security'. Although Pakistan has accepted its responsibility for transferring such technology under the AQ Khan Network first to non-state actors and then indirectly to several states. Even the EU responded specifically that Pakistan is responsible for one of the 'most serious threats to international stability and security'. This statement thus conflict with the last line of the para that is 'while contributing to the overall development, security and stability'²²⁰. Thus, it can be argued that omission of the WMD clause in cooperation agreement with Pakistan in some ways reflect the difficulty faced by the EU to deal with serious cases in non-proliferation regime.

Although Pakistan being a defector nuclear power which remained largely outside the non-proliferation regime, the EU holds a special interest in developing, strengthening and expanding its cooperation in area of nuclear non-proliferation . It is necessary to overview the linkages developed so far between the two in this area.

²¹⁹ Regulation (EU) No 1029/2012 of the European Parliament and of the Council of 25 October 2012 introducing emergency autonomous trade preferences for Pakistan [2012] OJ L316/43 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1029&from=EN>) (n 215) art 5.

²²⁰ Grip (n 41) 10.

7.11 EU and Pakistan Non-Proliferation Dialogues and Linkages

Under EU- Pakistan five years engagement plan 2012 , both the partners have made commitment to carry out comprehensive cooperation in area of security. The Dialogue on non-proliferation is part of the EU-Pakistan engagement plan and provides both sides a platform for exchange of view and perspectives on disarmament and nonproliferation²²¹. EU being strongly committed to nuclear non-proliferation, wants Pakistan to join the nuclear security framework. Since then both the partners have held bilateral dialogues on disarmament and non-proliferation. The overview of these dialogues held so far and linkages established in area of non-proliferation is assessed as follow;

7.11.1 First EU-Pakistan Dialogues on Disarmament and Non-Proliferation

Under five years engagement plan, the first round of EU-Pakistan dialogues on disarmament and non-proliferation was held on 16 June 2014. The EU special envoy for non-proliferation and disarmament held the talks with the Pakistani sides. In the first round of dialogues both the partners have discussed the issues relating to peaceful uses of nuclear energy, maintenance of regional and strategic stability as well as developments made in disarmament and non-proliferation²²².

²²¹ EU – Pakistan Five year engagement plan (2012) (https://eeas.europa.eu/sites/eeas/files/eu-pakistan_five-year_engagement_plan.pdf).

²²² European Union Delegation to Pakistan, First EU-Pakistan Dialogue on Disarmament and Non-Proliferation, Press release (<http://eeas.europa.eu/archives/delegations/pakistan/documents/>

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7.11.2 Second EU–Pakistan Dialogues on Disarmament and Non-Proliferation

The second EU-Pakistan dialogue on Disarmament and Non-Proliferation took place in Brussels on 18 April 2016 between the EU Special Envoy for Disarmament and non-proliferation and the Additional Secretary for the United Nations and Economic Cooperation of the Ministry of Foreign Affairs. The issues that were brought under discussion included cooperation in peaceful uses of nuclear energy, the conference on disarmament, conventional arms and weapons of mass destruction, the fissile material cut-off treaty and the Amendment to the Convention on Physical Protection of Nuclear Material. Pakistan also hosted the Annual meeting of the International Network for Nuclear Security Training and Support Centers in March 2016²²³.

The EU also encourages Pakistan to maintain the highest standards of nuclear safety and security, and to contribute constructively in multilateral disarmament fora, as well as to ratify or subscribe to relevant non-proliferation and confidence-building treaties and initiatives such as the Comprehensive Nuclear-Test-Ban Treaty (CTBT)²²⁴.

Similarly, in a meeting of 7th joint Commission considerations were made how to further operationalize the issue of disarmament and non-proliferation. It was suggested that a comprehensive security dialogues shall be arranged to hold a combination of talks on counter terrorism, disarmament and non-proliferation. To associate Pakistan with EU Centers of Excellence initiative on Chemical, Biological, Radiolo-

press_corner/20140616.01.en.pdf).

²²³ Council of the European Union, Draft Council Conclusions on Pakistan (12 July 2016) 10998 (<http://data.consilium.europa.eu/doc/document/ST-10998-2016-INIT/en/pdf>).

²²⁴ *ibid* 5.

7.11. EU AND PAKISTAN NON-PROLIFERATION DIALOGUES AND LINKAGES

gical and Nuclear Risk Mitigation (CBRN) recently established in Tashkent is also under consideration²²⁵. The EU CBRN is the EU worldwide programme involving 55 countries partner countries. The programme is financed under Instrument contributing to Peace and stability (IcPS). The objective is to educate the countries on mitigating the risks on CBRN and to develop a security culture.

7.11.3 Third and Fourth Round of EU–Pakistan Dialogues on Disarmament and Non-Proliferation

The third Round of EU-Pakistan dialogue on Disarmament, Non-Proliferation and Nuclear energy was held in Islamabad on 22 November 2017. The issues concerning arms control, disarmament and non -proliferation and peaceful use of nuclear energy were discussed. Similarly the fourth Round of EU- Pakistan dialogue on disarmament and non -proliferation was held in Brussels on 27 November 2018. Both the sides have showed understanding to further deepen there engagement in area of non proliferation and arms control and works towards shared objectives of global and regional peace and security²²⁶.

Disarmament and non -proliferation remains an important area of engagement under the new EU- Pakistan strategic engagement plan. EU attaches great importance to its engagement with Pakistan on non-proliferation and arms control. These dialogues help to develop a better understanding on both sides of each other's perspectives and the respective security challenges which tailor those perspectives²²⁷.

²²⁵ Council of the European Union, Draft Council Conclusions on Pakistan (n 223) 10.

²²⁶ Third Round of EU-Pakistan dialogue on Disarmament, non-Proliferation and use of nuclear energy, Islamabad Presse Release 22 November 2017 .

²²⁷ Fourth Round of Pakistan-EU dialogue on Non proliferation and Disarmament, Brussels Presse Release 28 November 2018 (<https://pakistanembassy.be/4th-round-of-pak-eu-dialogue-on-non->

7.12 Conclusion

The EU adopted WMD non proliferation strategy in 2003 to prevent the proliferation of WMD which it considered the greatest threat to its security. The strategy is established on principle of 'effective multilateralism' for combating proliferation of Weapon of mass destruction (WMD) and NPT is the key treaty of the strategy. The strategy also call for the strengthening and universalization of existing non proliferation regimes and structures. EU has been contributing its financial and technical support to international nuclear regime and its active involvement in non-proliferation matters which led to its emergence as a leading non proliferation actor.

The nuclearization of India and Pakistan in 1998 brought a change in South Asia security environment. The two arch rivals declared their nuclear status and their compounded tension over the issue of Kashmir in post nuclear India and Pakistan have greatly put at risks the security of the whole region. The nuclearization of India and Pakistan and consequent security crisis between them not only posed a challenge to EU as non proliferation actor but also question the rôle of the EU security governance as a credible actor in Pakistan-India security crisis.

EU's non proliferation response towards the most prominent case of India and Pakistan nuclear tests in 1998 consist of slow and weak declaratory policies urging both the States to join NPT and CTBT. It could not get engage with both the States in a substantive manner over their possession of nuclear weapons. Although EU clearly stated that nuclearization of South Asia have undermine the global efforts to strengthen the global non-proliferation regime but without offering any tangible

proliferation-disarmament/).

long term solution to the problems posed by Pakistan and India nuclearization. Both the States is considered to posed a challenge to nuclear non-proliferation regime irrespective of that both India and Pakistan have maintained their policy stance on not joining NPT which according to them is discriminatory, having colonial overtones based on the principle of haves and have not. Pakistan maintained its stance of credible minimum deterrence as part of its nuclear policy which Pakistan believed is required for the protection of its sovereignty and territorial integrity against the dominating nuclear India in South Asia. Pakistan believed that exemption of waiver to India by the Nuclear Supplier Group which is also a non-signatory of NPT is discriminatory political treatment towards it. For EU, Pakistan nuclear stance is the biggest challenge and is a litmus test for its credibility in field of nuclear non-proliferation.

Moreover, the EU role in post nuclear Pakistan and India security crisis, which has risks the security of the whole region multiple of times have been quite marginal and restrained. The EU response towards the Kargil crisis that outbreak after one year of nuclear testing between India and Pakistan, consist of merely a policy declaration which exhibited its limited response to the situation which had risked the security of the whole region. Similarly the security crisis namely 'twin peak' standoff between Pakistan and India in 2001-2002, Mumbai attacks in 2008, Uri camp crisis in 2016 and Pulwama attack in February 2019 all these have caused serious military escalation and nuclear standoff between Pakistan and India over the issue of Kashmir. But the kind of concern EU has shown over these security situations demonstrated its limited security governance capabilities. EU must consider that without the solution of Kashmir crisis between the nuclear arch rivals, peace and security of south Asia will remain highly at risks. EU has the capacity and can use

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its influence to mediate on Kashmir issue. By doing this it can play its due rôle in security governance which it has acquired and can genuinely contribute towards regional and global peace.

8 EU External Partnership Agreements with India and its Comparison with Pakistan

This chapter will encompass a detail comparison of respective partnerships of India and Pakistan with EU especially with regard to trade and investment partnership, clean energy and climate partnership, security cooperation, Free Trade agreement and strategic aspects of relationship. Based on empirical data particularly in the field of trade and investment, this comparative analysis will essentially lead to determine for Pakistan to build up and strengthen its engagement with EU in those respective areas of cooperation in which it is lagging behind in comparison to India partnership with EU in similar areas of cooperation in order to pave the way for its future engagements with EU.

8.1 Historical Account of the Development of EU- India Relations

Historical account of EU-Pakistan relations are already covered in chapter 3 of this thesis. It would be referred in the discussion where necessary.

8.1. HISTORICAL ACCOUNT OF THE DEVELOPMENT OF EU-INDIA RELATIONS

Since its independence in 1947, India has evolved as the second most populous country with multi ethnic diversities and the largest democracy on earth. India has been known for its military strength and know how and also for its dominant position in South Asia and for its leading role of Non-aligned movement. Its growing political and economic importance can not be ignored by the powerful states including EU, and India has been found ever eager to establish its political and economic links with new states. During 1990s EU has undergone considerable changes due to its enlargement with addition of new member states, completion of single Market and adoption of Maastricht treaty. During this period it has also revised its approach towards Asia region which has been inadequate in the past, thus has taken some initiative to readjust its policy in this matter¹. India is one of the first countries to establish diplomatic relations with the then EEC². During early 1970s, its relations with Brussels were mostly dominated by its ties with UK mainly because of its colonial history and because of its economic links with UK. The opening of the diplomatic mission was only a logical reaction of the first British application to join the Community in 1961, because India did not want to lose its preferential access to the UK market through the Common wealth regime. The failure of the British accession negotiation in 1963 prevented the establishment of the working relationship and the possible conclusion of the general trade agreement. In 1964 the Commission suspended its tariff level to zero on key India export goods such as tea, spices and skins. India was granted duty free quota for silk, handicrafts and hand-loom fabrics. Bilateral trade agreement on jute and coconut fibre was also

¹ J Vandenborre, 'India and the EU' in Carol Cosgrove-Sacks (ed), *The European Union and developing countries* (Palgrave Macmillan 1998) 268.

² *ibid.*

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concluded between them³. Like Pakistan the initial engagements between EU and India primarily remained focused on trade and commerce.

The initial commercial and trade engagements between the EU-India included the grant of general tariff preferences facility under the Generalized System of Preferences (GSP) scheme introduced by EC in 1971 for ninety-one developing countries including India⁴. This was followed by first Commercial Cooperation Agreement (CCA) that was signed in December 1973 between EU and India⁵. The agreement came into force in April 1974. The agreement was first of its type that was signed by the EEC with any 'non-associated' developing country embodying the concepts of commercial and economic cooperation linked with trade⁶. This agreement sought trade promotion with India in such a manner that it would not affect the India's bilateral relations with individual EEC member states⁷.

Following that, the EU and India signed a first five-year agreement for Commercial and Economic Cooperation in 1981⁸. Followed by these initial commercial agreements the EEC in 1983 set up its EC Delegation in New Delhi and gained its visibility in the political scenario of India⁹. Like Pakistan the India relationship with

³ Vandenborre (n 1) 269.

⁴ Gulshan Sachdeva, 'India and the European Union: Broadening strategic partnership beyond economic linkages' (2008) 45(4) *International studies* 341, 345.

⁵ The Commercial cooperation agreement between the EEC-India [1973] OJ L82/74, 3; For details on history of relations between the European Community and India see *The European community and India* [1973] OJ L85/86, 3

⁶ Commission of the European Countries, 'Communication from the Commission to the Council, The Community's Relations with India' (COM)79 Final Brussels (<http://aei.pitt.edu/4335/1/4335.pdf>), 2.

⁷ Sachdeva (n 4) 344.

⁸ Agreement for Commercial and Economic Cooperation between the European Economic Community and India 1981 [1981] OJ L328/6.

⁹ The Commercial cooperation agreement between the EEC-India (n 5) 14.

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the EU developed gradually, however, on the other hand, India enjoyed bilateral relations individually with the western Europe countries like United Kingdom, France and Germany. Like Pakistan India remained at large under the political influence of UK due to its former colony in comparison to other western countries. Since its independence from the UK in 1947, the two-enjoyed multifaceted bilateral relations. Similarly, with France, India had quite formal relations lacking much political warmth until the end of the cold war. Despite France being the third largest weapons supplier to India in this period the political equation between the two countries was restrained due to French inclination towards Pakistan¹⁰, while the West Germany had a strong relationship with India.

Following the collapse of the Soviet Union, the political scenario changed for India as well which could no longer be contained in South Asia by the cold war rubric¹¹. Hence it revived its traditional foreign policies, looking for new partnerships in the area of international investment and political engagements. The economic crisis of India in early 1990's lead to its adoption of policy on economic liberalization¹². Its steady economic growth has changed not only India's perception of itself but also the world's perception of India¹³. The shift in its economic policy proved to be a watershed moment in India's development trajectory. This helped in setting a new course to its political power as an emerging power¹⁴. India as a 'emerging power'

¹⁰ Ummu Salma Bava, 'India and the European Union: From engagement to strategic partnership' (2010) 47(2-4) *International Studies* 373, 374.

¹¹ C Raja Mohan, *Crossing the rubicon: The shaping of India's new foreign policy* (Viking New Delhi 2003).

¹² Bava, 'India and the European Union: From engagement to strategic partnership' (n 10) 375.

¹³ Ummu Salma Bava, 'India's role in the emerging world order' (2007) 4 *Friedrich Ebert Stiftung New Delhi, Briefing Paper*, 2.

¹⁴ Salma Bava, 'India: foreign policy strategy between interests and ideas' in Daniel Flesmes (ed), *Re-*

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was also forecasted in Jim Golman Sachs report, published more than ten years after the introduction of the acronym BRICS in Jim O'Neill's, along with Brazil, Russia and China. Similarly President Barak Obama in his address to Indian Parliament in November 2010 emphasized the status of India as an 'emerged power' has become omnipresent in policy debates and media¹⁵. In a successive BRICS scenario, various attempts have been made to present world scenario until 2050 based on demographics, resource allocation and other long term trends. The ensuing logic was that a country with economic strengths will necessarily become a political power as well¹⁶. This was also evident by the marked increase in China's political weight, specifically after 2008 European financial crisis. Although in comparison to China, India lags at least a decade behind China in its overall economic growth, it is assumed that it will follow a similar economic and political growth trajectory on a global stage¹⁷. For instance Indian economy took off following across-the board economic liberalisation (India growth rate stands at 8-10 percent, compared to its 3-(percent in 1980s)¹⁸, its prominent role in the G20, and its new format of choice for financial and economic crisis management have underscored that perspective¹⁹. India with its impressive democratic credentials and its growing economic stature and dominant position in region appeared as a new potential partner for the EU for its economic and political

gional leadership in the global system: ideas, interests and strategies of regional powers (Routledge 2010) 231.

¹⁵ Bernd Von Muenchow-Pohl, *India and Europe in a multipolar world* (Carnegie Endowment for International Peace 2012) 3.

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ Shada Islam, EU and India: progress, ambitions, realities, European Policy Center, Policy Brief (2007) (https://www.epc.eu/documents/uploads/770260388.EU%5C%20and%5C%20India.pdf?doc_id=425) 1.

¹⁹ *ibid.*

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engagements in South Asia.

Like Pakistan, the cornerstone of EU-India relations was predominantly trade and investment before its enhancement into a full-fledged political and strategic partnership. The ties between EU and India have been strengthened during the 1990s. On the institutional level a third generation cooperation agreement was signed between the two. For India Europe remained the most important destination for its exports and main source of Indian's imports.

8.2 The 1994 Cooperation Agreement Between India-EU

The 1994 cooperation agreement between India and EU helped in bolstering the bilateral relations beyond merely trade and economic cooperation²⁰. The objective was to achieve a closer and upgraded relationship between the two partners. This agreement covered the six aspects 1) to develop and diversify trade and investments 2) to strengthen cooperation in technical, economic and cultural matters, 3) to support the economic capacity building of India 4) to provide resources and technical assistance to accelerate India's development 5) exchanges of business communities and to help in creation of suitable environment of business 6) environmental protection and sustainable management of natural resources²¹.

The joint political statement that was signed between India and EU in 1993 opened the way for annual ministerial meetings and a broad political dialogue. Dur-

²⁰ Cooperation Agreement between the European Communities and the Republic of India on Partnership and Development [1994] OJ L223/24.

