I. INTRODUCTION

Students of the Holocaust stress the importance of remembering the past. In 1996, England’s leading Holocaust and World War II historian led a group of graduate students on a European tour of the places that provided the setting for Nazi terrorism. One student, Herut Hoskin, described her feelings in Birkenau:

It has often been said that no language has vocabulary adequate to describe Auschwitz, or any other death camp for that matter. . . . I am standing in Birkenau, this wide, desolate space—a monument to human depravity and misery, and I have no words. It is difficult to describe what I felt. . . . Like many others, I, also, kept asking myself: ‘Why? Why? How could the world let it happen? Could it happen again? To me? To my family?’

Though a person shudders to think of seeing one of humanity’s darkest moments repeated, these questions remain unanswered. As Herut Hoskin later concluded, “If it happened once, it could easily happen again, anywhere. . . . In remembering the past we . . . aim at minimising possible catastrophes in the future.” Thus, the future depends on how society addresses the early rumblings of a threat—whether people choose to watch in denial or to challenge it with action.

* B.A. 1998, Davidson College; J.D. 2002, University of Georgia.
1 See generally Martin Gilbert, Holocaust Journey (1997) (detailing students’ trip through journal entries).
2 Id. at 405.
3 Id. at 406.
Following World War II, Europe faced a formidable challenge to combat the racism and intolerance that had shaken peoples' understanding of freedom. In order to re-assert itself as a national power, Germany had to show the world that the threat of Nazism would remain repressed, forever left to history. Such efforts led to the implementation of a new constitution during the Allied occupation. In it, Germany, "[a]nimated by the resolve to serve world peace as an equal part of a united Europe," established the capability to ban political parties, hate speech, and discrimination.

Austria, likewise, faced a struggle after World War II. In 1938, Austria became the first victim to Hitler’s aggression when he decreed its reunification with the German Reich. As a result, Austria’s response to the peace following World War II was to reclaim independence. The Provisional Government of Austria, on April 27, 1945, issued a Declaration of Austrian Independence, which re-established a parliamentary government and re-instilled citizens’ loyalty to Austria.

In addition to these countries' reactions, the international community responded with legal measures intended to show its opposition to the systematic atrocities committed by Hitler’s Nazi party. States formed alliances, such as the United Nations (U.N.) and present-day European Union (E.U.), to protect against similar harm in the future. Today, both of these...
international organizations remain resolute in their fights against the spread of racism through the adoption of human rights treaties and agreements. To strengthen the impact these treaties and conventions have on the fight against hate crime and hate speech, they bind all signing parties to their terms as a matter of international law.\(^{11}\)

Unfortunately, in spite of these national and international legal measures, Hitler’s hatred has maintained its grasp over some believers. He still has faithful followers who view him as a hero. As a result, groups espousing neo-Nazi ideals carry on. Even worse, they are gaining increased popularity and control in European society and political systems. For example, the frequency and degree of hate crime continues to rise in Germany.\(^{12}\) In Austria, a xenophobic Nazi sympathizer guides the leadership of the country’s coalition government.\(^{13}\) Ironically, in spite of national and worldwide outrage against the increased threat of hate crime and hate speech,\(^{14}\) the neo-Nazi leadership shows little hesitation.\(^{15}\)

European Coal and Steel Community in 1952 began European integration. Continued negotiations led to the European Economic Community in 1958, which transformed into the European Union with the signing of the Maastricht Treaty on European Union in 1992. See id. at 7-13 (detailing the evolution of the European Union).

\(^{11}\) David E. Weiss, Striking a Difficult Balance: Combatting [sic.] the Threat of Neo-Nazism in Germany While Preserving Individual Liberties, 27 VAND. J. TRANSNAT’L L. 899, 931 (1994).

\(^{12}\) See Martin A. Lee, Neo-Nazism: It’s Not Just in Germany’s Beer Halls Anymore, L.A. TIMES, Dec. 31, 2000, at M2, available at 2000 WL 25931826 (citing a German Federal Criminal Bureau announcement that neo-Nazi violence in the first ten months of 2000 broke all post-Berlin Wall records with 11,752 reported right-wing extremist crimes); Carol J. Williams, German Hate Crimes Prompt Call for Party Bans, L.A. TIMES, Aug. 3, 2000, at A4, available at 2000 WL 2266139 (citing a 2000 report issued by the Federal Agency for the Protection of the Constitution stating a five percent increase in right-wing extremist violence from 1998 to 1999 and discussing spectrum of incidents occurring from defacement of Holocaust memorials with swastikas to severe beatings); Germany’s neo-Nazis, ECONOMIST, Aug. 12, 2000, at 18 (comparing 129 racist attacks in June 2000 to ninety-seven in June 1999 and offering devastating descriptions of grave desecration in Jewish cemeteries, a fire bomb in a homeless shelter, and a bomb in a Jewish family’s home). But cf. id. (suggesting the intensity of this xenophobic and racist behavior should not be a surprise, because New York’s Anti-Defamation League, which monitors neo-Nazi activity in various countries, reports Germany has the highest number of “hard-core racist skinheads” in all of Europe).

