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Binding the EU to International Human Rights Law

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I. Introduction

For almost 40 years, human rights have received protection within the legal order of the European Union (EU). Despite the absence of any specific mandate in the Treaties, the European Court of Justice (ECJ) took the initiative of developing these rights as general principles of Community law as part of its attempt to establish the legitimacy of EC law and its claim to supremacy in the face of objections from the constitutional courts of certain Member States.¹ This development was subsequently endorsed by the other institutions of the EU (then still the European Communities),² and, following the Treaty of Maastricht on the European Union, by the Member States themselves.³ In 2000, the EU raised the visibility of the human rights acquis for its citizens by proclaiming a Charter of Fundamental Rights.⁴ The Charter has undoubtedly brought about a shift in the culture of the institutions of the Union. The European Parliament now systematically checks whether the legislative proposals on which it deliberates comply with the rights, freedoms, and principles of the Charter.⁵ The Commission announced its intention to verify the compatibility of its proposals with the Charter in 2001.⁶ In 2005, it adopted a Communication clarifying the methodology it

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¹ Case 29/69 *Slauder v City of Ulm* [1969] ECR 419; Case 11/70 *Internationale Handelsgesellschaft v Einfuhr- und Vorratsstelle Getreide* [1970] ECR 1125.

² Joint Declaration by the European Parliament, the Council and the Commission Concerning the Protection of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms [1977] OJ C103/1 (27.04.77).

³ See Article 6(2) of the Treaty on European Union (TEU) ([2002] OJ C325 (24.12.02)).

⁴ The Charter was solemnly proclaimed by the Presidents of the European Parliament, the Council and the Commission on 7 December 2000 [2000] OJ C364/1 (18.12.2000).

⁵ See Article 34 of the Rules of Procedure of the European Parliament, 16th edn, July 2006, available online at: <<http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//NONSGML+RULES-EP+20060703+0+DOC+PDF+V0//EN>>.

⁶ SEC(2001) 380/3.