²¹ *ibid.*

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ing 1990s India accounted high trade with EU accounting for 24 to 26 percent of India's total trade²². Due to the gradual rise in its economic growth the per capita growth in India also doubled during 1990 - 2005²³. This helped in fostering India's trade with other countries other than the EU. This diversification in India's trade had caused an impact on EU-India trade relations despite the evolution of their political engagements in the new millennium²⁴. For instance, during the same period the India trade with China and US was recorded a faster growth trend in comparison to its trade with EU or any other region²⁵. However, during 2000s increased trade and economic investment by EU in India marked the high trade accord between the two partners²⁶. The India' raised economic and political profile captured the EU's post cold war interests to seek political engagement with states beyond the Confine of the European continent²⁷. As already discussed in chapter three of the thesis, EU seek to established its ties with China and India which it considered vital in South Asia both in terms of their economic and political importance. One of the key reason that has urge EU seeking enhanced economic-politico relationship with India was their shared diversity and commitments to common values including democracy, the rule of law and effective multilateralism²⁸. The first summit between EU-India was held in Lisbon in June 2000²⁹. This manifested the EU interest to enhance its eco-

²² Sachdeva (n 4) 348.

²³ Bava, 'India and the European Union: From engagement to strategic partnership' (n 10) 376.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ Sachdeva (n 4) 348.

²⁷ Von Muenchow-Pohl (n 15) 11.

²⁸ EU and India: progress, ambitions, realities, European Policy Center, Policy Brief (n 18) 1.

²⁹ First India-EU Summit (28 June 2000) (https://europa.eu/rapid/press-release-PRES-00-229_en.htm).

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conomic and political engagements with India. The Lisbon summit was meant to set a foundation for the evolution of the diverse relationship between the two partners.

Later in their fifth summit held in Hague on 8th November 2004, both the partners endorsed the establishment of their ‘strategic partnership’³⁰. The EU’s upgrading of its relationship with India to a strategic level was in fact the realization of its intention to develop its strategic partnership with important states in the region as set out in its EU-Asia strategy.

After over-viewing the historical account of the development of the relations between EU and India, the next sections of the chapter will cover the comparative analysis of the India and Pakistan partnership with EU in specific areas of cooperation.

8.2.1 Comparison of India and Pakistan Trade and Investment Partnership with EU

It is interesting to note that both India and Pakistan after their independence from the same colonial master Britain, established their trade and economic linkages with the then EEC almost at same time period. India signed its first commercial cooperation agreement with EU in 1974, while Pakistan concluded its first commercial cooperation agreement in 1976. Like Pakistan, India relations with EU have been also been trade centric. Both India and Pakistan had the same levels of development at the time of their establishing their relation with Europe and were interested to intergrate with the world economy. Europe remained the most important destination for the exports of both the countries as well as the main source of their imports. As

³⁰ Fifth India–EU Summit Hague, Joint Press Statement (8 November 2004) (https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/er/82635.pdf).

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well as for the Europe the primary focus of Europe engagement with these states was mainly trade and aid. This was also pointed out by Pascal Lamy, a former European Union Trade Commissioner, who stated that ‘the cornerstone of the EU-India relationship lies in trade and investment’³¹. His statement underscores the nature of relationship between EU and India. India is the world fastest economy, trading more than 100 billion euros in goods and services and the EU is India’s biggest trading partner. The 1994 cooperation agreement between India-EU has not only provided a legal framework for establishing the relations between the two partners but has proved to be instrumental in boosting the economic, political and sectoral cooperation between the two. It is important to note that for the EU the rationale for strengthening its economic and political engagements with India is found not only in its potential for a growth but also due to its relative importance be it actual or potential to the EU in terms of trade and investment³². The fastest growing economy of India makes it a lucrative partner for EU for establishing strong economic ties. Here it would be important to take a brief overview of India’s fastest growing economy before making an in-depth analysis of the comparison of India and Pakistan, bilateral trade and investments cooperation with EU.

India is the seventh biggest economy in the world. According to World Economic Forum its share in the world GDP was 2, 250 billion in 2016 which was about half the share commanded by Germany³³. This made India still fall in the list of the

³¹ Speech by Pascal Lamy, European Commissioner for Trade at the EU-India Business Summit (22 November 2000) (http://www.eeas.europa.eu/archives/delegations/india/documents/eu_india/021.eu_india_reso.2nd_page9.en.pdf).

³² Bernadette Andreosso-O’Callaghan, ‘Market Access and Trade Facilitation’ in Thomas Christensen, Emil Kirchner, and Philomena B Murray (eds), *The Palgrave Handbook of EU-Asia Relations* (Palgrave Macmillan 2013) 269.

³³ Gabriel Felbermayr and others, *Europe and India: Relaunching a Troubled Trade Relationship*

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developing country. Nevertheless, India relative economic is increasing in a steady manner over the last years driven by robust domestic demand³⁴. For instance, the comparison of India growth rate with the Eurozone revealed that the Eurozone managed an average growth rate of 0.7% during the five years from 2010 to 2015, while the India average GDP growth rate has grown steadily at the rate of 7.2% per annum³⁵. This has made India a lucrative market for the international businesses and investments. China was growing faster but now India has overtaken China as the fastest growing economy of the BRICS countries³⁶. Apparent by its purchasing power parity, India is now one of the world's largest economies with China, EU and USA. According to the CEPII EconMap forecasts, during the period between 2015 to 2050, India will contribute about 10% to the overall growth of the world economy³⁷. The contributing factors are its population growth, a better-educated workforce, its productivity catch up and capital deepening. This figure is quite high in comparison to its contribution in 1960, its share was more than three percentage points smaller³⁸. Fifty percent population of Indians is below the age of 25. This demographic factor could add about two percentage points yearly to India's per capita GDP growth in the coming twenty years³⁹. Further more, according to CEPII

(Bertelsmann Stiftung 2016) 10.

³⁴ Felbermayr and others (n 33).

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ CEPII Recherche et expertise sur l' Economie Mondiale (http://www.cepii.fr/CEPII/fr/bdd_modele/presentation.asp?id=11); See also G Felbermayr and others, 'Megatrends im Welthandel: Die neue Seidenstraße-Wachstumsregion zwischen Europa und Asien, ifo-Studie im Auftrag der bayerischen IHKs, im Erscheinen' [2015]

³⁸ Felbermayr and others (n 33) 10.

³⁹ International Monetary Fund, see also Geethanjali Nataraj, 'India-EU FTA: problems and future prospects' (2015) 3 World Commerce Review 2, 6

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EconMap forecasts India will also massively contribute to the overall growth of the global labour supply. About 28% of Comparison Of India And Pakistan Bilateral Trade With Eu: the overall increase in labour supply will be contributed from India during the period 2015 to 2050⁴⁰. These figures made India an attractive economy for the world trading partners especially for the largest trading bloc like EU.

Despite India impressive performance as the world's second fastest growing economy India has to struggle with various socio-economic challenges in a country. According to world bank report more than seventy percent of its population lives below the poverty line and in many key indicators for education, health, and gender equality, inadequate infrastructure India continue to far worse than sub-saharan Africa⁴¹. Furthermore income inequality and creation of job for 12 million people estimated to enter the work force every year are the important challenges faced by the Indian economy⁴².

In comparison to Indian economic profile, Pakistan is ranked sixth most populous country with and is one of the emerging economy⁴³. It was identified as one of the next eleven countries by Jim O'Neill as having a high potential of becoming world largest economies along with BRICS countries⁴⁴. Its GDP growth rate is 3.29 percent

⁴⁰ Felbermayr and others (n 37).

⁴¹ When the National Planning Commission announced in March 2012 that the nationwide average of people living below the poverty line had fallen to 29.9 percent, the findings drew sharp criticism from all sides of the political spectrum, given that the official definition is set at Rs.28.35 per person/day for urban and Rs.22.42 for rural dwellers—about 44 and 55 U.S. cents, respectively. An independent survey found 42 percent of all children in India to be underweight, decried by Prime Minister Manmohan Singh as a Kounteya Sinha, 'Malnourishment a national shame: Manmohan Singh' *The Times of India* (New Delhi, 10 January 2012) (<https://timesofindia.indiatimes.com/india/Malnourishment-a-national-shame-Manmohan-Singh/articleshow/11443478.cms>)

⁴² Von Muenchow-Pohl (n 15) 5.

⁴³ Pakistan Profile World Bank Data (<https://data.worldbank.org/country/pakistan?view=chart>).

⁴⁴ T Gant, 'On 10th Birthday, BRICS poised for more growth', *The Globe and Mail* (Toronto, 3 May

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which ranked it 42th largest in the world⁴⁵. In terms of parity of purchasing power it is 23th largest in the world⁴⁶. It has a young and growing population of around 200 million people¹⁸. Over 50% of its population is under the 25 years. The important feature of its market are a low production and labour costs. The key challenge which Pakistan faced is to create jobs for 2 million people who are joining the labour force every year over the next twenty years⁴⁷. Despite having the potential for a competitive economy, the Pakistan's economy has not yet experienced the potential for expansion unlike others Asia's emerging markets. Low level of foreign investments, weak infrastructure, slow domestic industrial growth, unresolved energy crisis and burgeoning foreign debt has caused a dent to its economic growth. In this backdrop, the next part of the chapter will highlight the recent trade and investment scenario of India and Pakistan with EU. This will determine the relative competitive position of India and Pakistan as a trading partner for EU.

8.2.2 Comparison of India and Pakistan Bilateral Trade with EU

In bilateral trade relationship, the EU's is the India largest trading partner accounting for 92 billion euros trade in goods in 2018, 12.9 percent of total Indian trade,

2018) (<https://www.theglobeandmail.com/report-on-felbermayr2017europe-business/economy/economy-lab/on-10th-birthday-brics-poised-for-more-growth/article536100/>).

⁴⁵ Pakistan GDP per capita growth (annual) world bank data (<https://data.worldbank.org/indicator/NY.GDP.PCAP.KD.ZG>).

⁴⁶ Parity of Purchasing Power (PPP) World Bank Ranking (https://databank.worldbank.org/data/download/GDP_PPP.pdf).

⁴⁷ See remarks by Enrique Blanco a world bank economist for Pakistan The World Bank, Accelerated Reforms Needed for Higher Growth, job creation, World Bank (Press Release) (9 November 2017) (<http://www.worldbank.org/en/news/press-release/2017/11/09/accelerated-reforms-needed-for-higher-growth-job-creation>).

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leading USA (10.1%) and China (10.9%). India is the Union ninth largest trading partner, accounting for 2.3% of EU's total trade in goods in 2018 trailing USA (16.9%) and China (15.3%)⁴⁸. Overall the trade in goods between EU-India have increased to 72% during the last decade⁴⁹. The textile sector is by far the most important import sector for the EU 28 from India followed by chemicals, machinery and electrical products that were ranked second and third most important products⁵⁰. The most important export sector for the EU 28 to India remained the machinery and electrical products. The stone and glass remained the second most important export sector⁵¹. As per the trade pattern of India particularly on the import side remained stable during the period between 1994-2014. The four largest sectors on the import sides are still important today as were twenty years ago i.e. machinery and electrical products, stone and glass, chemicals and Metals⁵². While on the exports side the textile sector remained on the top, but the leather products and vegetable products have lost its relative importance in Indian exports to EU. Over these years India has become an important supplier of chemicals and machinery components to the EU. This shows that India has diversified its exports products and have upgraded its industries.

Trade in services between EU and India have also increased from 23 billion euros in 2010 to 29 billion euros in 2016. These figures made the India the fourth largest

⁴⁸ Bilateral trade between EU and India (<https://ec.europa.eu/trade/policy/countries-and-regions/countries/india/>).

⁴⁹ *ibid*; Felbermayr and others (n 33) 33

⁵⁰ *ibid* 34.

⁵¹ *ibid*.

⁵² *ibid* 36.

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service exporter to the EU and the 6th largest destination for EU export in services⁵³. The gradual rise in its ranking to from 9th in 2012 to 6th at present has increased the relative importance of India for EU as an import partner in services⁵⁴.

Besides the bilateral trade in goods and services, a good flow of FDI is also taking place from both the sides. In recent years the EU is considered the first foreign investor in India having a stock of more than 50 billion Euros investments in India⁵⁵. The investment flows from EU to India has been doubled from 8% to 18% during the last decade. The factor for the increase in flow of FDI from EU is Indian domestic consumer market which is very active and considered a major attraction for the EU investors. Many EU companies are now the household's names in India due to its presence in Indian domestic market for several decades. Among the top ten European Investors countries, the UK has been the biggest investor in India which has the investments from \$22. 7 billion from April 2000 to December 2015. UK is followed by Netherland with FDI inflow of \$16. 8 bn, Germany with \$8. 4bn and France which ha \$4. 8bn FDI inflows in India. UK, Germany, France, Netherland, Sweden and Denmark have a major contribution in the creation of 1. 2 million European direct jobs in India and 5 million indirect employment. There are about 6000 European companies working in India and making its contribution in the broad range of sectors which includes financial services, automotive, logistics, chemicals pharmaceuticals, health care, infrastructure, IT, food processing, petroleum and natural gases. The well-known European companies working in India includes British

⁵³ Bilateral trade in services between EU and India (<https://ec.europa.eu/trade/policy/countries-and-regions/countries/india/>).

⁵⁴ *ibid*; See also Felbermayr and others (n 33) 36-37

⁵⁵ The European Union and India Trade and Investment 2017 (https://eeas.europa.eu/sites/eeas/files/the_european_union_india-trade_investment-2017_0.pdf), 25.

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petroleum, Volkswagen, Siemens, Renault, Unilever n Ericsson, Maersk, Vodafone, Ferrero⁵⁶.

For India, the EU is an important destination for its FDI investments. Especially the United Kingdom, Germany, Belgium and Netherlands are important destinations for the Indian companies for making its investments. The Indian companies not only made investments in Europe but also have employed their people in companies in Europe. Since 2000 the Indian companies have invested over 50 million euros in Europe. And have employed more than 130,000 people in these four countries as well as in other EU member states. The Tata group is the biggest Indian company, which has employed approximately 80,000 people in its European subsidiaries.

The preferable sector of investment for the Indian companies is the IT sector. Around 20% Indian investments are in the IT sector followed by automotive, steel and manufacturing. The Indian IT companies also target the new EU member states for its investments like the Czech Republic, Romania, Poland and Hungary. Apart from creating direct employments these investments also helped in creating indirect employment such as housekeeping, construction, security, catering and many others⁵⁷.

8.3 The European Investment Bank Investments in India

The European investment bank is the world's largest international public bank. Owned and governed by its members, it is the long-term lending institution of the

⁵⁶ The European Union and India Trade and Investment 2017 (n 55).

⁵⁷ *ibid* 24.

8.3. THE EUROPEAN INVESTMENT BANK INVESTMENTS IN INDIA

European Union. It is important to note that The European Investment Bank since its first operation in 1993 has provided more than EUR 1.34 billion for a long-term investment in India.

At the 13th European Union - India summit held on the 30 March 2016, the President of the European Investment bank announced not only to strengthen its engagement with India but also made its firm commitment to support long-term investments in India necessary for environmentally sustainable social and economic development in India. The opening of the EIB branch as a regional representation for South Asia in New Delhi was also announced by the President of the EIB in the same summit⁵⁸.

The regional South Asia branch was then opened on 31 March 2017. The regional EIB bank branch would help in ensuring closer ties with public and private partners across the country and through its financial and technical support will benefit the long-term investment in India. The EIB is known as a global leader for financing in climate change projects. It is important to note that the European Investment Bank has given its support for long-term investment across India for more than 20 years, which has strengthened the Indian industry, reduced carbon emissions and also helped in harnessing renewable energy.

In the same summit, the European Investment bank announced to launch a largest ever financing project in India worth EUR 450 million long-term loans for building the first metro line in Lucknow, capital of Uttar Pradesh. The project will provide finance sustainable transport and renewable energy projects. The long-term

⁵⁸ European Investment Bank (EIB) announces largest ever loan in India and new office at EU-India Summit (<http://www.eib.org/infocentre/press/releases/all/2016/2016-080-eib-strengthens-engagement-in-india.htm>).

8.4. ESTABLISHMENT OF INVESTMENT FACILITATION MECHANISM

investment loan for a metro project in Lucknow is the first part of an expected broader metro network planned for the capital of Uttar Pradesh, which is the most populous state in India with a 3 million people. The metro project would have helped in the increased use of public transport from 10% to 27%. For the construction of the metro line, the Bank's governing body has already approved 250 million euros representing the second tranche of 450 million euros.

Jonathan Taylor the vice president of the EIB responsible for lending operation in Asia and climate action worldwide while endorsing the importance of making long-term investments in the new Lucknow Metro Project said that 'Investment in sustainable public transport is essential not only to improve urban mobility but also to reduce carbon emissions, address health issues and cut time lost in traffic'⁵⁹.

8.4 Establishment of Investment Facilitation Mechanism

For the promotion of future investments from the European Union in India both the partners have announced the establishment of an investment Facilitation Mechanism (IFM). In a statement, the Minister of the Indian Commerce ministry said that 'The mechanism will allow for a close coordination between the European Union and India with an aim to promote and facilitate EU investment in India'. The establishment of the investment facilitation mechanism was the result of the joint statement endorsed by both the partners in the 13th EU - India summit held in March 2016. In the statement both the sides reaffirmed their commitment to oppose protectionism and

⁵⁹ European Investment Bank (EIB) announces largest ever loan in India and new office at EU-India Summit (n 58).

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to work in favour of a fair, transparent and rule-based and investment environment’.