\(^{13}\) See All Things Considered (NPR radio broadcast, Feb. 3, 2000) (transcript available at 2000 WL 21469448) (discussing rise to power of Jörg Haider’s Freedom party in Austria).


\(^{15}\) The groups’ organization explains their collective success in heightening the spread of
The xenophobia, racism, and intolerance manifested by hate crime do not stop at the Austrian and German borders; one can safely anticipate the same results throughout Europe. Nevertheless, individuals and political units react more strongly to the situations in Germany and Austria. Despite the existence of deeper feelings and greater numbers elsewhere in Europe, they fear and give more press to the existence of hate crime in Germany and Austria because of the historical context these countries (particularly Germany) provide in the rise of Nazism and Hitler's control during World War II. Neo-Nazis' strong organization, leading role in the rise of hate crime, and increasing popularity in Austria's and Germany's social and political cultures reintroduce the "ghosts" surrounding World War II and heighten the world's fears as to what harm they will cause next.

Some commentators argue that governmental attempts to stop the neo-Nazi threat actually feed its increase in popularity and support. Whatever the cause, the rise of right-wing extremism cannot be denied and must be stopped. Otherwise, by gaining greater power and support, the groups threaten to undermine the progress made in combating racism and xenophobia in Europe.

To this effect, there must be political responsibility inside and among borders to enact effective human rights legislation in states that uphold the values and requirements of international agreements and the international organizations adopting them. This note analyzes the interplay between states, concentrating on Austria and Germany, and the international organizations to which they belong in working together to combat racism. Assessing governmental and intergovernmental responses to neo-Nazi leadership, this note primarily focuses on the responsibilities these countries have as a result of signing or ratifying E.U. and U.N. treaties and conventions.

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crime and gaining power in politics. Germany's neo-Nazis, supra note 12, at 18.

16 "Immigrants, Jews, non-whites (and, for that matter, homosexuals) are subjected to an appalling ritual of abuse in many European countries—human excrement is delivered through their letter-boxes, cigarettes stubbed out on their scalps." Id. Hate crime is also rising in other countries. For example, in England and Wales, at least twenty-three thousand racist attacks (mostly nonviolent) were reported in 1998-1999, a sixty-six percent increase from the previous year. Id.

17 See id. (suggesting "because racist violence in Germany raises such awful ghosts, dealing with it there is all the more necessary"); see generally JOHN TOLAND, ADOLF HITLER (1976) (providing an historical perspective of Adolph Hitler's rise to power from the initial development of his Nazi beliefs in his homeland, Austria, to his leadership as Führer of Nazi Germany during the World War II era).

18 See Weiss, supra note 11, at 939 (predicting unanticipated results by driving extremists into mainstream society thereby increasing their social and political power).
Part II of this note discusses hate crime in light of current events in the German and Austrian governments respectively. Part III, section A, discusses various international conventions and treaties adopted by Austria and Germany as member states of the E.U. and the U.N. It presents the expectations of these agreements to provide a backdrop for constitutional analysis as to whether the two countries are upholding their responsibilities. Section B analyzes national responses to these agreements as manifested in the German and Austrian constitutions. Section C then evaluates the reasons for the continued rise of hate crime in spite of these intergovernmental efforts. It discusses the gaps in the way the countries and international organizations work together, which lead to weakness and ineffectiveness, providing for the recommendation of a better hate crime control methodology for the future.

II. BACKGROUND

A. The Rise of Hate Crime and Intolerance in Germany

The amount of crime in Germany offers a misleading picture of the make-up of neo-Nazi groups: "As a purely political threat, the total number of people in the [German] extremist groups is minimal compared to the total population of Germany." In spite of this population gap, the extremist groups continue to cause substantial destruction throughout Germany and now greatly influence German policy.