Through the establishment of the investment Facilitation Mechanism, the EU delegation in India and Indian Department of Industrial Policy and Promotion (DIPP) will hold high-level meetings to assess and facilitate ‘ease of doing businesses for the EU investors in India. The Facilitation Mechanism will help to identify and solve the problems faced by the EU investors and companies regarding their business operations in India.

The official Investment Promotion and Facilitation Agency in the name of ‘Invest India’ will also be a part of this Mechanism. It will help in creating a single window-entry point for EU companies that required assistance for their investments and businesses at the central or the state level⁶⁰.

8.4.1 India Utilization of Standard GSP Arrangement

India is the beneficiary of Standard GSP arrangement which ‘granted duty reductions for ca. 66% of all the EU tariff lines to countries of low or lower middle income, which do not benefit from other preferential trade access to the EU market’⁶¹. During the period 2014-2015 India was among the thirty countries, which benefit from the EU’s standard beneficiary arrangement⁶². And during 2016-2017 India was among the total 23 standards GSP beneficiaries⁶³. As far the India performance under the

⁶⁰ European Union & India establish an investment Facilitation Mechanism, New Delhi (Press Releases) (17 July 2017) (https://eeas.europa.eu/delegations/india_en/29918/European%20Union%20&%20India%20establish%20an%20Investment%20Facilitation%20Mechanism).

⁶¹ *ibid.*

⁶² *ibid.*

⁶³ European Commission, ‘Report from the Commission to the European Parliament and the Council ‘Report on the Generalised Scheme of Preferences covering the Period 2016-2017’ COM(2018) 36 final, Brussels, 1.

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current GSP scheme is concerned, in 2014 India was by far the biggest user of the standard GSP with a 52. 7% GSP Preferential imports to the EU. India was followed by Vietnam and Indonesia. In total these three beneficiaries accounted for 87. 8% of all the imports where Standard GSP preference have been used⁶⁴.

In 2016-2017 among the GSP beneficiaries India and Vietnam took up the largest part of all EU imports from the GSP beneficiaries including the nation GSP import⁶⁵. Bangladesh is the third largest, which falls in EBA beneficiary list. During 2016 - 2017 the India, Bangladesh and Vietnam are also listed as the three largest beneficiaries based on GSP preferential imports only⁶⁶.

India remains the biggest exporter to the EU under the GSP despite its several products sections including the textile was graduated from the GSP as they no longer qualified for GSP trade preferences from 2014. In 2016, India exported EUR 7. 6 billion worth of textiles and clothing to the EU, of which EUR 5. 7 billion exports were through utilization of Standard GSP⁶⁷. In 2016 India accounted for 53% of Standard GSP Preferential EU imports which again made it the largest user of the standard GSP scheme in 2016-2017⁶⁸.

⁶⁴ European Commission, 'Report from the Commission to the European Parliament and the Council 'Report on the Generalised Scheme of Preferences covering the Period 2014-2015' COM(2016) final, Brussels, 7.

⁶⁵ European Commission, 'Report from the Commission to the European Parliament and the Council 'Report on the Generalised Scheme of Preferences covering the Period 2016-2017' COM(2018) 36 final, Brussels, 3.

⁶⁶ *ibid.*

⁶⁷ *ibid* 4.

⁶⁸ *ibid.*

8.5 EU Trade-Related Technical Assistance to India

The objective of the trade related technical assistance from EU is to better integrate India into the international trade system, to further enhance its bilateral trade and investments ties with the EU.

8.5.1 Capacity Building Initiative for Trade Development (CITD)

The EU funded this programme to enhanced the the capacity of India's trade-related regulatory institutions and enforcement mechanism in order to meet the international standards⁶⁹. The programme aimed to improve the quality of food and SPS management, to comply with REACH (Registration, Evaluation, Authorization of Chemicals), improve administration and enforcements of intellectual property rights in compliance with international standards, setting up of post clearance audit(PCA) in Indian customs, to improve the functions of the institutions involved in competition policy (CCI-Competition Commission of India) in terms of investigation, reporting and enforcement, to make awareness and enhanced the capacities of private sectors and government institutions on fair competition, procurement and transparency. Improvements in these areas is considerably in view of the future prospects of conclusion of BFTA between EU and India.

⁶⁹ The EU funded this programme 2013-2017 with 9 million euros. EU Delegation to India Report on EU-India Capacity building initiative for Trade Development (<https://www.izvoznookno.si/dokumenti/citd%5C%20presentationdec%5C%202013.pdf>)

8.6 Bilateral Trade in Goods, Services and Investments Between EU-Pakistan

As already discussed in third chapter, EU has been one of the important trading and aid partner of Pakistan. The bilateral trade relations between the two are governed through the economic cooperation agreement of 2004. EU has played a great deal in supporting Pakistan's integration into a rule-based economy. EU has achieved this by enhancing its bilateral trade with Pakistan in goods and services, increasing its investments in various sectors, supporting its federal and provincial institutions. EU is Pakistan most important trading partner. According to trade data between EU and Pakistan EU has accounted for 12. 8% of Pakistan's total trade in 2015 and absorbing 23. 7% of Pakistan's total exports. Pakistan was the EU's 41th largest trading partner in goods accounting for 0. 3% of EU trade in 2016. Pakistan's exports is dominated by textile sector and clothing accounting for 82% of total Pakistan's exports to EU in 2016. Pakistan's imports from EU mostly consist of machinery and transport equipment 40. 2% in 2016 and chemicals in 19. 6% in 2016⁷⁰. The EU imports from Pakistan during 2006-2016 have almost doubled reaching up to 6,273 million euros from 3,319 euros. Since the grant of GSP+ status to Pakistan in 2014, the growth of imports from Pakistan has been increased to 5,515 euros in 2014⁷¹.

⁷⁰ EU-Pakistan trade facts (<https://ec.europa.eu/trade/policy/countries-and-%20regions/countries/pakistan/>).

⁷¹ *ibid.*

8.6. BILATERAL TRADE IN GOODS, SERVICES AND INVESTMENTS BETWEEN EU-PAKISTAN

8.6.1 Pakistan a Beneficiary of GSP+ Status

Since January 1, 2014 Pakistan is benefitting from the EU GSP+ arrangement for the last four years(2014-2018). The GSP+ status for Pakistan has been once again approved for another two years by the European parliament after the evaluation of Pakistan's performance concerning the fulfilment of GSP+ conditionality which required the implementation of core human rights, labour rights environment and good governance conventions in a beneficiary state. Currently Pakistan is one of the ten beneficiaries under the EU GSP+ scheme. This special incentive arrangement is awarded to the countries vulnerable in terms of economic diversification and export volumes for attaining sustainable development and good governance. Under this arrangement the eligible countries are given full duty suspension for essentially the same 66% of tariff lines as standard GSP⁷². Based on EU imports share ratio, vulnerable country is classified according to its lack of competition and lack of diversity in exports in the EU market⁷³. As far diversification of Pakistan industries are concerned it has been very limited as Pakistan's export to EU is mainly from the same sector i.e textile and clothing. Seventy percent of the Pakistan's exports to the EU consists of articles of accessories-knitted or crocheted, apparel and clothing

⁷² Commission of the European Communities, 'Report from the Commission to the European Parliament and the Council Report on the Generalized scheme of Preference covering the period 2014-2016' COM(2016) 29 final (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%5C%3A52016DC0029>); European Commission, 'Report from the Commission to the European Parliament and the Council 'Report on the Generalised Scheme of Preferences covering the Period 2016-2017' COM(2018) 36 final, Brussels

⁷³ Annex VII of the GSP Regulation provides vulnerability thresholds. For details about the GSP+ see Factsheet on the European Union's GSP+ scheme (http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_1552.35.pdf); Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [2012] OJ L303/1 ([link%20https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L..2012.303.01.0001.01.ENG&toc=OJ:L:2012:303:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L..2012.303.01.0001.01.ENG&toc=OJ:L:2012:303:TOC))

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and ready-made textiles⁷⁴. Based on these facts Pakistan will continue to meet the vulnerability criteria for its eligibility to the GSP+ status⁷⁵ subject to the fulfilment of the GSP+ conditionality concerning the ratification and implementation of the 27 core international conventions Humans and Labour rights, good governance and environment protection.

In comparison to India, which has diversified its exports sectors to EU from vegetables and leather products to machinery components and Chemical, Pakistan could not diversify its exports sectors which evident its lack of upgradation of its local industries. Pakistan needs to work on its products diversification for circumventing the negative effect of competitive pressure from its competitors specially India and other Asian competitors⁷⁶.

In textile and clothing sector Pakistani exports had been experiencing a tough competition not only from a large scale GSP exporter i.e. China, India, Indonesia, Vietnam and Thailand but also from Bangladesh which had been accessing the EU market under the EU' EBA scheme⁷⁷. Therefore it was expected that the Pakistan Textile industry would boost from the grant of GSP+ concession likely to make it the second largest textile and garment exporting country in the south east Asian region⁷⁸. Textile industry is one of the key sector which contribute immensely in

⁷⁴ Kishwar Khan, *Pakistan–Trade Performance under the GSP+* (Friedrich-Ebert-Stiftung (FES) Islamabad 2017) 7.

⁷⁵ European Commission, Brussels [2013] (<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1006>).

⁷⁶ Khan (n 74) 11.

⁷⁷ S Akhtar, *EU's GSP + Influence on Developing countries Access to Key Markets* (University of Manchester 2014).

⁷⁸ *ibid*, India, China, Colombia, Vietnam, Thailand are not eligible to apply for the GSP+, China has graduated out of the Textiles and Garments section while India has graduated out of the Textiles section of the standard GSP.

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Pakistan's economy⁷⁹. Pakistan's is amongst the top ten exporters in the global Textile and Clothing market (T&C) and EU is also one of the major players in Global T&C market. It is the largest importer with a share of 22 percent and the largest exporter with a total 25 percent share in exports⁸⁰. The Textile industry in Pakistan comprises cotton cloth, cotton spinning and made up sectors. The made-up sector consists of different sub groups namely tents and canvas, towels, cotton bags, knitwear, hosiery and readymade garments⁸¹. In Pakistani export the share of T&C remained the highest. It is recorded more than 56 percent during the last ten years⁸². In comparison to any other export sector the Pakistani exports remained concentrated in the broad category of 'cotton and cotton textiles'⁸³. Since Pakistan's utilization of the GSP+ status, the Pakistani exports to the EU has increased by 39 percent in value and by 12 percent in volume till September 2017⁸⁴. Thus, the share of T&C in Pakistani export to the EU remained dominant. Other than T&C 15-20 percent of Pakistani exports comprise agricultural items, sports good, leather and leather plastic etc⁸⁵. However, Pakistan have mainly utilized the GSP+ for

⁷⁹ For details about Pakistan's textiles industry, see JCR-VIS, Sector Update: Textile Industry (2016) (<http://jcrvis.com.pk/docs/Textile201611.pdf>) and Pakistan Credit Rating Agency. Textile Sector – An Overview (2016) (http://www.pacra.com.pk/uploads/doc_report/Textile%5C%20Sector_Sep16.pdf)

⁸⁰ Imports of Textiles and Clothing (2016) (<http://stat.wto.org>).

⁸¹ See Pakistan Credit Rating Agency. Textile Sector – An Overview (n 79).

⁸² Khan (n 74) 7.

⁸³ *ibid.*

⁸⁴ European Commission, Directorate-General for Trade, European Union, Trade in goods with Pakistan (trade.ec.europa.eu/doclib/html/113431.htm); 'Pakistan Workers Confederation Report on GSP Plus and Labour Standards in Pakistan the Chasm between conditions and compliance' [2017] Friedrich-Ebert-Stiftung (FES), 10; K Ghaus, 'Trade and Compliance of Labour Standards in Global Supply Chains A Case Study of Pakistan' [2017] Friedrich-Ebert-Stiftung (FES), 10-11

⁸⁵ Khan (n 74) 8.

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the exports of its T& C products. By September 2017 the share of textile and garments in exports have reached the height of 78 percent in comparison to its 69 percent share in 2013. The clothing has contributed utmost in the exports raising by 69 / 48 percent in value and volume⁸⁶. The export in T&C was increased by 24 percent during the first GSP+ year however in successive year the pace could not be maintained as it was recorded 17 percent in 2015 and 7 percent in 2016⁸⁷.

On the other side the share of EU in Pakistan's imports hovers around 12 percent. More than half of the Pakistan's imports from the EU consist of chemical, transport and machinery. In 2013 the Pakistan trade surplus with EU was recorded 699 million which was increased by more than hundred percent in 2014 to 1427 million. Till 2015 the surplus grew to 1643 million, later a decline of 40 percent was recorded in 2016. These figures revealed Pakistan's declining trade surplus with EU. Although the GSP+ being a unilateral scheme the Pakistan imports from the EU have increased by 30 percent from 2014⁸⁸.

In context of Pakistan and India trade performance with the Europe here it would be important to assess the Pakistan's ranking against those structural factors which are the responsible for holding back the export growth in Pakistan, particularly when compared to its competitors in Asia.

⁸⁶ Khan (n 74).

⁸⁷ *ibid.*

⁸⁸ *ibid* 9.

8.7 Pakistan's Lack of Competitiveness

One of the key factor which hampered Pakistan growth in trade in comparison to India is its lack of competitiveness. The factors which make up the competitive environment of an economy are its institutions, macroeconomic environment, health, education, labour, market efficiency, business sophistication and innovation. These factors are classified in three categories and are measured by Global Competitive Index 1) the basic requirements, 2) efficiency enhancers, 3) factors reflecting innovation and sophistications⁸⁹. Pakistan's competitive environment lack balance, coherence and is least innovative. In innovation and business sophistication it ranks 72 out of 137⁹⁰. Even in most basic requirements which are necessary for business to operate effectively it ranked low at 114 and its overall ranking in Global competitiveness Index is 115⁹¹. Except during the period 2008-2010, Pakistan remained at the lowest on the global competitive index⁹². The average score of Pakistan's during the 2013-2016 was 3. 4 out of 7⁹³. However, during 2017-18 the performance was relatively improved with a score of 3. 7 but remained low in key areas of competitiveness such as public institutions, structural inefficiencies, health and education and inadequate property rights protection. The factor which is negatively effecting Pakistan's competitiveness in industries and business is its energy crisis.

⁸⁹ World Economic Forum. The Global Competitiveness Report 2017-2018 (<http://www3.weforum.org/docs/GCR20172018/05FullReport/TheGlobalCompetitivenessReport2017%5C%E2%5C%80%5C%932018.pdf>).

⁹⁰ *ibid* 327.

⁹¹ *ibid* 327.

⁹² Trend in Global Competitiveness Index, Global Competitiveness Report (various issues) (www.weforum.org).

⁹³ *ibid*. From 2012-13 to 2016-17, the ranks were out of 144, 148, 144, 140 and 138 countries

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The Pakistan's infrastructure for the electricity is underdeveloped. Many industries and small-scale business are closed because of the energy crisis in Pakistan. Overall education, inadequate infrastructure, innovation, corruption, and limitations to access credit are the main factors for the lack of competitiveness in Pakistan business environment.

8.7.1 Trade Related Cost Incurred Due to Export

In the categories of border and documentary compliance Pakistan ranks at 4th. Though as compared to India and Bangladesh it has less time-consuming procedures. But the monetary cost which is incurred by the Pakistani exporters which includes logistics, freight and custom administration is significantly high as compared to India and Vietnam⁹⁴.

8.7.2 Trading Across the Border and Ease of Doing Business

The World Bank ranking for the ease of doing business and trading across the borders includes internal factors facing the business and those factors that come across when they engage in export activity⁹⁵. In comparison to India Pakistan has better rank in trading across the border that is 146 out of 190, while India rank at 171. In ease of doing business Pakistan rank at 147 out of 190 while India rank at 100⁹⁶. In this backdrop recently the incumbent government is envisaging to take

⁹⁴ World Bank Doing Business Report, Rank in Cost to Exports, 2019 (<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Profiles/Country/PAK.pdf>).

⁹⁵ World Bank Doing Business Report, Rank in Trading Across Border and Ease of Doing Business (<http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Profiles/Country/PAK.pdf>).

⁹⁶ *ibid.*

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various initiatives to create ease of doing business after thorough and wholesome review of policies and procedures that will pave the way towards conducive business environment.

8.7.3 Labour Market Efficiency

The overall competitiveness in business is determined by the labour market efficiency. Among the Asian countries Pakistan's rank the lowest in labour market efficiency. As per 2017-18 figures Pakistan's rank 122 out of 137 in labour market efficiency while India ranked at 75. Various indicators contribute in labour market efficiency such as pay and productivity, labour employer relations and female participation. Pakistan labour market is inefficient because of its low performance in all these indicators and made it fall in its ranking fall in comparison to India and other Asian competitors like Vietnam, India, Philippines and Bangladesh⁹⁷.

8.8 EU Investments in Pakistan

The EU has been one of the Pakistan's important investor both in Foreign Direct Investments (FDI) and in portfolio investments. However in comparison to India EU investments in Pakistan has been considerably less. The share of EU investment in Pakistan in fiscal year 2009 was 19.1% which grew considerably to 55% in Fiscal Year 2013. The investments range from textile, energy, telecommunication, exploration to food and other manufacturing sectors.

⁹⁷ Global Competitiveness Index 2017-2018, 'Labour Market Efficiency 2017-18' (<http://www3.weforum.org/docs/GCR20172018/05FullReport/TheGlobalCompetitivenessReport2017%5C%E2%5C%80%5C%932018.pdf>).

8.9 Comparison of India and Pakistan Strategic Partnership with EU

8.9.1 EU-India Strategic Partnership: Factors that Contributed Towards the Development of EU-India Strategic Partnership

Due to India's growing economic stature, the European Commission has made a case for upgrading of relation with India in a communication with the European Parliament and other member states in 1996. However, the Indian nuclear tests in 1998 halted this process. Moreover European Parliament views concerning general conditions of human rights in India and Indian forces atrocities against the Kashmiris in India occupied Jammu & Kashmir were never well received by India which believe that these opinions amounted to interference in its internal affairs. Despite the present of these irritants the EU showed its interest in formulating a strategic partnership with India as well as with other states moved by its renewed common foreign and security policy interests⁹⁸. As was evident by the European first security strategy adopted in December 2003. As already discussed the strategy lists the key global challenges and threats that Europe needs to meet which includes terrorism, proliferation of weapons of mass destruction, regional conflicts and failed states, organized crime, piracy, cyber security, energy security and climate change. Simultaneously along with meeting these challenges EU also aims to promote economic development, stability and good governance in its immediate neighbourhood i.e east-

⁹⁸ Von Muenchow-Pohl (n 15) 12.

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ern Europe, Mediterranean littoral, the Balkan, and Transcaucasia⁹⁹. To tackle these transnational characters of the threats required coordinated responses at the global and regional level, which in turn depends on strengthened multilateral institutions. This coin the concept of EU ‘effective multilateralism’ and its search for new strategic partners¹⁰⁰. Hence the European Security Strategy paper specifically calls for strategic partnerships with China, Canada, Japan and India in addition to special ties already established with United States and Russia and with other states as stated in the strategy ‘who share our goals and values and prepared to act in their support’¹⁰¹. In the European Security Strategy each of these partners was mentioned as ‘key international players’ with which partnership would develop ‘in diverse ways’¹⁰². Up to date the collaborators of the EU’s strategic partnership gave a general idea of its selection criteria i.e. state’s political leadership in their region, its economic potential to Europe, and its adherence to same European goals and values¹⁰³. However China is one of the prominent exception to this whole criteria of selection except its economic and political dominance in the region.

⁹⁹ Von Muenchow-Pohl (n 15) 15.

¹⁰⁰ *ibid.*

¹⁰¹ Council of the European Union, A Secure Europe in a Better World, European Security Strategy, Brussels [2003] (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:r00004>), para 14.

¹⁰² Javier Solana, Remarks in an interview with Xinhua News Agency/China Youth Daily (17 March 2004) (http://english.peopledaily.com.cn/200403/17/print20040317_13780.html).

¹⁰³ Von Muenchow-Pohl (n 15) 15.

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8.9.2 Establishment of Strategic Partnership with India

The first summit that was held in Lisbon in 2000 had laid the foundation of 'beginning of process' of building a strategic partnership between India and EU¹⁰⁴, and the joint declaration had set out its 'framework'¹⁰⁵. After working over the years, the European Commission published a communication on 'An EU - India Strategic Partnership' in June 2004. The communication has proposed a series of strategic policy dialogues and strategic sectorial dialogues required for establishing the strategic relationship¹⁰⁶. The Communication proposed to genuinely develop the strategic relationship with India in four key areas 1) cooperation, especially in multilateral fora, on conflict prevention, fight against terrorism, non - proliferation of weapons of mass destruction, 2) a strengthened economic partnership, 3) development cooperation, 4) fostering intellectual and cultural exchanges. Six weeks later in a response to the EC Communication, the New Delhi presented several proposals in its first ever Indian strategy paper on relations with outside entity, for enhancing more systematic interaction with the European Union¹⁰⁷.

The strategic partnership between EU - India was then endorsed at the fifth summit 2004. In the summit, two documents were adopted the Joint Political Declaration which was deemed to be the starting point of a joint reflection that would lead to a firm and visible upgrading of the EU-India relationship, from the ex-

¹⁰⁴ Ministry of External Affairs, India, Annual Report 2000-2001 , 61.

¹⁰⁵ Second India-EU Summit New Delhi, Joint Communiqué (23 November 2001) (http://eeas.europa.eu/archives/delegations/india/documents/eu_india/021_eu_india_reso_2nd_page2_en.pdf).

¹⁰⁶ European Commission, 'Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, An EU-India Strategic Partnership' (communication) COM (2004) 430 Final Brussels, 6.

¹⁰⁷ Ministry of External Affairs, India, Annual Report 2000-2001 (n 104).

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isting dialogue between good friends to a truly strategic partnership between two major players'¹⁰⁸. The Joint Action Plan outlined four areas of closer cooperation, political, bilateral and multilateral cooperation with an emphasis on transnational security threats, development, enhanced economic and sectorial cooperation and closer cultural ties. It was annexed with voluminous paper detailing EU's ideas for the corresponding institutional architecture, incorporating and streamlining existing dialogue format between two partners¹⁰⁹. From the Indian side an equally detailed response was also added. The India reply also stressed on a 'relationship of sovereign equality based on comparative advantage and mutuality of interests and benefits' which clearly indicated India's limitations in this newly forged strategic partnership. The response further added that the 'partnership should be kept immune from the vicissitudes of either side's relationship with a third party'¹¹⁰. The joint action plan for the strategic partnership was approved in the 2005 summit alongside the Strategic Partnership declaration acclaimed both the partners 'common commitment to democracy, pluralism, human rights and the rule of law'¹¹¹. Unlike EU, India is not the staunch advocate of democracy and human rights to other states. It believes that its democratic and pluralistic credentials formed an important component of 'soft power' that it can project in South Asia and beyond, which can attract and aspire others but does not extend its support to any pro-democratic movements or rebuking

¹⁰⁸ European Commission, 'An EU-India Strategic Partnership, Commission Staff Working Annex to the Communication from the Commission' 768 Brussels, 15.

¹⁰⁹ Von Muenchow-Pohl (n 15) 15.

¹¹⁰ Rajendra Kumar Jain, 'India and the European Union: building a strategic partnership' in Subrata K Mitra (ed), *India's new dynamics in foreign policy* (Hanns-Seidel-Stiftung 2006) 87.

¹¹¹ Council of the European Union, The India-EU Strategic Partnership Joint Action Plan (Press 223) (7 September 2005) 11984/05 Brussels.

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other government for their human rights record¹¹². Furthermore, it claim to adhere to the policy of non-interference in internal affairs of other states, one of the five principles on which the Non-aligned movement was founded also lacks credibility. Other important reason that can well-explain the India policy of non-interference in other states matters is that ‘if New Dehli were to get strictly evangelical on human rights records, pretty soon fingers will be pointed as its own record in Gujrat, Kashmir or the northeast’¹¹³. This starkly contradict with the EU active promotion of democratic norms and values as central part of its normative agenda which read as “The best protection of our security is a world of well-governed democracies”. Spreading good governance, supporting social and political reforms, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order¹¹⁴.

At the Helsinki summit, the implementation report on the working of the strategic partnership was presented¹¹⁵. In the summit, it was agreed to present an annual progress report on the implementation of the Joint Action Plan would be presented. In the Eight summit 2007 both the partners resolved to make an ‘overall assessment’ of the Joint Action Plan in 2008 and assess the ‘ways and means’ to upgrade the overall framework of the EU-India relations¹¹⁶. A revised Joint Action Plan was

¹¹² Von Muenchow-Pohl (n 15) 15.

¹¹³ ‘UN Human Rights Council resolution against Sri Lanka’ *Times of India* (New Dehli, 15 March 2012).

¹¹⁴ Council of the European Union, A Secure Europe in a Better World, European Security Strategy, Brussels (n 101).

¹¹⁵ Ministry of External Affairs India, EU-India Joint Action Plan, Implementation Report (13 October 2006).

¹¹⁶ Eighth India–EU Summit New Dehli, India-EU Joint Statement (30 November 2007) (<<http://energy.iep-berlin.de/pdf/3/7-1.pdf>> para 3.

8.10. EVALUATION OF EU-INDIA STRATEGIC PARTNERSHIP

adopted in the Marseilles summit held on 29 September 2008. The revised Joint Action Plan added 40 odd new activities in four areas which include peace and comprehensive security, sustainable development, research and technology and cultural exchanges¹¹⁷. However, the Joint Action Plan underpinning the strategic partnership between EU - India could not achieve much-desired results. It is said that joint action plan was 'long on shared fundamental and abstract political objectives but short on specifics and deliverables, and devoid of timelines'¹¹⁸. This strategic partnership generated lot of paper work, dialogues, exploratory committees and working groups without giving any significant policy measures on identified areas or economic breakthroughs¹¹⁹. This, on one hand, reflects the defiant nature of India not willing to change its stance on important critical issues such as Climate change and at the same time it also reflects the inability of the EU to develop the convincing diplomatic procedures or processes that could be used effectively in the negotiations with its strategic partners to reach the consensus on important matters.

8.10 Evaluation of EU-India Strategic Partnership

while evaluating the EU strategic partnership with India, it would be important to refer to also the two important speeches of ex Prime Minister Manmohan Sign which

¹¹⁷ EU-India Marseille Summit, The EU-India Joint Action Plan (JAP) (29 September 2008) (http://www.europarl.europa.eu/cmsdata/122866/joint_action_plan_2008_en.pdf).

¹¹⁸ Von Muenchow-Pohl (n 15) 13.

¹¹⁹ David Malone, *Does the elephant dance?: contemporary Indian foreign policy* (Oxford University Press 2011); See also Rajendra K Jain, 'India-EU strategic partnership: Perceptions and perspectives' [2014] NFG Working Paper Series (https://refubium.fu-berlin.de/bitstream/handle/fub188/17880/wp1014-india-eu-strategicpartnership_0.pdf?sequence=1&isAllowed=y)

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is known as ‘Manmohan Doctrine’ by Indian political analysts outlining Singh’s vision of India during his first term in Office. According to him ‘India’s external relation as primarily determined by economic links’¹²⁰. This approach is also applied to its newly coined strategic partnership with EU. Furthermore Manmohan Singh vision for India’s place in the world give very little space to EU. This is also evident by EU’s absence on the Indian grand strategy map¹²¹. EU is mentioned along with India’s three main European partners the United Kingdom, Germany and France that have for decades been the dominant factors in shaping the Indo-European relations, only as an overarching economic entity but not as a political power¹²². The New Delhi based think tank have undertaken the comparative study of India’s strategic partnerships with States and have graded them based on their political, defence related and economic performance¹²³. This study insists on the existence of a ‘strong and mutually beneficial relationship’ as a precondition for the establishment of strategic partnership with India and the actual ratings of India’s strategic partnerships is based on the concrete benefits each strategic partnership has netted for India¹²⁴. It is surprisingly to note that this comparative study includes France, United Kingdom and Germany but not EU¹²⁵. In Indian media EU is frequently referred as a ‘trade bloc’ and is seen as an economic power with corresponding political ambitions

¹²⁰ CR Mohan, ‘Delhi Darbar: The Manmohan Doctrine’ *Daily Times* (Mumbai, 28 February 2008).

¹²¹ Raja Menon and Rajiv Kumar, *The long view from Delhi: to define the Indian grand strategy for foreign policy* (Academic Foundation New Delhi 2010) 59.

¹²² Von Muenchow-Pohl (n 15) 19.

¹²³ Satish Kumar and others, ‘India’s Strategic Partners: A Comparative Assessment’ [2011] Foundation for National Security Research, November.

¹²⁴ Von Muenchow-Pohl (n 15) 19.

¹²⁵ *ibid.*

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but with limited delivery capabilities¹²⁶. In terms of hard power, Europe seems to lack sufficient means to achieve its political objectives beyond its region but also lack consensus on how to use the means to muster up¹²⁷. Despite Europe's notable contribution to NATO forces in Afghanistan and its role as a supplier of defence hardware, the Europe could not gain the great power status in Indian's view mainly because it remained militarily absent from the India's wider neighbourhood since the end of colonialism¹²⁸. Pakistan also view Europe in the similar perspective. For both India and Pakistan Europe is one of the strong economic power but considered less influential in political aspects mainly due to its absence of hard power approach towards security issues in the region. Like Pakistan, India also rely on U. S. A for political and military support concerning its security as well as of the region. This is one of the main reason that India give a priority to its relations in its foreign policy¹²⁹. It is said that if 'Europe to remain a pole of power' it must play its role that shall not be limited to economic cooperation rather a robust role in international relations and defence. Only then it can make an impact on Indian traditional political preferences. Even Europe is aware of this fact that despite its strong economic cooperation with India in recent past 'India's new middle class and its foreign policy elites remain much more focused on the US and Asia rather than Europe'¹³⁰. Unlike EU, the USA has always been an attractive political ally for In-

¹²⁶ Von Muenchow-Pohl (n 15).

¹²⁷ *ibid.*

¹²⁸ *ibid* 20.

¹²⁹ C Jaffrelot and S Singh, 'Does Europe matter to India?' in Thierry Tardy, *European security in a global context: internal and external dynamics* (Taylor & Francis 2010) 198.

¹³⁰ Christian Wagner, 'The EU and India: a deepening partnership' in Ummu Salma Bava, Giovanni Grevi, and Alvaro Vasconcelos (eds), *Partnerships for effective multilateralism: EU relations with Brazil, China, India and Russia* (Institute for Security Studies, Paris 2008) 89.

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dia, which has not only provided military support to India but have also supported its political stance on various issues in the region. However it must be noted that India oscillated towards America after the collapse of U. S. S. R. India which is rising gradually as a hegemonic power in Asia has a great support for its strategic politics from the USA. As remarked by the Raja Mohan that the' Bush administration has been fully sympathetic to India's great-power aspiration'¹³¹.

Other reasons for the absence of strong strategic partnership between EU and India is that EU does not see eye to eye with India on certain important issues rather its common policy on these issues do not meet the Indian political interests. For instance, The EU policy on nuclear non-proliferation is clearly defined so it did not support the decision of giving the Nuclear supplier group (NSG) status to India. At the 45-nations NSG, five countries out of six were Europeans (Austria, Ireland, Switzerland and Netherlands) which initially raised its objection to the Indo - US deal regarding the lifting of the global ban on nuclear trade with India. The EU policy on non-proliferation do not favour the nuclear deal with countries which lies outside the non-proliferation regime thus its policy on nuclearization clash with India stance of maintaining its nuclear status. Another issue relates to India aspiration to become a permanent member of United Nation Security Council (UNSC) while the EU has no common position on UNSC reforms hence it does not support the Indian political interest. Similarly, on issues of Human rights abuses in Kashmir, labour standards, Kyoto protocol and others the EU countries do not have any common policy while these are the issues of prime interest to India¹³². Few Indians analysts

¹³¹ R Mohan, 'India and the Balance of Power' (2002) 84(2) Foreign Affairs (<https://www.foreignaffairs.com/articles/asia/2006-07-01/india-and-balance-power>), 25.

¹³² Sachdeva (n 4) 363.

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remarks that the reason for not establishing strong strategic partnership lies in the fact that the EU lays more stress on values rather than on geo-politics if a country or region is at distant from Europe. According to them ‘Given the mismatch of context, concerns and goals, even on a most pertinent issue they think that ‘it is difficult to envisage more substantial cooperation soon’¹³³. However, according to some analysts in context of strategic relations, there has been a meaningful change in perception of each other in recent years and a tendency of accommodating each other concerns and priorities¹³⁴.

The trust deficit in EU-India strategic partnership is explained by the fact that ‘the EU is not a strategic actor and its ability to bring security deliverables to the partnership is extremely limited’¹³⁵. Regarding enhancing its strategic partnership both the partners can play a role relating to terrorism in South Asia, particularly in Afghanistan and contribute towards its post-conflict reconstruction. Through this stability and peace could be achieved in the region¹³⁶. Both can work on together on climate change and in Africa. It is argued that biggest challenge to EU-India partnership is to ‘broaden existing economic collaborations to new areas’¹³⁷. Although the strategic partnership between EU and India could not be established due to differences in their approach towards the highlighted issues, despite that India enjoys

¹³³ Rajendra K Jain, ‘India, the European Union and Asian Regionalism’ (2005) 3(1-2) Asia-Pacific Journal of EU Studies 29.

¹³⁴ Saponti Baroowa, ‘The emerging strategic partnership between India and the EU: a critical appraisal’ (2007) 13(6) European Law Journal 732.

¹³⁵ Ummu Salma Bava, ‘The EU and India: challenges to a strategic partnership’ in Ummu Salma Bava, Giovanni Grevi, and Alvaro Vasconcelos (eds), *Partnerships for effective multilateralism: EU relations with Brazil, China, India and Russia* (Institute for Security Studies, Paris 2008) 113.

¹³⁶ C Grant, ‘Four Pillars of EU-India Relationship’ (2008) 50 Centre for European Reform, London (<https://www.cer.eu/search/site/Bulletin%25206%25202008>).

¹³⁷ Wagner (n 130) 103.

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separately strong economic and political ties with important European countries which includes UK, Germany and France¹³⁸. This exhibit the inability of the EU to perform well in its collective external act together and to play a significant role in the evolving international system of powers¹³⁹.

The EU diplomatic strategies are often questioned when it comes to its bilateral partnership agreement with other states. With India, it has developed issue-based diplomacy on critical issues like climate change, environment, good governance, human rights, counter-terrorism, non-proliferation, trade and development. All these issues are part of the EU - India joint Action Plan which was developed within the framework of the EU - India strategic partnership¹⁴⁰. Despite these issues are covered by the joint action plan, none of these issues yielded any meaningful results to date. India maintained its stance against EU on many issues rather than developing any consensus on these issues. For instance, on the issue of climate change in Copenhagen in 2009, EU was opposed by India. This raises a question on EU diplomatic skill to make, communicate and implement its strategies towards its strategic partners like India and to get the maximum out of these partnerships¹⁴¹.