An array of countless stories illustrates the ugliness of the neo-Nazi crimes committed in Germany on the basis of hate. A black man was kicked to death in Dessau; an asylum housing foreign orphans was firebombed; an Asian fast-food stand was set on fire in Schwerin; graves have been desecrated in Jewish cemeteries; a bomb was planted in a Dusseldorf train station; and a Mozambican boy was kicked to death. Each of these crimes occurred in the

\[19\] Id. at 915 n.109; see generally THE WORLD ALMANAC 790 (William A. McGeeveran, Jr. ed., World Almanac Books 2001) (citing a July 2000 estimate of the German population as 82,797,408 people); Lee, supra note 12, at M2 (indicating there are more than 50,000 active right-wing extremists in Germany).


\[21\] Id.

\[22\] Holley, supra note 14, at A4.

\[23\] Germany’s neo-Nazis, supra note 12, at 18.

\[24\] Id.

\[25\] Id.
As if the individual crimes are not heinous enough, the trend appears to be shifting away from isolated incidents of violence towards organized terror.27

The facts and follow-up of a February 1999 incident reveal the most about the depth of the problem in Germany. A mob of neo-Nazis attacked two foreign residents and chased them through the town of Guben. One of the men, a 28-year old Algerian immigrant named Omar Ben Noui, crashed through a glass door while trying to escape the terrorizing mob behind him. He later bled to death from a severed artery.28

Eleven neo-Nazi youths were tried for his death.29 Their sentences were in some ways more unnerving than their crime. Three defendants, convicted of manslaughter, received two to three year jail terms. Two defendants, found guilty of lesser charges of causing serious bodily injury, vandalism, and duress, received 200 hour community service sentences and court warnings. The remaining six defendants received probation.30 Following the verdict, the German press and anti-racism leaders expressed outrage. A headline in the left-wing Berlin newspaper, Die Tageszeitung, read “Law not justice,” and the Secretary General of the liberal opposition Free Democrat Party asked, “When will we stop minimizing far-right violence?”31

If ever a doubt existed whether the court gave the defendants and other neo-Nazis the proper message regarding their behavior, it later became clear the defendants had not changed. In December 1999, one of the teens convicted for Ben Noui’s death stabbed a German boy of Asian heritage.32 His repeat offense illustrates the effect of leniency on neo-Nazis. Furthermore, the memorial for Ben Noui in Guben continues to be vandalized.33

26 See Hall, supra note 20, at 13; Holley, supra note 14, at A4; Germany’s neo-Nazis, supra note 12, at 18.
27 Hall, supra note 20, at 13.
29 Lee, supra note 12, at M2.
30 Four German Extremists Arrested in Racial Attack, supra note 28, at 10A.
32 Four German Extremists Arrested in Racial Attack, supra note 28, at 10A.
German Chancellor Gerhard Schroeder admits that his government underestimated the scope of the neo-Nazi threat. As a result, recent efforts show a change in the political mindset. In late 2000, political leaders began pressuring the government to recommend the Federal Constitutional Court to outlaw political parties harboring known neo-Nazis and other extremists. The focal point of this pressure seeks to outlaw the largest far right-wing party, the National Democratic Party (NPD). The openly xenophobic NPD receives the brunt of attention from anti-extremists because its party ranks apparently contain neo-Nazis. Heeding to the pressure in a December 8, 2000 vote, Germany’s parliamentary houses, the Bundestag and Bundesrat, joined together in asking the Federal Constitutional Court to dissolve the party.

While the court considers whether to issue a party ban, the German government also considers further action. Chancellor Schroeder stated in August 2000, “our laws are sufficient” to fight the extreme right, and “[it is] important to strictly enforce them.” After a government ban of a protest scheduled for January 27, 2001, the liberation date of the Auschwitz death camp, the NPD cancelled all political demonstrations to protect its interests “until further order.” The Federal Constitutional Court’s decision about the NPD’s future could take years; until their holding, political and social debate in Germany will thrive regarding the proper choice. In the meantime, the U.N. and E.U. should discuss whether and how to respond in order to end the haunting of Hitler’s ghosts.