Apart from that, it is argued that in the academic literature the role and relevance of the EU relationship with India are hardly discussed. For instance, in one of

¹³⁸ Tony Barber, 'Europe is risking irrelevance as the world moves on' *Financial Times* (London, 21 November 2009); T Garton-Ash, 'One great power will be absent from the London G20 summit. Guess who?' *The Guardian* (London, 26 March 2009)

¹³⁹ Richard Whitman, 'The EU: standing aside from the changing global balance of power?' (2010) 30(1) *Politics* 24; See also Charles Grant and Robert Cooper, *Is Europe doomed to fail as a power?* (Centre for European reform London 2009)

¹⁴⁰ Council of the European Union, *The India-EU Strategic Partnership Joint Action Plan* (Press 223) (n 111).

¹⁴¹ David Allen, 'The EU and India: Strategic partners but not a strategic partnership' in Thomas Christiansen, Emil Kirchner, and Philomena B Murray (eds), *The Palgrave Handbook of EU-Asia Relations* (Palgrave Macmillan 2013) 575.

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these academic articles about India foreign policy and contemporary security challenges, India relations with major powers like US and China are discussed along with key issues of India concern like terrorism nuclear non-proliferation and international trade. There is hardly any mention of EU relationship with India or its potential role in any of India's foreign policy concerns despite being the strategic partners¹⁴². Similarly, Daniel Novotny in conclusion of his article 'EU's place in India's Foreign and Security Policy' said that while 'India was seeking a new pattern of strategic dialogue' with the EU, only the US is regarded as a crucial factor in India's foreign and security policy' even though it does not share any common interest either globally or regionally with India¹⁴³. Overall the strategic partnership between EU and India fall short of the aspirations contained in the joint action plan of 2008 mainly due lack of convergence between the two partners on certain important issues such as India's defiance attitude to accept binding commitment to cut carbon commissions, allowing tariff concessions to EU companies in proposed BITA to invest more freely in India, observance of human rights and labour standards in a country and tackling of other global challenges which EU foresee in its strategic engagement with India. Hence the strategic engagement could impact effectively on the political issues due to lack of convergence between the two partners rather being predominantly limited to economic issues. However with the resumption of EU-India summit in 2016 which restarted after the gap of four years the two sides have taken an unprecedented steps to deepened their strategic partnership. The EU has also renewed its strategy for

¹⁴² Rohan Mukherjee and David M Malone, 'Indian foreign policy and contemporary security challenges' (2011) 87(1) *International Affairs* 87.

¹⁴³ Daniel Novotny, 'The EU's place in India's foreign and security policy' [2011] *EU External Affairs Review*, 105.

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India to reinforced the engagement on political, security and strategic issues¹⁴⁴.

8.11 Pakistan's Strategic Partnership with EU

In comparison to EU-India Strategic partnership which have been formed in 2004, EU has recently forged its strategic engagement with Pakistan, after both the sides have finalized their strategic engagement plan that have entered into force in June 2019. The newly forged strategic partnership signify mutual trust and confidence which have been build up between the two partners over the period of years particularly after the successful completion of first engagement plan that entered into force in 2012 and completed in 2017. The two sides agreed to upgrade the bilateral engagement into strategic partnership. The strategic partnership is a forward looking ambitious political framework which aimed to enhance the bilateral engagement between EU and Pakistan. The Strategic engagement plan covered multifaceted area of co-operation. The traditional areas of engagement that remained prominent strands for cooperation include peace and security, democracy, rule of law, goof governance and Human rights, Migration and Mobility trade and Investment, sustainable development which include Energy, climate change and economic, social and environmental sustainability, education and culture , science and technology. Apart from these areas the two sides have committed to deal with issues that have a global significance climate change, security, counter-terrorism, regional security and stability as well as extending support to each other on multilateral forums. Pakistan should learned from the experienced of India strategic partnership with EU which

¹⁴⁴ Garima Mohan, 'Politics Over Trade: A Revival of the EU-India Partnership' *GAPPI* (27 August 2018) (<https://www.gppi.net/2018/08/27/politics-over-trade-a-revival-of-the-eu-india-partnership>).

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have not realized its real potential until now mainly due to India intransigent attitude on important political issues. EU has emerged as an important power bloc economically as well as politically. Pakistan need to realize the full potential of its strategic engagement with EU and should look forward by working together on issues of common interests such as counter terrorism, non-proliferation, regional security, climate change and other important global issues. Further more Pakistan shall avoid those factors which can cause hindrance in realizing the true potential of this partnership. This would also require mutual trust and respect from both the sides.

8.12 Comparison of India and Pakistan Prospects of Conclusion of Free Trade Agreement(FTA) with EU:

8.12.1 India-EU Free Trade Agreement(FTA):Prospects and Critical Issues Involved

Free trade agreement proposed between EU and India remains one of the most tangible deliverable of the EU-India strategic partnership. Since the formulation of EU Global Europe Strategy, India was viewed by EU as an important trade partner along with few other countries. The main factors are its rapid economic growth and expanding middle class which offered a solid foundation for future economic cooperation with India¹⁴⁵. The Joint action plan set up a High level Trade Group

¹⁴⁵ Wagner (n 130) 98.

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to explore, among other thing, the ‘possible launch of bilateral negotiations on a broad based trade and investment agreement’¹⁴⁶. After several round of exploratory talks the formal negotiations between EU and India started in June 2007, when the WTO Doha Round had become effectively deadlocked¹⁴⁷. These negotiations well demonstrated that concluding an FTA between large economic powers is not an easy task¹⁴⁸. Specifically, in case of India where the country foreign trade policy is shaped by a responsiveness to a domestic policy making by technocrats and politician rather than being influenced by the international forces¹⁴⁹. After several rounds the negotiations broke down in 2013. The major reason was that EU insisted that the proposed agreement should cover atleast 90 percent of the bilateral trade volume and should also cover issues like intellectual property rights, competition policy, public procurement as well as labour and environmental standards. The provisions concerning IPR in the proposed draft of EU-India FTA have drawn a public criticism in India. These provisions were termed quite extensive which could go beyond the obligations already layout under the WTO’s TRIPS agreement¹⁵⁰. Thus, if approved these provisions could limit the capacities of both India and EU to use the public

¹⁴⁶ Von Muenchow-Pohl (n 15) 25.

¹⁴⁷ *ibid*; See also Selim Raihan and others, ‘European Union-India Bilateral Free Trade Agreement: Potential Implications for the Excluded Low-income Economies in Asia and Africa’ in Mia Mikic (ed), *Challenges and Opportunities for Trade and Financial Integration in Asia And the Pacific* (United Nations Economic, Social Commission for Asia, and the Pacific (ESCAP) 2009) 70

¹⁴⁸ For example, EU Negotiations with Mercosur are based on the 1999 Negotiation Directives. Negotiations with ASEAN were ongoing since 2007 but have been stopped; the EU is now focusing on bilateral agreements with separate ASEAN members.

¹⁴⁹ Jan Wouters and others, ‘Some Critical Issues in the EU–India Free Trade Agreement Negotiations’ (2014) 20(6) *European Law Journal* 848, 1.

¹⁵⁰ *ibid*; For important details on use of Public health safeguards and flexibilities allowed in the WTO’s TRIPS agreement see TRIPS and Public Health, IISD Trade and Development Brief (2003) (http://www.iisd.org/pdf/2003/investment_sdc_dec_2003_9.pdf) and TRIPS and Public Health (https://www.wto.org/english/tratop_e/trips_e/tripsfacsheet.e.htm)

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health safeguards and flexibilities allowed in the WTO's TRIPS agreement. These provisions were quite surprising in the sense as India has repeatedly mentioned that it will not commit to provisions that go beyond the TRIPS agreement¹⁵¹. Another divisive issue concerns the Indian interest in the liberalisation of its service supplies under Mode 1 and 4 of the GATS¹⁵². Due to its growing skilled labour force in services, India interest is to seek better market access for services suppliers within Europe under a more liberal visa regime and for data secure nation status important for Indian IT companies wanting market access in Europe¹⁵³. Although initially EU interests also seem like India's interests while taking into consideration India's highly skilled services providing workforce and its consequent offensive interests¹⁵⁴. However, the EU does not seem to be interested to liberalise services under Mode 4 in the WTO and in FTAs¹⁵⁵. Similarly, the EU has also not given in to India's demand to liberalize services under Mode 1 which will have an impact on the use its call centres as well as its software engineering¹⁵⁶. The EU offers regarding Mode 1 services in Doha Round or (Doha Development Agenda, DDA) is counted very

¹⁵¹ Carlos M Correa, 'Negotiation of a free Trade agreement European Union-India: will India accept Trips-plus protection?' [2009] Oxfam Germany (http://www.oxfam.de/files/20090609_negotiationofafreetradeaggrementeuindia_218kb.pdf).

¹⁵² Wouters and others (n 149) 7.

¹⁵³ Gauri Khandekar, 'The EU-India summit: On the threshold of change' (2012) 1 ESP Policy Brief, 2.

¹⁵⁴ Rafael Leal-Arcas, 'Chapter Two: The Gats in the Doha Round: a European Perspective' in Kern Alexander and Mads Andenas (eds), *The World Trade Organization and trade in services* (Brill 2008) 53.

¹⁵⁵ Bernard Hoekman, Aaditya Mattoo, and Andre Sapir, 'The political economy of services trade liberalization: a case for international regulatory cooperation?' (2007) 23(3) *Oxford Review of Economic Policy* 367, 375.

¹⁵⁶ Michael Gasiorek and others, 'Qualitative analysis of a potential Free Trade Agreement between the European Union and India' [2007] Centre for the Analysis of Regional Integration, 4.

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limited¹⁵⁷. Like India the EU has also a huge interest in obtaining liberalization of Indian services sector, specifically the liberalization of Indian banking and financial sector, in the IT and Telecom sectors, education, insurance, health and construction sectors as well seeking liberalization of still very protected services sectors like legal, accountancy, retail, postal and distribution¹⁵⁸. No doubt both the parties have a shared interest in reaching an agreement on provision regarding liberalizing trade in services¹⁵⁹.

Similarly like India interests in the liberalisation of services under Mode 1 and Mode 4 of the GATT, EU also holds an important concern regarding the labour standards in India. It is important to note that India has not earlier ratified the 1973 Minimum Age Convention or the 1999 Worst Forms of Child Labour Convention which was one of the main serious issue in FTA negotiations between EU and India. India stance was that its Constitution provides labour rights protection cannot support its non-ratification of the important international labour conventions. The reason is that state laws vary considerably and practically they may not be consistent with the obligations under the Conventions so the chances of discrimination in wages and employment exist and cannot be overruled¹⁶⁰. Although EU could have evaded the inclusion of the provision regarding fairer labour standards while keeping in view India's waning interest as regarding the inclusion of provisions on fairer la-

¹⁵⁷ Hoekman, Mattoo, and Sapir (n 155) 375.

¹⁵⁸ Sangeeta Khorana and Nicholas Perdakis, 'EU-India Free Trade Agreement: deal or no deal?' (2010) 11(2) South Asia Economic Journal 181.

¹⁵⁹ Gasiorek and others (n 156) 4.

¹⁶⁰ CUTS ECORYS, *Trade Sustainability Impact Assessment for the FTA between the EU and Republic of India* (Final Report TRADE07/C1/C01, 2009); Dick Gupwell and Natalie Gupta, 'EU FTA negotiations with India, ASEAN and Korea: the question of fair labour standards' (2009) 7(1) Asia Europe Journal 79, 86

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bour standards in the FTA¹⁶¹. But such a concession would be a sheer opposition to Article 21 TEU which requires the EU to be guided by its principles while concluding the partnership agreements to foster the sustainable development and societal development with the developing countries¹⁶². Thus, it can be argued that the EU should not exempt to include the provisions relating to fairer labour standards in the proposed FTA with India to follow its goals, which are also enshrined in Global Europe Strategy. It reads ‘As we pursue social justice and cohesion at home, we should also seek to promote our values, including social and environmental standards and cultural diversity around the world’¹⁶³. It is important to note that India has now given its ratification of the the Minimum age convention and worst form of child Labour convention in June 2017¹⁶⁴. This will remove the EU concerns regarding the observance of fair labour standards in proposed FTA between EU and India.

The civil society in India has also raised its concerns regarding the subsidization of the agriculture and dairy sector. They have raised their protests the EU’s offensive interests regarding subsidization of the agriculture sector in India. The European agriculture imports from India in comparison to its exports are over five times larger despite the fact the EU tariff rates on such imports are relatively high¹⁶⁵.

¹⁶¹ ‘Labour Pangs Likely to Hold Up India-EU Free-Trade Agreement’ *The Economic Times* (7 November 2009) (http://articles.economictimes.indiatimes.com/2009-11-07/news/28434950_1_india-eu-trade-india-and-eu-india-eufree-trade-agreement).

¹⁶² Consolidated Version of the Treaty on European Union [1997] OJ C340/145 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11997M/TXT&from=EN>), art 21.

¹⁶³ European Commission, ‘Global Europe: Competing in the World: A Contribution to the EU’s Growth and Jobs Strategy’ COM(2006) 567 final.

¹⁶⁴ Ratification of ILO Convention by India (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102691).

¹⁶⁵ TJ Achterbosch, MH Kuiper, and Pim Roza, *EU-India free trade agreement: A quantitative as-*

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The Indian dairy farmers can produce the competitive dairy products as the production cost of the dairy products are quite low. Therefore, the demand for the Indian dairy products has been on the rise which includes the production of the raw milk and value-added products like cheese and butter¹⁶⁶. Many of the 90 million workers who are involved in dairy farming are landless¹⁶⁷. The Indian dairy industry is targeted by the EU dairy producer who will export its agriculture and dairy products with lower tariffs in the Indian market. This could have a serious implication for the Indian dairy farmers who must face the competitive pressure from the cheap EU subsidized dairy imports¹⁶⁸. The Indian dairy industry has a serious reservation about it. In 1999 when import quotas for skimmed milk powder were removed, the imports from the EU were raised. Similarly, Indian imports 130,000 tons of the skimmed milk powder from the EU when no tariffs existed on the skimmed milk powder¹⁶⁹. Later when the local dairy farmers protested this arrangement claiming the local producer could not compete with subsidized imports the Indian government have to reinstate the tariffs¹⁷⁰. Similarly, regarding provisions on the agriculture sector in FTA with EU, India hold a strong defensive agricultural interest to protect the mean of supports of the weaker parts of its population, thus India position is unlikely to change while concluding the provisions on the agriculture sector in FTA

essment (LEI Wageningen UR 2008) 195-196.

¹⁶⁶ See Sophie Powell, 'The EU-India FTA: initial observations from a development perspective' [2008] Traidcraft Polic Unit Policy Report (http://www.traidcraft.co.uk/Resources/Traidcraft/Documents/PDF/tx/policy_report.eu.india.FTA2.pdf), 13.

¹⁶⁷ Pia Eberhardt and Dharmendra Kumar, Trade Invaders: How big business is driving the EU-India free trade negotiations (2010) 21.

¹⁶⁸ Khorana and Perdikis (n 158) 191.

¹⁶⁹ Wouters and others (n 149) 13.

¹⁷⁰ Powell (n 166) 14.

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with EU¹⁷¹. However, the sustainability impact assessment report did not cover an analysis of the dairy sector as they ‘do not constitute an important share of trade between the EU and India... Given the limited number of sectors and issues to be analysed, a choice has to be made’¹⁷². The civil society actors are of the view that negotiations on FTA could be stalled on this subject, as it appears to be important to negotiators¹⁷³. On the other hand, the relevant officials who have drafted a qualitative report on FTA’s economic impact are of opinion that for the conclusion of the FTA agriculture liberalization could not prove to be a breaking point¹⁷⁴. Regardless of that EU seems to be pushing India to reach an agreement on agriculture¹⁷⁵.

Another issue concerns the inclusion of human rights provision in FTA which was not well received by India. For instance, the Netherlands have urged for the inclusion of the human right clause which is supported by Articles 2, 3 (5) and 21 (1) of TEU. Under these articles, the EU is required to uphold and promote human rights clauses in its partnership agreement with third states. Similarly, this approach is reaffirmed under Article 207(1) of TFEU for the Common Commercial Policy. Even the conclusion of the strategic partnership between EU and India was based on the understanding that it should be guided by, among other values, on the promotion of human rights values and both the partners should be engaging to coordinate and harmonize their positions on major multilateral human rights con-

¹⁷¹ Achterbosch, Kuiper, and Roza (n 165) 19,62.

¹⁷² ECORYS (n 160) 415.

¹⁷³ *ibid.*

¹⁷⁴ Gasiorek and others (n 156) 4.

¹⁷⁵ Amiti Sen, ‘India-EU meet: India to resist move to open multi-brand retail & other sectors to foreign investments’ *The Economic Times* (26 June 2012) (<https://timesofindia.indiatimes.com/india/Malnourishment-a-national-shame-Manmohan-Singh/articleshow/11443478.cms>).

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ferences and conventions¹⁷⁶. Similarly, regarding FTA with India, the Commission stated that for the promotion of the human rights values in India, it should be engaging in human right topics in a respectful and constructive manner. Besides that, India should start human rights discussion with the EU officials and human rights reports with recommendations for the EU-India human rights dialogue should be produced regularly¹⁷⁷. The EESC has called on the Commission to make sure that FTA complies with the human rights and stressed on the attachment of the human rights clause to FTA¹⁷⁸. Similarly, the EP declared that inclusion of the human right clause in FTA is an essential element, which shall consider the persecution of the religious minorities in India and human rights defenders in India along with the current human rights situation in Kashmir¹⁷⁹. In this context, it is important to note that the Commission in its 2010 communication ‘Trade, growth and world affairs’ only urged the partners to respect and promote human rights¹⁸⁰.

On the other hand, India stance is that clauses concerning human rights, environmental standards and non-proliferation should not be included or connected to FTA¹⁸¹. Both the sides have once again shown an interest in resumption of negotiation on FTA which broke down in 2013 on various divisive issues in the 14thEU-

¹⁷⁶ Wouters and others (n 149) 14.

¹⁷⁷ ‘Communication from the Commission to the Council, The European Parliament and the European Economic and Social Committee An EU-India Strategic Partnership’ COM(2004) 0430 final, para 2.1.6.

¹⁷⁸ Opinion of the European Economic and Social Committee on ‘The role of civil society in the free trade agreement between the EU and India’ [2012] OJ C24/51.

¹⁷⁹ European Parliament resolution of 26 March 2009 on an EU-India Free Trade Agreement (2008/2135 (INI)) [2010] OJ C117E/166, 40.

¹⁸⁰ ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Trade, Growth and World Affairs Trade Policy as a Core Component of the EU’s 2020 Strategy’ COM(2010), 15.

¹⁸¹ Gauri Khandekar, ‘The EU and India: a loveless arranged marriage’ (2011) 90 FRIDE policy brief.

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India summit held in New Delhi on 6 October 2017, the joint statement read as:

‘The leaders expressed their shared commitment to strengthening the Economic Partnership between India and EU and noted the ongoing efforts of both sides to re-engage actively towards timely relaunching negotiations for a comprehensive and mutually beneficial India-EU BTIA¹⁸². It is important to note that India is interested to have a toned-down version of the BTIA, this includes the chapter on investments but as far the contentious issues are concerned between the two, India intends to avoid it for the time being. However, the EU is seen holding its previous position relating to these divisive issues¹⁸³.

8.12.2 EU-Pakistan Free Trade Agreement(FTA): Future Prospects

Most importantly, besides the extension of the two-year GSP+ status to Pakistan the European Committee on International Trade CIT has also agreed to discuss upgrading Pakistan’s from the GSP+ beneficiary to a Free trade agreement (FTA) partner in future. If that is achieved that could bring enormous economic benefits to Pakistan. The EU through its free trade agreements with its partners helped them to achieve a rule-based economy. EU also wants that the smooth transition of the Pakistan’s current structure of Pakistan business market into a rule based global economy. The EU free trade agreements with its partners are very ambitious. Through these agreements the EU wants to open markets with its key partners state

¹⁸² EU-India Summit, New Delhi (6 October 2017) (<http://www.consilium.europa.eu/media/23515/eu-india-joint-%20statement.pdf>); Also see Overview of the FTA and other Trade Negotiations (http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf)

¹⁸³ India, EU to hold free talks next week (9 November 2017) (<https://www.livemint.com/Politics/UDXmgxJeTNKK5QIAUBmeoK/India-EU-to-hold-free-trade-talks-next-week.html>).

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to make trade free and cheaper through elimination of custom duties, to provide better access to foreign investors for trade and investments and to provide access to government procurement markets. Through FTA agreements EU also strive to ensure the implementation of the intellectual property rights, labour laws, human rights and enforcement of the competition rules in the open markets.

Pakistan can achieve much in terms of trade and sustainable development through this opportunity, keeping in view the current structure of Pakistan's business environment, its underdeveloped infrastructure, its energy crisis and employment of the young labour force. The free trade agreement with EU could not only bring enormous business and investment opportunities to Pakistan but could also help it in establishing into rule-based economy. This agreement will also help in diversifying the Pakistan's export to EU beyond the few selected sectors. It will attract the EU investors who can explore the new opportunities that Pakistani market can offer. It will also have helped Pakistan business industries in the effective implementation of the labour and human rights standard besides making a space for the equal gender opportunities in its business and Industrial environment.

8.13 Comparison of India and Pakistan Security Co-Operation with EU

8.13.1 India-EU Security Co-Operation

Pakistan and EU Counter-terrorism engagements has been dealt in detail in chapter 5 of this thesis. This section will cover only India and EU security co-operation. For assessing the scope of EU-India security co-operation it is important to review

8.13. COMPARISON OF INDIA AND PAKISTAN SECURITY CO-OPERATION WITH EU

each side's security concerns. For Europe, currently four security challenges predominate. They are terrorism perpetrated by minority Muslim zealot groups, Russian revanchism, the migrant crisis and associated problems of civil war and state collapse in Middle East and North Africa¹⁸⁴. For India its two important security challenges are cross border terrorism from Pakistan. The recent example is the Pulwama attack on security personnel in India occupied Jammu and Kashmir for which India accused the Pakistan intelligence for backing the terrorist group based in Pakistan and secondly to deal with the steady growth of China's economic power and its military presence along the India's land and maritime borders due to the undergoing project of Pakistan-China economic corridor. Although both the partners have divergent security interests there is a clear imperative for greater understanding between EU and India on range of security issues. Both India and EU, keeping in view the security challenges have brought a change in its foreign policy. The newly elected government in 2014 demonstrated this change when its was announced by its foreign policy office that 'India wants to be a leading power rather than just a balancing power'. Similarly EU to effectively deal with new security challenges have increased its focus on constructing both an outward and forward looking foreign policy¹⁸⁵. Apart from their variant strategic interests both the partners have a scope of engagement on three important areas which include west Asia, Maritime security and Counter-terrorism and radicalisation¹⁸⁶. In context of EU-India secur-

¹⁸⁴ S Ekim, 'What's the future of European (in) Security and (dis)order?' [2017] Brookings institutions (<https://www.brookings.edu/blog/order-from-chaos/2017/03/10/whats-the-future-of-european-insecurity-and-disorder/>).

¹⁸⁵ S Saran and K Gupta, 'Introduction: the scope for security cooperation between the EU and India' in Samir Saran and others (eds), *Prospects for EU-India security cooperation* (European Institute for Security Studies 2016) 5.

¹⁸⁶ *ibid.*

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ity cooperation, I will focus my analysis on EU-India counter terrorism engagements only. Counter-terrorism has been recognized one of important area for EU and India cooperation since the strategic partnership was forged. In a political declaration of September 2005 on the India-EU strategic partnership, both the partners affirmed to extend their cooperation in area of counter terrorism. The statement read as:

We recognize the fact that terrorism constitutes one of the most serious threats to international peace and security and reaffirm our condemnation of all acts of terrorism in all its forms and manifestations as criminal and unjustifiable, irrespective of their motives. As part of our joint efforts to fight terrorism, we will establish contacts between the EU Counter-Terrorism Coordinator, work towards blocking access to terrorist financing and co-operate in the fight against money laundering¹⁸⁷. Later in 2010 EU-India Joint Declaration on International Terrorism, the key areas were identified for extending their cooperation to counter terrorism in all its forms and manifestations. The scope of the identified key areas was as follow:

1. **Law Enforcement and police cooperation:** Both the partner agreed to extend mutual cooperation in order to prevent terrorists access to financial and other resources, sharing of strategic information relating to the terrorists group to prevent terrorist activity, to identify various areas of cooperation with respect to the designated agencies according to their respective competencies, to work towards providing the mutual legal assistance and for exploring the possibility of an EU - India Mutual Legal Assistance agreement and EU-India agreement on Extradition.

¹⁸⁷ Council of the European Union, Political declaration on the India-EU Strategic Partnership (7 November 2005) 11985/05 (http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/86132.pdf).

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2. **Cybersecurity:** In cybersecurity both the sides agreed for developing closer linkages and work together for mutual assistance in cybersecurity.
3. **Transport, Aviation and Border Security:** Under this area both the partners have agreed to coordinate their efforts against the terrorist and terrorist group to deny them haven and freedom of travel as per international law; both the sides have agreed to work together in ICAO for the improvement of the international security standards for the passengers, cargo and mail and to control the movement of terrorist and terrorist group across the national border. Besides that, both the sides have also agreed to work towards the more efficient control on the issuance of identity and travel documents.
4. **To Work Together in Multilateral System to Counter Terrorism:** For countering terrorism both the sides have agreed to increase cooperation in the various multilateral forums like the UN and to make efforts towards the adoption of CCIT. Both have showed their serious commitment towards the implementation of the 2006 UN Global Counter-Terrorism Strategy which can be used as a mean towards enhancing the national, regional and global efforts to counter terrorism, to make contribution under the Financial Action task force to control the international financing of the terrorist groups and to share best practices regarding financial controls. Thus, both the partners decide to encourage the global ratification and the effective implementation of all the relevant conventions on counter-terrorism, and to works towards the promotion of the civil dialogue among various civilizations to broaden the understanding among civilizations under the auspices of the UN as a mean to control extremism. Besides that, both India and EU have also agreed to adopt

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an effective and comprehensive approach to control violent extremism which was identified as a vital component of their efforts to control terrorism¹⁸⁸.

Both the partners stressed the importance of holding a high-level counter-terrorism and security dialogues with intervals. The Sixth EU-India security dialogue was held in Brussels on October 25, 2012, besides that in Hague EU-India practitioner's workshop was also conducted on 12 December 2012. Similarly, the two sides also hold timely meetings on cybersecurity, disarmament, nuclear proliferation and on counter-piracy.

8.13.2 India - EU Joint Declaration to Fight against Terrorism, 30 March 2016

The Joint declaration of the EU - India to fight against terrorism is noteworthy for three reasons. First both the partners called for the 'perpetrators of attacks in Paris, Brussels, Pathankot, Gurdaspur and Mumbai terror attacks to be brought to justice. Leaders called for the decisive and united actions to be taken against ISIL 'Daesh, Lashkar-e-Tayeba, Jaish-ei Muhammad, Hizbul Mujahideen, the Haqqani Network and another internationally active terrorist group such as Al-Qaeda and its affiliates.

Second, both the partners have agreed to adopt a comprehensive approach to address the issue of terrorism. Thus, they resolved to extend their cooperation to prevent counter violent extremism and radicalization, disrupt terrorism movement and flow of foreign terrorist fighters, to control financial sources of terrorist fin-

¹⁸⁸ European Union, EU-India Joint Declaration on International Terrorism [2010] (https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/118405.pdf).

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ancing, to dismantle terrorist infrastructure and to prevent the supply of arms to terrorists. Third, both EU and India have also expressed their concerns about the increased incidence of the radicalization of youth and use of cyberspace for this purpose. Therefore, both the sides resolved to extend their cooperation in information technology and communication which also include the IT service provider to control the use of the cybers' space by the terrorist groups for promoting their agendas and to work towards controlling the extremist narratives online¹⁸⁹.

8.13.3 India-EU Joint Statement on Cooperation in Combating Terrorism, 6 October 2017

In the India-EU 14 Summit held in Delhi on 6th October 2017, both the partners reaffirmed their commitment to enhance their cooperation to fight against the terrorism. Both the partners adopted the joint statement on cooperation in combating terrorism. Recalling there 2016 declaration on the fight against the terrorism both the sides reiterated their commitment to adopt comprehensive approach to tackle the issue of terrorism. Both the sides resolved to enhance cooperation to prevent counter terrorism, violent extremism and radicalization, flow of foreign terrorism fighters, disrupt recruitments, stop sources of terrorism financing, prevent supply of arms to terrorists and to dismantle terrorist infrastructure. Besides that, both the sides emphasized on the urgent need for the adoption of the Comprehensive Convention on International Terrorism in the United Nations. This convention will serve as an instrument for a global alliance against terrorism and will reinforce the message that no grievance or cause can justify the terrorism in any form. Both the

¹⁸⁹ European Union, EU-India Joint Declaration on International Terrorism (n 188).

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sides reaffirmed that terrorism should not be linked with any religion, civilization, ethnic group or nationality. Both the partners also affirmed their commitment to enhance their cooperation to fight radicalization and violent extremism. The issue regarding increased incidence of radicalization of youth and use of internet for this end was also taken into consideration. Besides that, both the sides emphasized the need of people to people contact and exchanges between academics, civil society, and leaders as a step towards promoting peace, tolerance, inclusiveness and welfare to overcome hatred and violence¹⁹⁰.

Analysing EU-India political declarations and commitments to counter terrorism, there are two important areas which have been identified by both of them for enhanced cooperation. This include, first dealing with groups which both the partners agree are terrorists, by restricting their movement and financing, secondly sharing best practices in responding to or mitigating different types of terrorist attacks¹⁹¹. Both the partners have explored the scope for collaboration introduced frameworks for cooperation in these two areas. However still there exist gaps due to reluctance on either side for dialogue particularly on sensitive issues¹⁹². In order to deal with terrorist groups both the sides have agreed on promoting joint efforts to disrupt recruitment, stem terrorist movements, tackle terrorist financing and prevent supply of arms¹⁹³. However the proposal concerning sharing of intelligence have proved diffi-

¹⁹⁰ India-EU Joint Statement on Cooperation in Combating Terrorism, New Delhi (6 October 2017) (<http://www.consilium.europa.eu/media/23516/eu-india-joint-declaration-on-counter-terrorism.pdf>).

¹⁹¹ G Price, 'Counter-terrorism and Radicalisation' in Samir Saran and others (eds), *Prospects for EU-India security cooperation* (European Institute for Security Studies 2016) 33.

¹⁹² *ibid.*

¹⁹³ *ibid.*

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cult to enforce until now¹⁹⁴. Both the partners have also agreed to share experiences in responding to terrorist activities, in light of terrorists attacks on Mumbai, Paris and Brussels. Moreover the EU had also agreed to provide its assistance in India's 'smart cities' initiatives which provide a great scope for sharing best practices in building resilience whether in relation to disaster or terrorist attacks¹⁹⁵. There has been limited cooperation between the two on cyber security and intelligence sharing due to India certain concerns and sensitivities. Since recent terrorist attacks in Europe there has been growing interest on both sides to enhance engagements on issues that previously proved to be sensitive.

Radicalisation is another important area that need enhanced cooperation of both the partners. Indian Muslims a population of 180 million have proved remarkably resilient to radicalisation. However radicalisation issue is pertinent one for the EU as of mid 2015 around 1,200 French 440 Belgian, and 500-600 German Muslims have joined the Islamic state¹⁹⁶ in contrast to Indian Muslim whose number in the group stood at just 25¹⁹⁷.

Concerning regions, both EU and India have shared their concerns regarding number of countries and regions which include Afghanistan, Pakistan, North Korea, Nepal, Iran, Middle East particularly Syria¹⁹⁸. Amongst that, Afghanistan issue hold

¹⁹⁴ Price (n 191).

¹⁹⁵ Ministry of Urban development, Smart Cities (2015) ([http://164.100.161.224/upload/uploadfiles/files/SmartCityGuidelines\(1\).pdf](http://164.100.161.224/upload/uploadfiles/files/SmartCityGuidelines(1).pdf)).

¹⁹⁶ Louisa Loveluck, 'Islamic State: Where do its fighters come from' *The Telegraph* (8 June 2015) (<https://www.telegraph.co.uk/news/worldnews/islamic-state/11660487/Islamic-State-one-year-on-Where-do-its-fighters-come-from.html>).

¹⁹⁷ Vijaita Singh, '25 Indians in Islamic State: govt' *The Hindu* (27 December 2015) (<https://www.thehindu.com/news/national/25-indians-in-islamic-state-govt/article8032071.ece>).

¹⁹⁸ Saran and Gupta (n 185) 5.

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equal importance to both the partners. Stable and secure Afghanistan is in interest of both EU and India not only from counter terrorism perspective but also for the regional security. Both EU and India has a main interest to prevent Afghanistan from being used by extremist and terrorist groups to launch terrorist attacks in India or Europe. As pointed out by India's permanent Representative to the United Nations in his speech in July 2008 that 'security within Afghanistan and co-ordinated efforts to stop terrorists from operating with impunity beyond Afghanistan borders must be paramount priority of our collective efforts in Afghanistan'¹⁹⁹. India feared if security in Afghanistan is not achieved then with the withdrawal of the NATO forces, the country will be used as a safe heaven and training ground for anti-India extremists and terrorists groups²⁰⁰. Therefore, secure and stable Afghanistan is not only in interest of India but for the whole South Asia. It is for this very reason India that has been exerting its political influence in Afghanistan. India has been Afghanistan's fifth-most significant source of development assistance and its largest South Asian donor²⁰¹. It has provided aid and development assistance to the Karzai government for the various projects such as health, infrastructure, training, health care, civil aviation²⁰² and has trained the Kabul police forces and established a framework for bilateral counter-terrorism cooperation in 2011 and in

¹⁹⁹ Nirumpan Sen, 'Permanent Representation from India to the United Nations, statement on the situation in Afghanistan in the United Nations Security Council, 9 July 2008' in Avtar Singh Bhasin (ed), *India's Foreign Relations-2008* (Ministry of External Affairs and Geetika Publishers 2009) 2534.

²⁰⁰ See 'Clueless in Afghanistan' *Live Mint* (27 January 2010).

²⁰¹ Shiza Shahid, 'Engaging Regional Players in Afghanistan: Threats and Opportunities' [2009] Center for Strategic and International Studies, Washington D.C, 2.

²⁰² President of India, speech in the honour of the President of the Islamic Republic of Afghanistan, Hamid Karzai, New Dehli (4 August 2008).

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2012²⁰³. Moreover, India has also deployed its own small number of security forces to Afghanistan for the protection of Indian diplomatic missions and reconstruction projects²⁰⁴. Attaining peace and secure democratic process is in India's foreign policy interest and Afghanistan is also considered a litmus test for India's ascendance as a regional and global power²⁰⁵.