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34 Lee, supra note 12, at M2.
35 Id. Germany’s constitution does not forbid such an action so long as the party represents a threat to the free democratic basic order. GRUNDEGESETZ [Constitution] [GG] art. 21(2) (F.R.G.), translated in FLANZ, supra note 4, at 115.
36 Lee, supra note 12, at M2.
37 See Roundup: German parliament to demand ban of far-right party, DEUTSCHE PRESSE-AGENTUR, Dec. 8, 2000 (citing Interior Minister Otto Schilly and state interior ministers as saying the NPD “spearhead[ed] a movement of violent skinheads and . . . helped create an environment in which attacks were made on foreigners and other minorities”); Williams, supra note 12, at A4 (suggesting party affiliates have been implicated in many right-wing attacks); Mark John, Germany: Yearahead—Can Germany win its fight against far-right?, REUTERS ENGLISH NEWS SERVICE, December 19, 2000 (likening the NPD to Hitler’s Nazis in threatening violence in society).
38 German Parliament to Demand Ban of Far-Right Party, supra note 37.
40 Id.; see Far-right German NPD party abandons holding demonstrations, AGENCE FRANCE-PRESSE, Aug. 18, 2000, available at 2000 WL 24692612.
Extremist political activity and its resulting harm have likewise created a stir in Austria. In the October 1999 parliamentary elections, the radical right-wing Freedom Party gained twenty-seven percent of Austrians’ support to become the second most popular party in Austria. Upon entering into a coalition with the People’s Party, Jörg Haider’s Freedom Party became the first ultra-nationalist party to enter a European government since World War II. Haider refused a seat in the new coalition government in order to maintain his role as governor of Carinthia. Nevertheless, he remained a controlling hand over the Freedom Party cabinet members, and thereby the coalition government’s decisionmaking.

The Freedom Party pursues hate campaigns and anti-immigrant platforms before elections, and its leadership shows no regret. Haider praises Adolph Hitler’s employment policies and Waffen SS veterans, expresses a xenophobic attitude towards foreigners, attempted to play down Nazi atrocities, and uses Nazi slogans during his speeches. Once elected, the citizens in Austria and the world over feared the harm the Freedom Party’s leadership would bring to their efforts to curb discrimination and to unify Europe.

Austria’s former government disapproved of the new coalition, but, given the solid majority in Parliament, it had no choice but to allow the Freedom Party into government. In an attempt to minimize the damage to Austria’s reputation, President Thomas Klestil took the following precautionary measures to limit Haider’s xenophobic threat: (1) he required Haider and his coalition partner, Wolfgang Schüssel of the People’s Party, to sign a declaration promising to respect European values and renouncing Austria’s

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45 Id; see All Things Considered, supra note 13.
46 Austria vs. Europe’s Common Values, supra note 41, at 20.
47 Id.
49 Kim Rahir, supra note 44.
50 All Things Considered, supra note 13.
Nazi past and all discrimination, anti-Semitism, and racism;\(^{51}\) (2) he rejected two of Haider’s cabinet selections;\(^{52}\) (3) he named Schüssel as chancellor;\(^{53}\) and (4) he gave Schüssel’s party control of the Ministry of the Interior, which controls immigration.\(^{54}\)

The Freedom Party’s entry into the coalition government and Haider’s power behind it prompted a strong national and international backlash. In Austria, despite limitations imposed on the government, citizens took to the streets in protest of the new government while Schüssel was sworn into office.\(^{55}\) On the international scene, the E.U. took a stand against the Freedom Party’s history of xenophobia and sympathy for Nazism by imposing unprecedented political sanctions against Austria.\(^{56}\)

These sanctions took place immediately upon the swearing in of the new coalition government on February 4, 2000 and lasted until September 12, 2000.\(^{57}\) The Austrian ministers could attend regular E.U. meetings, but E.U. members otherwise limited Austria’s participation in E.U. and international activities.\(^{58}\) For example, they excluded Austrian ministers from backroom negotiations, shunned Austrian ambassadors, denied support to Austrian candidates proposed for international posts, boycotted cultural exchange programs and military exercises, and refused to meet bilaterally with Austrian ministers and senior officials.\(^{59}\) The warnings accompanying the sanctions strengthened their message. The European Parliament cautioned that Austria’s E.U. participation could be suspended if the coalition government did not respect democracy and human rights.\(^{60}\)

\(^{51}\) Ames, supra note 14.

\(^{52}\) One of the nominees, Hilmar Kabas of the Vienna Freedom Party, insulted President Klestil by calling him a “lump,” meaning bastard. The other nominee had run one of the anti-immigration election campaigns. Rahir, supra note 44; All Things Considered, supra note 13.

\(^{53}\) All Things Considered, supra note 13.

\(^{54}\) Id.

\(^{55}\) Rahir, supra note 42.

\(^{56}\) The decision evidenced a break from the EU’s traditional stance of non-interference in members’ internal politics. Ames, supra note 14.