EU shared an equal interest in secure and stable Afghanistan mainly because of its involvement as an important ally of NATO coalition forces since start of America war on terrorism in Afghanistan. EU has deployed over 33, 000 troops to the NATO-led International Stabilisation and Assistance Force (ISAF) and has committed 8 billion euros in aid for Afghanistan during the period 2002-2010. Attaining Secure and stable Afghanistan will serve both the EU-India partners regional and global policy objectives. For achieving that both EU-India need to coordinate their approach towards Pakistan. Pakistan is one of the important regional player for attaining security in Afghanistan due to its close cultural and religious links with Afghanistan. Moreover Pakistan has also links with the Taliban group in Afghanistan which gives a considerable leverage and influence to Pakistan over any peace process in Afghanistan. Since Pakistan's involvement in American war on terror has given rise to anti-American sentiments in the country and have also fuelled the radicalisation of the Taliban elements and the people in general remained resentful of the Western military forces in the region. Moreover, Pakistan has also suffered huge human losses along with heavy economic and infrastructure losses due to its

²⁰³ 'India to train Karzai armed forces, establish military ties in Central Asia' *Defense News* (19 July 2010).

²⁰⁴ Larry Hanauer and Peter Chalk, 'India' in Larry Hanauer and Peter Chalk (eds), *India's and Pakistan's Strategies in Afghanistan* (RAND Corporation 2012) 13.

²⁰⁵ Harsh V Pant, 'India's Changing Role' [2011] *Middle East Quarterly*, 31-39.

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involvement in American war on terror. EU through its counter terrorism engagements with Pakistan has provided economic and technical assistance to counteract states weakness in countering terrorism and in building infrastructure in terrorism hit areas. Hence secure and stable Afghanistan is in interest of not only India and EU but also Pakistan so that Afghanistan territory is not used by terrorist groups and for launching attacks against any country. EU should use its leverage as the largest India and Pakistan trading partner and their biggest source of aid and development by establishing a security dialogue for achieving as well as assisting a meaningful solution in Afghanistan necessary for combating terrorism and for overall regional security.

8.14 Comparison of India and Pakistan Clean Energy and Climate Partnership with EU

8.14.1 EU-India Clean Energy and Climate Partnership

EU considered India a crucial and potential partner in clean energy and climate mitigation partnership. In 2004 EU - India set up an energy panel to address the familiar challenges of energy security. Besides extending cooperation in the field of renewables the energy panel was tasked to promote the security of supplies and to maintain the stability of prices. The energy panel decided to set up working groups in three areas: 1) Coal and clean coal conversion technologies, 2) Energy efficiencies and renewable energies, 3) Fusion energy including India participation

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in ITER²⁰⁶. Without any major changes, this cooperation was reiterated through various dialogues and mechanism in 2005, 2012. The working group on petroleum and natural gas as part of the energy panel was also established in 2007. The agenda given to the working group include securing the supplies at competitive prices and to diversify sources and transport routes. The group was also required to convene their meeting twice a year, however, no meeting of the group was reported after 2007²⁰⁷. In terms of time and resources the level of the engagement of the group was below par thus it could not meet its objectives. A joint work programme on energy, climate change and clean development was adopted in 2008²⁰⁸. The recent developments in the sector of clean energy and climate change took place in the Summit which was held in Brussels on 30 March 2016. In this summit both the partners have adopted a joint declaration on clean energy and climate partnership. The declaration outlines the commitments and cooperation of both the partners in the field of clean energy, energy efficiency and climate action. Under the climate and clean energy partnership, both the partners will share their views on policy and regulatory approaches as well as will work together to promote business solutions and will support each other joint innovation activities. In this regard the European Commissioner for climate action and energy said:

‘As a major world player, India is a crucial partner for the EU on climate and Energy matters. I look forward to deepening our already fruitful relationship with

²⁰⁶ Ministry of External Affairs Government of India, Inaugural Meeting of the India-EU Energy Panel, Press Release (29 June 2005) (<http://mea.gov.in/pressreleases.htm?dtl/5451/Inaugural+meeting+of+IndiaEU+Energy+Panel>).

²⁰⁷ Ministry of External Affairs Government of India, 2nd Meeting of the India-EU Energy Panel (7 April 2007) (<http://mea.gov.in/press-releases.htm?dtl/4689/2nd+Meeting+of+the+IndiaEU+Energy+Panel>); *ibid*

²⁰⁸ *ibid*; *ibid*

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this new partnership. Together, EU and India can boost energy security and fight climate change through a clean and sustainable energy system'²⁰⁹.

The EU and India cooperation in the energy sector will cover the following areas i.e. co-operation on energy efficiency in buildings, development of renewable energy sources which include solar and offshore wind, smart grids and funding energy research and innovation. Besides that, both the partners also agree to explore opportunities for collaboration for the promotion of the objectives set out in the International solar Alliance. The International Solar Alliance was launched by France and India at the Climate conference (COP 21) held in Paris in December 2015.

Moreover, both the partners have also agreed to work together to promote the implementation of the intended climate plans (INDCs) formulated after the Paris climate summit, ways to adapt and lessen the adverse impacts of climate change and to introduce the transparency and accountability framework for the climate change. Both the sides have also agreed to work and extend their cooperation in the context of Montreal Protocol.

At the EU-India summit held in Delhi on 6 October 2017, both the partners have adopted a historic leader's joint statement on clean energy and climate change²¹⁰. The statement was endorsed by the leader at the summit. During the Summit, the European Commissioner for climate action and energy Miguel Arias Canute said:

'This first-ever statement is a testimony of our highest political commitment

²⁰⁹ The Joint declaration between European Union and Republic of India on A Clean Energy and Climate Partnership (<http://www.consilium.europa.eu/media/23673/20160330-joint-declaration-energy-climate.pdf>); See also EU and India agree on Clean energy and climate partnership, 2016-March-31 (<https://ec.europa.eu/energy/en/news/eu-and-india-agree-clean-energy-and-climate-partnership>)

²¹⁰ EU-India Joint Statement on Clean Energy and Climate Change (6 October 2017) (https://ec.europa.eu/clima/sites/clima/files/news/20171006_statement_en.pdf).

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to the Paris Agreement and the clean energy transition. Today, the EU and India are joining forces to help put the Paris Agreement into practice and bolster energy cooperation, including new fields of cooperation on energy efficiency, smart grids and now emissions, mobility. By working together, we can make a difference and jointly lead the global clean energy race'²¹¹.

Both the partners have confirmed their commitments under the Paris Agreement and have agreed to establish a cooperation to enhance the implementation of the agreement and to meet its objectives. Besides that, both the partners have also agreed to further develop their partnership through facilitating business to business interactions on the implementation of climate action commitments and clean energy sector. They also agreed to expand their cooperation to new areas which include green cooling, energy storage solar pumping and advanced biofuels. They also agree to establish a strong partnership to work on the reduction of the greenhouse gas emission and to enhance resilience to climate change. Besides that, both the partners commit to pursuing constructive collaboration on the implementation of India's national climate plan²¹².

8.14.2 EU - Pakistan Clean Energy Co-operation

In comparison to India India which entered into clean energy co-operation with EU in 2004, Pakistan held its first EU-Pakistan energy dialogue in Brussels on 27 January 2017. The two sides in their first meeting discussed the energy crisis in

²¹¹ EU-India Joint Statement on Clean Energy and Climate Change (n 210); See also India and EU strengthen partnership to implement Paris Agreement and boost clean energy cooperation (https://ec.europa.eu/clima/news/india-and-eu-strengthen-partnership-implement-paris-agreement_en)

²¹² EU-India Joint Statement on Clean Energy and Climate Change (n 210).

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Pakistan and explored the potential for cooperation between the two partners in energy sectors and renewable resources. The two sides discussed the viable projects that could help Pakistan in solving its energy crisis and to meet the growing demand of energy particularly through use of clean and renewable sources²¹³.

8.15 EU Revised Strategy for India for Enhanced Relationship with India

As already analysed that EU-India strategic partnership could not achieved its broader strategic objectives it has aimed. The relations between the two partners remained focussed mainly in areas of trade, technology, education and cultural exchanges. However, past few years have saw a momentum in their relations triggered by their foreign policy and strategic interests in the region. Few important factors have contributed in renewing the relations between the two partners. First the assertive China in South Asia causing similar economic, political and security concerns for both India and EU. Secondly US policy under the Trump administration is viewed as a threat to global liberal order by the European. Brexit is another important factor which has pushed India to look for new 'gateways' to Europe with the departure of its traditional partner from Union. Similarly Europe also felt the need to strengthen its partnerships in a resurgent Asia²¹⁴. Given these factors a substantive

²¹³ Embassy of Pakistan, Pakistan-EU Energy Dialogue Commences in Brussels, Press Release (27 January 2017) (<http://embassyofpakistan.be/site/press-release-pakistan-eu-energy-dialoguecommences-in-brussels/>).

²¹⁴ HV Pant, 'Together in an uncertain world' [2018] Observer Research Foundation (<https://www.orfonline.org/research/together-in-an-uncertain-world-45709/>); G Mohan, 'Rediscovering Europe: New avenues for the Europe-India Partnership' [2018] Global Public Policy Institute (<https://www.gppi.net/2018/08/09/rediscovering-europe-new-avenues-forthe-europe-india-partnership>)

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engagement between the two partners is a natural corollary. The momentum in relationship started once again with 13th EU-India summit that was held in Brussels on 30 March 2016 after a four year gap. The summit generated six policy documents with different thematic focus. This reflected the interests of both the partners to keep up the appearance of their strategic partnership²¹⁵. It was in this summit that two sides set up the ‘Agenda for action 2020’ which prioritise cooperation in four main areas i.e. foreign policy, trade and investment, global issues and sectoral policy cooperation and people to people contacts²¹⁶. The 14th summit between EU-India that was held in New Delhi on 6 October 2017 proved significant as it reflected the growing convergence between the two partners on regional and international issues. For the first time in their declaration on counter-terrorism there was a specific mention of globally proscribed terrorists and terrorist groups, including Hafiz Sayeed, Zakiur Rehman Lakhvi, Dawood Ibrahim, LeT, Hizbul Mujahideen, JeM²¹⁷. It was also expressed that ‘responsible countries should take adequate measures to ensure that their territory is not used for terrorist activities’. This statement was relevant to Pakistan as well, keeping in view the past terrorists attacks on India for which India accused Pakistan for its support to the jihadist group and supporting them for terrorist attacks on India²¹⁸. Second the two sides, also expressed their common stance on China’s ‘Once belt and one Road. It states that the ‘connectivity issue must be based on universally recognized international norms, good governance, rule

²¹⁵ Andrea Frontini and Susanna Mocker, ‘Cutting the Gordian knot? Assessing the outcomes of the March EU-India Summit. EPC Commentary, 8 April 2016’ [2016] European Policy Centre.

²¹⁶ *ibid.*

²¹⁷ SD Pradhan, ‘The significance of the 14th India-EU Summit’ *The Times of India* (10 October 2017) (<https://timesofindia.indiatimes.com/blogs/ChanakyaCode/the-significance-of-the-14th-%20india-eu-summit/>).

²¹⁸ *ibid.*

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of law, openness, transparency, equality and must follow principles of social responsibility, accountable debt financing practices, balanced ecological and environmental protection, preservation standard and social responsibility'. This statement clearly reflected both the sides reservations on the Chinese centrally designed project without respect to international norms²¹⁹. Third, with reference to China activities in South China Sea to the two sides also underlined 'the importance of freedom of navigation, overflight and peaceful resolution of disputes, in accordance with the universally recognized principles of International law, notably the United Nations Conventions on the laws of Seas (UNCLOS)1982'²²⁰. On Nuclear non-proliferation matters two sides re-affirmed their support to the Iranian nuclear deal as a 'crucial contribution to the non-proliferation framework and international, peace stability and security'²²¹. Concerning North Korea nuclear tests both the sides stressed the responsibility of those who provide support to North Korean nuclear missiles programmes²²². Hence for the very first time both EU and India expressed their understanding on issues having relevance to security, counter-terrorism and regional security.

As way forward the European Commission and High Representative of the Union in November 2018 adopted a joint communication to the European Parliament and the Council called 'Elements for an EU strategy on India'²²³. The strategy lay out the road map for strengthening the EU-India partnership which has lost its momentum

²¹⁹ Pradhan (n 217).

²²⁰ *ibid.*

²²¹ *ibid.*

²²² *ibid.*

²²³ European Commission, 'Joint Communication to the European Parliament and the Council Elements for an EU strategy on India' JOIN(2018) 28 final (https://eeas.europa.eu/sites/eeas/files/jc.elements_for_an_eu.strategy_on.india.-_final.adopted.pdf).

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for few good years due to the absence of a clearly articulated strategy.

In recent years EU has emerged as an important economic and political actor and have developed robust bilateral relations with strategic partners and countries in Central, East South and Southeast and with the Association of Southeast Asian Nations Asia(ASEAN). The EU is working on developing its strategy ‘Connecting Europe and Asia’ and enhancing its security policy engagement in the region. With this background setting it has an interest fortifying its political and economic ties with India, along with security and defence cooperation, because it holds an important geo-strategic position in Asia and emerging global power due to its consistent economic growth, strong demographic dynamism and an ambitious drive for modernisation. Due to its emerging economy it holds a position of strength in continent of Asia. EU believes that a strong partnership with India is a key for balanced EU policy towards Asia as a whole. The joint communication proposes element for the EU strategy towards the India for the next 10-15 years based on the last commission communication on India of 2004²²⁴ as well as the recommendations given by the European parliaments in its resolution of 2017 concerning EU relations with India. This Joint communication revised the scope of EU-India engagements in the following areas

1. Reinforcement of the EU-India strategic partnership
2. Aim for building a strong partnership for sustainable modernisation: For attaining that the EU will continue to work with India for the adoption of comprehensive and balanced agreements on trade and investment and support a

²²⁴ ‘Communication from the Commission to the Council, The European Parliament and the European Economic and Social Committee An EU-India strategic partnership’ COM(2017) 0623 final.

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rules-based global trade regime. To enhance trade and investment and unlock the potential of two economies EU will use all available channels to ensure fair market access and predictable investments conditions.

3. Both the partners should join forces to maintain the rule based on effective multilateralism and global economic governance. This required cooperation within the framework of multilateral forums such as United Nations, WTO and G20.
4. Develop a shared approach at the multilateral level to tackle the global challenges such as environment protection, climate change, ocean governance, sustainable development and work jointly for the effective implementation of the Paris agreement. It is suggested that EU should continue supporting their International solar Alliance and cooperate to facilitate Indian clean energy transition and implement the sustainable development goals, including through an enhanced cooperation in the area of research and innovate
5. To seek common responses to security threats and regional issues

Overall this revised strategy underscore a transformative shifts in EU approach towards India concerning its engagements with India in different areas particularly EU interest in reinforcing cooperation on foreign policy issues and developing security and defence cooperation. The EU objective in reinforcing cooperation with India on foreign policy is to play together an important role in the stability and security of their extended neighbourhood which includes Central Asia, the Middle east and west Asia, Africa and the Indian Ocean. In area of foreign policy engagements, the strategy pointed out the improved India and Pakistan relations which

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is considered important as it would unlock the potential of two countries as well as that of region. The EU seek to play with India a coordinated role on important international issues such as their support to Afghanistan to built it as a prosperous and self reliant country, implementation of the joint Comprehensive plan of Action on Iran, the ‘two state solution’ in Middle East Peace Process and to work jointly in contributing peace and prosperity in Africa and supporting African solutions to African crisis.

For the very first time the EU which is traditionally diffident of using its hard power tools proposes the defence and security cooperation with India²²⁵. This would include exchange of experience in training, capability development participation in missions and operations and research into new defence system. Moreover to develop concrete initiatives and promote better understanding of EU policies, it is essential to develop further military to military relations with India which would cover engagement between leaders of India armed forces and EU military structures and joint exercise. Other key focus areas for security cooperation include terrorism which required strengthening of technical cooperation on combating terrorism, countering radicalisation violent extremism and terrorism financing, cyber security maritime security. EU also seeks India cooperation on Indian Ocean concerning security and governance, building on counter-piracy and promoting respect for the international law of sea. EU also intend to seek positive engagement with India on non-proliferation and disarmament export control, nuclear safety and security. Following its stance on non-proliferation treaty regimes, it urges India to join comprehensive test ban treaty (CTBT) and non-proliferation of Nuclear weapons (NPT)

²²⁵ Council of the European Union, Enhanced EU Security Cooperation in and with Asia-Council Conclusions [2018] (<https://www.consilium.europa.eu/media/35456/st09265-re01-en18.pdf>).

to encourage India to join the Arms Trade Treaty and the Comprehensive Nuclear Test Ban Treaty.

Although EU and India have been enjoying robust trade and investments relation, the two partners could not accomplish FTA until now due to disagreement between them concerning issues already discussed. In this respect EU in its revised strategy has expressed its commitment to work towards comprehensive and balanced agreements with India that will respond to each side's key interests in trade and investment and which would contribute to sustainable growth and development of both the partners.

8.16 Conclusion

The comparative analysis of India and Pakistan partnership with EU in specific area of Cooperation showed that for both the countries EU has been a very important trade partner. Trade is the backbone of their relations with Europe. European market has been the most important destination for both the countries exports products as well as for their imports. Hence for both the countries EU has been the foremost trading partner as well as the largest investor. Apart from trade and investment EU is crucial partner of India in area of clean energy and climate change. India has been benefiting from EU expertise in this area of cooperation. Similarly in area of science and technological innovation EU and India has established strong linkages in addition to education and cultural exchanges. Pakistan though enjoys strong trade links with EU but in comparison to India its linkages with EU in clean energy and climate change, science and innovation and education has been quite limited.