\(^{57}\) See id. (citing sanctions’ effective date); Austrian far-right leader slams Schroeder after visit, AGENCE FRANCE-PRESSE, May 26, 2001, available at 2001 WL 2414728 (citing sanctions’ removal date).

\(^{58}\) See Ames, supra note 14 (detailing member state’s ministers specific reactions to Austria and its ministers after the sanctions took effect).

\(^{59}\) See id.; Austria vs. Europe’s Common Values, supra note 41, at 20.

\(^{60}\) Such action has never been taken but is justified under the Treaty on European Union. Ames, supra note 14.
the insulting, xenophobic and racist statements issued by (Haider) over many years."\(^{61}\)

For some countries, this response lacked sufficient strength. Israel withdrew its ambassador from Vienna, and the United States warned it was watching Austria closely.\(^{62}\) France and Belgium, supported by Italy, Spain, and Portugal, endorsed more radical measures, such as Austria's eventual expulsion from the E.U.\(^{63}\) Europe must not become "infected by the gangrene of the extreme right," said one Belgian minister.\(^{64}\)

Though the sanctions brought the resignation of Jörg Haider as head of the Freedom Party, they failed in their ultimate objective: to oust the Freedom Party from government or to convince Austrians to vote them out. In fact, the E.U. possibly achieved the opposite result: resentment of perceived E.U. meddling with election results reinforced Austria nationalism rather than a change in government.\(^{65}\) The E.U. denies the sanctions were a failure, but, considering their potential for harm, it was risky to impose them to achieve minimal results.\(^{66}\) Despite denials as to the results, the E.U. now recognizes the fault of trying to use sanctions to influence the government formation.\(^{67}\)

### III. LEGAL ANALYSIS

#### A. International Agreements and Their Application to National Law

Many international instruments exist to support the fight against racism and xenophobia. They range from general affirmations of human rights to specific texts dealing exclusively with certain subjects. Since the requirements

\(^{61}\) Id.  
\(^{62}\) Rahir, supra note 42.  
\(^{63}\) Id.  
\(^{64}\) WISTRICH, supra note 43.  
\(^{66}\) In light of the fact that Haider remains unapologetic, the potential for harm likely exceeded the potential for benefit. See Rahir, supra note 42. E.U. business could have been hampered by a Vienna veto. For example, an Austrian referendum stated that unless the sanctions were lifted "immediately," Austria might veto the procedural reforms planned for discussion in December to pave the way for new E.U. members. Charlemagne: Wolfgang Schüssel, Austria's steely chancellor, ECONOMIST, July 8, 2000, at 54.  
\(^{67}\) Romano Prodi, European Commission chairman, said "A bigger Europe will often have problems, but we will have to respect the results of those elections." Sanctions had More Effect on EU than Austria, supra note 65, at A23.
imposed on member states vary in strength, an examination of international political institutions' instruments sheds light on the methods available to fight the increased support and power of neo-Nazi crime and political activity.

According to several international documents, rights to equality and non-discrimination are universal, autonomous, and associated with the exercise of other fundamental rights. Of those documents, this note discusses the Universal Declaration of Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of all Forms of Racial Discrimination (with background information provided from the U.N. Charter and the Treaty Establishing the European Community as amended by the Treaty of Amsterdam). All E.U. member states are signatories to or have ratified these international agreements (except for the Convention on the Elimination of all Forms of Racial Discrimination). Unfortunately, their participation shows only a commitment to guarantee respect for such rights. Not even the most strenuous and demanding instrument provides direct recourse to redress. Instead, a strong response requires further implementing action by ratifying states. This note discusses the Germany's and Austria's implementation of these international agreements in Section B.

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68 See Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain Community measures to combat discrimination, arts. 1, 2.1, 1999 O.J. (C 369) 3 [hereinafter Discrimination Communication].


74 Discrimination Communication, supra note 68, at art. 2.1.

1. U.N. Charter

The U.N. Charter, enacted in 1948, clearly establishes the organization’s underlying commitment to equality at its outset: the preamble “reaffirm[s] faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women.”76 The General Assembly retains the power to initiate studies and make recommendations77 in order to achieve the U.N. purposes of “develop[ing] friendly relations among nations based on respect for the principle of equal rights and self-determination . . .”78 and “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”79

2. Universal Declaration of Human Rights

Two weaknesses of the U.N. Charter are that it fails to define human rights in specific terms and to establish a rights enforcement mechanism.80 In order to address these weaknesses, the U.N. set a common standard of human rights achievement for nations and peoples in the Universal Declaration of Human Rights (UDHR) in 1948.81 It proclaims that all people “shall strive by teaching and education to promote respect for [human rights] and by [implementing] progressive measures . . . to secure their universal and effective recognition and observance” within member states.82 Still, the generality of the UDHR’s articles create problems for applying the standards to national incidents. It does not clearly define the extent of ratifying nations’ responsibilities.83 For example, in the absence of a specific reference to hate speech, one can only imply a response to the rise of neo-Nazi activity in Austria and Germany.

76 U.N. CHARTER pmbl.
77 Id. at art. 13(1).
78 Id. at art. 1(2).
79 Id. at art. 1(3).
80 See Elizabeth F. DeFeis, Freedom of Speech and International Norms: A Response to Hate Speech, 29 STAN. J. INT’L L. 57, 75 (1992) (explaining that the drafters expected subsequent documents to provide this information).
81 UDHR, supra note 69.
82 Id. pmbl.
83 Many nations viewed the declaration as a non-binding source of international law upon approval, but scholars take the position today that it is binding as customary international law or as part of the member nations’ Charter obligations. See DeFeis, supra note 80, at 76 n.100; Jack Greenberg, Race, Sex, and Religious Discrimination in International Law, in HUMAN RIGHTS IN INTERNATIONAL LAW 315 (Theodor Meron ed., 1984) (citing the invocation of the UDHR and its principles many times inside and outside the U.N.).
Article 29 declares: "These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations." Therefore, because hate speech, in an ambiguous sense, hinders the protection of human rights (a primary U.N. purpose), its use should be restricted in U.N. member states. Unfortunately, such a general rule is not likely to apply if challenged based on a specific incident of harm.

3. Treaties and Amendments Establishing the European Union

The Treaty Establishing the European Community (EC Treaty) and the Treaty Establishing the European Economic Union (EEC Treaty) originally did not discuss discrimination. When written, members primarily sought to form a common market, an economic and monetary union, rather than to protect human rights. Today, amendments to the EC and EEC Treaties reflect the shift in focus.

Now, the E.U. has a definite procedure for responding to activities contradicting or ignoring the organization's founding principles. Article 309 of the EC Treaty defines the methodology and justification for E.U. action. The European Council, acting by a qualified majority, may suspend Member States' certain rights under the EC Treaty "where the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1) of the Treaty on European Union has been determined in accordance with Article 7(1) of that Treaty." The finding of such a breach of Article 6(1) principles by a Member State may only follow an invitation for comment to

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84 UDHR, supra note 69, at art. 29(3).
85 See DeFeis, supra note 80, at 77.
86 See Greenberg, supra note 83, at 317-18 (explaining the problem with responding to contemporary U.S. racial, sexual, or religious discrimination issues results because the issues "have transcended generality and deal mostly with particulars of implementation").
87 See supra text accompanying note 10.
88 EC Treaty, art. 309.
89 For a qualified majority, the council’s votes are weighted as follows: Belgium, 5; Denmark, 3; German, 10; Greece, 5; Spain, 8; France, 10; Ireland, 3; Italy, 10, Luxembourg, 2; Netherlands, 5; Austria, 4; Portugal, 5; Finland, 3; Sweden, 4; and United Kingdom, 10. See EC Treaty, arts. 205(2), 309(4).
91 EC Treaty art. 309(2).
the alleged breaching Member State and a unanimous vote on a proposal offered by one-third of Member States or by the Commission after obtaining the European Parliament's assent.92

Despite the existence of the means to respond to discrimination, the circumstances for their use are limited; "the existence of legal powers and evidence of the political will to act do not in themselves justify [European] Community legislation."93 Article 5 of EC Treaty defines when Community action is justified:

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.94

For example, the E.U. sanctions outraged Austrians, because citizens felt more capable to respond to national elections.95 The principle of subsidiarity96 and these feelings explain why the E.U. so rarely responds to instances of hate speech or hate crime.


The Council of Europe adopted the Convention for the Protection of Human Rights and Fundamental Freedoms in 1953 to address human rights abuses.97 It is very similar to the UDHR except that it limits discussion to civil rights.98 The Convention has been described as the "world's most successful system of international law for the protection of human rights currently in force."99
For application to a discussion of neo-Nazi activity, freedom of expression is the prominent right protected by the Convention. Article 10 provides:

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

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary to a democratic society, in the interests of national security, . . . for the prevention of disorder or crime, . . . [or] for the protection of the reputation or rights of others . . . .