Undoubtedly EU gives importance to India in its external relations. India grow-

ing economic market and EU's and India shared fundamentals of democracy and diversity led to the establishment of strategic partnership between the two. EU have forsee the crucial role India can perform along with it on regional security, counter-terrorism, non-proliferation and other global issues. However both India and EU have underperformed in their strategic partnership until now due to lack of convergence on issues that impinge on their strategic partnership as well as India inclination towards other powers particularly U. S. A in its foreign policy and security matters. Besides being the strong economic partners one of the most important area for closer engagement between the two is counter terrorism. Both the partners have reaffirmed their commitments in their joint declarations to fight international terrorism. Overall the political engagement between the two partners on important issues remain underdeveloped. For the reinforcement of political, security and strategic ties with India EU has revised its strategy towards India. The EU interest in renewed strategic partnership with India is in fact an offshoot of EU renewed security interests in Asia. The India growing economy and its dominant position in South Asia make India an important external partner for EU. EU revised strategy for India indicates its interest to forge strong economic, political and security engagement with India.

In comparison to India, EU has recently forged a strategic partnership with Pakistan. The strategic partnership will lay a foundation of strong partnership and will expand the relations in new areas of cooperation. Now being a strategic partners both EU and Pakistan can work together on regional security, counter terrorism, climate change and issues having a global significance. EU has a significant interest in attaining peace in Pakistan. Pakistan can play a positive role along with EU in supporting a peace process in Afghanistan important for regional security. Counter terrorism and non-proliferation are the other important area where both

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the partners can enhance their cooperation. Taking advantage of this strategic partnership with EU, it is important that Pakistan should enhance its economic and sectorial cooperation, specifically in education, science and technology, clean energy, development closer cultural ties and exchanges.

9 Conclusion

This Chapter concludes the important aspects of the thesis along with few recommendations.

The objectives of EU external action with third world countries and regions, as outlined in Article 21 of the TEU, is aimed to promote democracy, rule of law, human rights and respect for the principles of the United Nations and international law. EU, through its external partnership with third countries, aims to foster sustainable economic, social and environmental development of the developing countries with the ultimate aim of eradicating poverty. Hence, the inspiration to make the Union a stabilizing force and a model in the new multipolar world, as set out in Laeken declaration, is achieved through the Lisbon treaty which has introduced the modifications in Union's external policy by transforming the union into an efficient global actor able to exert its influence both in economic and political spheres. The Lisbon treaty has also contributed in building the political and security identity of the of the Union by reforming its common foreign and security policy, so that it can play a prominent role as a global security actor.

The EU and Pakistan relations hold significance from trade and development co-operation perspectives, which traditionally occupied a central place since the establishment of their bilateral relations when they first signed the first economic

cooperation agreement in 1976. The tone for enhanced relations was set in 2004 when the two partners signed a 'Cooperation agreement on partnership and development'. The trade centric relations graduated to new level of political co-operation when five year engagement plan was adopted in 2012 -2017. This engagement plan provided a framework of cooperation in areas of mutual importance such as trade and development, human rights and democracy, counter-terrorism and security. With this engagement plan for the very first time, better political co-operation between EU and Pakistan has been a notable achievement. The successful completion of five year engagement plan build up trust and confidence between the two partners which calibrated the engagement between the two partners to a level of a strategic engagement plan in June 2019. The new strategic engagement plan provides a new political framework of engagement. This signifies that EU value its external relations with Pakistan and intends to expand and diversify their partnership in new areas of co-operation and to deal with global challenges as a new strategic partners.

For Pakistan, EU has proved to be a formidable partner during all these years, not only in area of trade and investment but most importantly by extending its support in strengthening democracy, rule of law, human rights, governance, rural and economic development. Democracy, rule of law, human rights and sustainable development have remained the focal area of EU engagement with Pakistan. For the promotion and strengthening of democracy in Pakistan, the role of the EU has been very strong and supportive. Since the last military rule in 1999, three successive democratic governments have been elected through general held elections in a country. This bespeaks of EU's contribution in the support of democratic process in the country. The EU has also provided its technical and financial support for bringing much needed electoral reforms in the country. The EU has deployed its

Election Observation Missions(EOM) specifically in the last three general elections which has monitored those elections and has identified those areas in its reports which required improvements for the conduct of free and fair elections. With the help of EOM reports along with its recommendations, Pakistan's electoral reform bill was successfully enacted in October 2017 that included 32 out of 50 recommendations listed in the 2013 EU Electoral Observation's Mission report.

EU has been Pakistan's largest trading partner as well as its one of the largest donor. For giving a boost to Pakistan's weak economy and to provide help in overcoming its socio-economic issues particularly in alleviating poverty and to provide support for its sustainable development, EU has granted preferential access at zero percent tariffs to the Pakistani exports in the European market by granting GSP+ status to Pakistan on 1st of January 2014 for four years (2014-2018) renewable subject to Pakistan's fulfilment of GSP+ conditionality which required the ratification and implementation of 27 core UN human rights, labour rights, environment and good governance conventions. During this short period of four years, the government of Pakistan has set up new institutions and adopted legislations at national and provincial level for ensuring compliance with these conventions. This fairly brought improvement in the overall human rights conditions in the country, specifically in protection women and minorities rights, labour standards in markets and industries and abolishment of child labour in the country and ensuring them free and compulsory education through constitutional amendment. The government of Pakistan has set up National Commission on Human rights in 2015, which has played a very important role in keeping a check on general human rights situation in the country. Federal and provincial Commissions on status of Women have been set up for the promotion of women rights in the country. The National Action Plan for human

Rights as well as interfaith harmony plan is specially a notable initiatives by the government to fulfilled the EU obligations concerning the overall improvement and protection of human rights in a country. The award of EU GSP+ status to Pakistan has yield positive results not only in giving a boost to Pakistan's economy by increasing its exports in textile and clothing to European market, which has been doubled since the ward of the preferential access to European market, but it has also proved to be instrumental in the improvement of the human rights conditions in a country as well as in general perception of the country known for its poor record of human rights records especially women and minorities rights. Overall, there has been marked improvement in Pakistan's compliance with human rights, labour rights, environment and good governance conventions. Furthermore, Pakistan's need to engage with EU to bridge the implementation gaps concerning these conventions relevant to the scheme during the next two years duration of GSP+ status. Besides enactment of legislations Pakistan should improve its enforcement mechanism as well. Issues such as child abuse, honour killing of women, enforced disappearances, extra judicial killings, protection of minorities and their forceful conversion to Islam, freedom of expression, strengthening of women rights and ensuring them equal education and employment opportunities , environment and climate change are those areas which need to be addressed earnestly by the Government.

Pakistan needs to utilize its full capacity in order to derive the full advantage of GSP+ status. The EU through its award of the GSP + status to Pakistan status not only helped sustainable development but also helped in establishing a rule based economy in Pakistan. In total Pakistan's exports, of which 78 % share consists of textile and clothing, entered the European market at zero percent tariff, still Pakistan could not attain the estimated target of export profit during these years. Moreover,

Pakistan's exports in textile and clothing as well as other products face tough competition with other Asian competitors in European market notably Bangladesh, a EBM beneficiary, India, China, Vietnam and Indonesia, which are the users of the General GSP scheme. Pakistan has mainly used GSP+ for exports of its textiles and clothing. Pakistan needs to diversify its exports other than Textiles and clothing. To achieve that it needs to expand its industrial based and should overcome those structural factors which halt the progress of its local industries such as energy shortage, inadequate infrastructure, structural inefficiencies of institutions, law and order situation, labour market efficiency, lack of innovation and business sophistication, ease of doing business and bad governance. To overcome these deficiencies is not only essential for giving boost to its local industries required for the diversification of its exports products but also necessary for attracting the foreign European investors. These reforms are also required in view of the European Committee on international trade's decision to upgrade Pakistan from a GSP+ beneficiary to a free trade agreement partner.

EU and Pakistan counter-terrorism engagements hold significance importance for both the partners. Pakistan has become of crucial importance for the EU specifically after the start of America's war on terror which also led to European's civilian and military engagements in Afghanistan. The rise of home grown terrorism and extremism in Pakistan and use of its territory by terrorists groups involved in subjugating the international efforts to destabilize Afghanistan, Pakistan became a priority country for the EU to establish its counter-terrorism engagements with Pakistan. The EU has successfully established itself a major donor and actor in combating terrorism in Pakistan during the past few years. The EU for its counter-terrorism efforts in Pakistan, is very well received mainly for its approach to counter

terrorism which is based on security-development nexus. EU's financial and technical support, which it has provided through various projects starting from 2003 till present, has been quite substantial. As EU approach for countering terrorism and extremism in a society is based on socio-economic perspectives, therefore, for combating terrorism in Pakistan, the EU has made interventions in specific areas which it has considered crucial to eradicate those factors which contribute towards terrorism. EU interventions for countering terrorism is mainly focussed in areas such as strengthening of democracy through electoral reforms, Preventing /countering violent extremism, capacity building of law enforcement agencies, criminal justice reforms to deal effectively with terrorism cases. The projects in these areas were financed under the instrument for stability and were designed as per these thematic areas and have been successfully implemented and have achieved the desired objectives. This includes the civilian capacity building of police forces in Punjab and Khyber Pakhtunkhwa provinces to counter terrorism and violent extremism, reforms in criminal justice system of Punjab to effectively deal with terrorism cases, strengthening of prosecutorial services to deal effectively with the police and judiciary, improved investigation standards and maintaining impartiality in terrorism cases. Besides that, projects have been funded for development, peace building, youth and gender participation as well as rehabilitation of areas and communities in Baluchistan, Khyber Pakhtunkhwa and FATA which remained under the impact of terrorism. These projects aimed for stabilization, increased participation of civil society and institution building to reduce the risks of these areas of reverting back to conflict. Similarly, projects under long term instrument (IcSP) were mainly focussed on capacity building of Punjab criminal justice system and countering violent extremism in province of Punjab and khyber Pakhtunkhawa. EU should continue

providing support in these thematic areas necessary to combat terrorism and eradicate extremism. The projects for capacity building of security forces, criminal justice response/ rule of law and countering violent extremism were mainly carried out in Punjab and Khyber Pakhtunkhwa. Similar projects should be initiated through EU support and assistance in province of Baluchistan, which has been under the impact of terrorism during the past many years. This should include programmes for capacity building of Baluchistan police forces to equip them to prevent and fight terrorism, necessary reforms in its criminal justice system for improved investigations, strengthening public prosecution services, judicial capability and measures for the protection of witnesses in terrorism cases witness and rehabilitation of terrorism survivors.

Apart from EU's assistance in combating terrorism, Pakistan needs to take legal and political measures to combat terrorism and play its role in regional security and stability. The government of Pakistan should evaluate its National Internal Security Policy (NISP) and National Action Plan, which were adopted after the terrorist attack on Army Public school in Peshawar, to determine whether these plans have achieved the desired results in curtailing terrorism and preventing radicalization in the country. Based on these findings, the government should take the initiative of formulating a comprehensive counter terrorism strategy for the country. It's a high time that Pakistan should change its policy of conciliatory approach towards specific militant groups and should target all the terrorists groups operating on Pakistan's territory, so that its territory should not be used by any terrorists groups. Only in this way, Pakistan can effectively contribute in curtailing terrorism which is now one of the global challenge both for EU and Pakistan as a strategic partners.

Related with that, Pakistan needs to take necessary legislative measures, re-

quired by FATF, for curtailing terrorism financing and money laundering. Currently Pakistan is in grey list of FTFA for inadequate measures to regulate money laundering and terrorism financing. Pakistan is also in the list of 23 countries adopted by European Commission with strategic deficiencies concerning money laundering and counter-terrorism financing thus posing risk to European financial system. To address these deficiencies, the State Bank of Pakistan and Security Exchange Commission of Pakistan have recently adopted new rules to choke terrorism financing. Pakistan should take EU technical expertise in this area to address the deficiencies and gaps in countering financial terrorism and money laundering laws.

Ever since EU has renewed its common foreign and security policy, its role as an independent power broker and negotiator in international conflicts has become more pronounced. For instance, EU has played a strong role in Syrian war, Ukraine conflict, rising tensions in Persian Gulf, stand-off in Korean Peninsula. However, while considering EU role as a security actor in important international conflicts, it hasn't showed the kind of concern to Pakistan-India security escalations that took place following an attack on Indian parliament in 2001, Mumbai attacks in 2008 and most recently Pulwama attack in 2018 which have caused serious military escalation and a nuclear stand-off. EU has historically played a very insignificant role in looming discord among the two nuclear powers. The latest tensions between Pakistan and India following the Pulwama attack provided sufficient reasons to assume that Kashmir issue can ignite into a conflict of unimaginable magnitude and cannot be resolved without third party interventions. This gives a valuable opportunity to the EU to present itself as a reliable security actor. EU has an opportunity and responsibility towards the peace of the region. EU should be impartially engaging with both India and Pakistan to resolve the Kashmir issue and to check the rise of Hindu extremism

in India. EU should put the demands in the same magnitude to Indian government to check the lynching of minorities and suffocating the lives of Kashmiris as it would demand from Pakistan to act against non-state actors threatening the peace of the region. EU has always stood for human rights around the world. How can it overlook worst human right abuses committed in Kashmir?

EU should realize that the south Asia region is at the cross roads and peace and security in the region are seriously under threat. EU has a potential opportunity to play a role to thwart any nuclear conflict. EU has the capacity and enjoy influence to mediate though Indian government has refused any third party mediation. EU would have to look beyond its economic gains to be accepted as a reliable arbitrator. It's time to grasp the opportunity and play its due role to contribute towards global peace.

Similarly, in area of nuclear non-proliferation, the EU has played significant role in non-proliferation initiatives around the world. For instance, EU played a pivotal role in reaching nuclear deal with Iran in 2015 and earned much international appreciation. Concerning Pakistan's stance on not joining NPT and its stance on maintaining minimum nuclear deterrence, it is immensely important to understand that it is security guarantees durable peace alone that lays the foundation in any region to make lasting progress towards de-weaponization and non-proliferation. Presently Kashmir exists as a nuclear flashpoint. It poses serious threat to the regional's peace and stability. The recent actions by the Indian government has made the situation more volatile particularly after its post Pulwama jingoistic approach. It is imperative for EU to realize that the threat dictating action at the end of Pakistan are result of an existence of actual threat and not merely a perceived one. Both India and Pakistan have actively engaged in a conflict four times. They carry a history that

emerged from the bitter and painful events of a bloody division and the bitterness has further nurtured over the years. The recent air skirmishes have further lowered the nuclear threshold and contributed in increasing war hysteria that has made the scenario extremely dangerous. The first attempt by the EU should be to contribute in lowering the current tensions in Kashmir in particular and Kashmir in general. Till the time EU rationally and realistically take into account every aspect involved in the conflict, it will not be able to play a role of reliable arbitrator. EU would have to look beyond its interests in the region. It will have to drop the prospects of viewing India as potential capitalist market presenting massive profit opportunities to European multi-national companies and governments. It should also at least for the time being cease to support India by projecting it as a strategic counterweight to China to serve the interests of the west. Unless these two approaches are altered, EU would fail to play a meaningful role in mitigating nuclear crises in sub-continent.

Only after lowering the current tensions will allow significant efforts in resolving the Kashmir issue that may eventually help Pakistan to reduce the intensity of security threat it is presently perceiving. Unless the dispute between the bitter rivals are resolved, no progress towards non-proliferation can be attempted. More significantly EU may have to shun the idea that the tension can be lowered or progress can be made towards non-proliferation while the Kashmir issue lingers on.

In area of research and innovation, Pakistan should build up its partnership with EU and benefit from EU's expertise. In area of fusion energy research like India, Pakistan should also seek an agreement with European Atomic Energy Community (EURATOM) concerning fusion energy research. Through this agreement, Pakistan can develop its scientific understanding and technological capability underlying fusion energy system. Pakistan should enter into arrangements with EU universities

for joint research and technological exchanges programmes for its students.

For addressing its clean energy issues, Pakistan should establish cooperation with EU in field of renewable energies. Pakistan should seek EU's expertise in coal and clean conversion technologies. Similarly, Pakistan should also establish a strong partnership with EU to enhance resilience to climate change.

EU is well known for its expertise in technical vocational training. Pakistan should seek the EU support in imparting vocational training to its youth entering the labour market every year to equip them with quality skills useful for businesses, industries as well as essential for international markets. This is also essential if Pakistan seeks EU's foreign investment in Pakistan in sectors and businesses which requires skillful human resource.

Similarly education, research and innovations should be prioritized by Pakistan in seeking EU's engagement and support. Pakistan should seek EU's assistance on aligning its education system with European education system based on innovation, research and imparting essential technical skills. EU should provide opportunities through education exchange programmes to Pakistani students and professionals, so that they get the opportunity to study and work in EU universities and industries.

At a moment both EU and Pakistan are at a new phase of relationship after signing of Strategic Engagement Plan. With this new development, both EU and Pakistan should reinforce there political and economic engagements and benefit from multifaceted cooperation ranging from trade to security to other numerous issues. Both EU and Pakistan can prove to be crucial strategic partners by coordinating position on multilateral issues and work together to address regional and global challenges and to promote effective multilateralism. EU should also seek to engage Pakistan to promote common global agendas on human rights and democracy,

gender equality and women empowerment. Finally the strategic engagement between the EU and Pakistan can only flourish if it is build on trust confidence and equality as well as commitment of both the partners to attain the desired political, economic and multilateral objectives under the new strategic framework.

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