Article 14 requires that this freedom of expression, and all others guaranteed in the Convention, must be secured without discrimination.

Under the Convention, neo-Nazi groups certainly have the right to assemble and express their opinions. Of the article 10(2) limitations, the ability to restrict freedom of expression for the prevention of disorder or crime and for the protection of the rights of others allows member states to react when these groups go too far. On the other hand, uncertainty surrounding the application of these restrictions arises given the large role of the political party leaderships in creating Austria's and Germany's problems. Government leaders may be less likely to step in where their counterparts initiate the abuses. Furthermore, if they step in at all, the action taken may not be strong enough.

To ensure compliance, the Convention established the European Commission on Human Rights and the European Court of Human Rights. An

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100 Human Rights Convention, supra note 70, at art. 10.
101 Id. at art. 14.
102 Id. at arts. 10, 11.
103 For example, denying requests for march and demonstration permits limits the freedom of expression of the neo-Nazi groups in the short-term but will likely have little long-term effect. See Holley, supra note 14, at A4. On the other hand, evidence shows that in Germany the government's reaction is becoming harsher given the proposed ban. See also German Police Raid Extreme-right Party Headquarters, Xinhua News Agency, June 11, 2001, available at 2001 WL 22434051 (describing police and prosecutor raids of the NPD headquarters, offices, and residences).
104 See Human Rights Convention, supra note 70, at arts. 19-51.
individual may petition the Commission directly concerning governmental action that allegedly violates a Convention-guaranteed right. The only problem is that a petitioner must first exhaust all available domestic remedies.

5. International Covenant on Civil and Political Rights

Because of the questions regarding whether the UDHR binds member states, the U.N. General Assembly and Secretariat implemented a binding agreement, the International Covenant on Civil and Political Rights. Using language similar to that in the European Convention, article 19 proclaims everyone’s right to hold opinions without interference and to freedom of expression. The right to freedom of expression is limited, as in the European Convention “for respect of the rights or reputations of others” or “for the protection of national security or of public order.” More importantly, the International Covenant avoids the generality problems of the European Convention. Article 20 requires states to prohibit hate speech with the following provision: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

The article 19 restrictions and article 20 prohibitions declared in the International Covenant on Civil and Political Rights could apply to Haider’s remarks and the Freedom Party’s platform. Article 2 requires adopting states to pass legislation giving effect to the Covenant’s provisions; each state must provide a remedy for violations “notwithstanding that the violation has been committed by persons acting in an official capacity.” The risk remains that the government’s role in the violation will prevent its enforcement, but the Civil and Political Rights Covenant attempts more than other international agreements to require remedial enforcement.

105 Id. at art. 34.
106 Id. at art. 35.
107 Rights Covenant, supra note 71.
108 See id. at arts. 19(1), 19(2).
109 Id. at art. 19(3a).
110 Id. at art. 19(3b).
111 Id. at art. 20.
112 Id. arts. 2(2), 2(3a).

The International Convention on the Elimination of All Forms of Racial Discrimination entered into force in 1969. Drafters hoped to stimulate the adoption of "all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination." The International Convention on the Elimination of All Forms of Racial Discrimination corrects the problems of past international agreements. It declares its prohibitions with sufficient specificity to effectively address problems such as neo-Nazi infiltration in society and government. Article 4 of this Convention requires that adopting states:

condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination . . . .

To achieve these measures, states must:

(1) punish the dissemination of any such race- or hate-based ideas or any violence resulting therefrom; (2) "declare illegal and prohibit organizations . . . which promote and incite racial discrimination, and shall recognize participation in such organizations . . . as an offence punishable by law", and

113 Elimination Convention, supra note 72.
114 Id.
115 Id. at art. 4.
116 Id. at art. 4(a).
117 Id. at art. 4(b).
(3) "shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimina-

tion."118

Despite drafters' progress in implementing international agreements that effectively respond to problems surrounding discrimination and hatred, the International Convention on Elimination of All Forms of Racial Discrimination unfortunately does not apply to Germany and Austria.119 Germany maintains that no further specific measures are necessary for compliance.120 The Austrian government, however, thought that not all of the Convention’s provisions apply at the domestic level, so Parliament adopted a short summary of the Convention’s provisions to avoid confusion with those provisions that did not apply.121

The international agreements described above offer little opportunity for the U.N. or E.U. to force action in a member state. They are redundant, building upon one another with the same language of hope for change with little chance of effecting it. Instead, the responsibilities of and methodologies for fulfilling the international community’s broad goals are largely left to the national laws of the member states. The E.U. and U.N. can interfere primarily only where the responsibilities of the international agreements are ignored or rejected. Thus, one must look to the national laws to respond to the NPD and the Freedom Party.

B. Constitutional Theory Regarding Fundamental Rights in Austria and Germany

Austria and Germany, as member states of the U.N. and E.U., pledged to promote and encourage equality, nondiscrimination, and universal respect for human rights and fundamental freedoms.122 To uphold these responsibilities, both countries have introduced a range of measures to assert individuals’ rights

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118 Id. at art. 4(c).
120 See Germany General Overview, supra note 119.
121 See Austria General Overview, supra note 119.
122 See U.N. CHARTER pmbl.; EC Treaty art. 2.
not to be discriminated against. The constitutions and various laws introduced aim to combat racist violence and the incitement of racial hatred.

1. Germany's Constitutional Law

Following Allied occupation, the Federal Republic of Germany sought to create a government insulating itself from the past. Therefore, the constitution, or Basic Law, clearly states the government's top priority in its first words. Article 1(1) of the Basic Law proclaims that the "dignity of man is inviolable. To respect and protect it shall be the duty of all public authority."123 The Federal Constitutional Court described this "dignity of man" as the "center of all the Basic Law's determinations."124

Equality logically flows from this fundamental right; article 3(1) specifies that "all people are equal before the law."125 This article offers broad protection to German citizens. For example, Germany has no special legislation against racism.126 The legislature has rejected bills of this sort introduced in the past because of the government's inability to implement their goals and desire to have a better, more comprehensive plan than the bills provide.127 Instead, the German legislature relies upon article 3 of the Basic Law and various provisions of the Criminal Code to avoid racial discrimination—even in the civil law fields.128

Article 5 of the Basic Law guarantees freedom of expression,129 but no basic right is guaranteed to an unlimited extent.130 General laws can limit freedom of expression.131 For restriction of the basic rights, the associated freedoms are prioritized: statements of fact are protected less than statements

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123 GRUNDGESETZ [Constitution] [GG] art. 1(1) (F.R.G.), translated in FLANZ, supra note 4, at 106.
125 GRUNDGESSETZ [Constitution] [GG] art. 3(1) (F.R.G.), translated in FLANZ, supra note 4, at 106.
126 See Germany General Overview, supra note 119.
127 Id.
128 See id. (citing these constitutional and criminal provisions as sufficient to comply with the International Convention on the Elimination of All Forms of Racial Discrimination).
131 General laws regulate matters instead of ideas or form instead of content. Also, in order to limit a basic freedom, their purpose must hold higher ranking in importance than the freedom restricted. See id. at 97.
of opinion. In fact, article 5 does not protect "deliberately or demonstrably untrue" statements of fact at all. As a result, it is unconstitutional to deny the Holocaust.

The Basic Law's underlying concept is known as the "free democratic basic order." Germany's Federal Constitutional Court, which interprets the Basic Law in disputes, defined the "free democratic basic order" in 1952 as:

an order which excludes any form of tyranny or arbitrariness and represents a governmental system under a rule of law, based upon self-determination of the people as expressed by the will of the existing majority and upon freedom and equality. The fundamental principles of this order include at least: respect for the human right of a person to life and free development; popular sovereignty; separation of powers; responsibility of government; lawfulness of administration; independence of the judiciary; the multi-party principle; and equality of opportunities for all political parties.

Originally intended to apply only to particular constitutional provisions, the concept now manifests the spirit and basic structure of the Basic Law as a whole. The constitutional provisions that specifically mention the free democratic basic order (i.e., articles 18 and 21 discussed below) guarantee the stability of the constitution and preserve individual freedom; "[t]he freedom of the citizen should not be misused to destroy the freedom of others."

Article 18 is one Basic law provision that specifically references the free democratic basic order. It provides that those who abuse their freedom of

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132 Id.
134 See id. (discussing a case in which limiting a revisionist historian's propagation of the "Auschwitz Hoax" theory did not violate the article 5(1) freedom of expression).
138 Id. at 28.
139 GRUNDGESETZ [Constitution] [GG] art. 18 (F.R.G.), translated in FLANZ, supra note 4,
expression “in order to undermine the free democratic basic order shall forfeit these basic rights.” Thus, if one uses freedom of expression, freedom of the press, freedom of teaching, freedom of assembly, freedom of association, the privacy of posts and telecommunications, property rights, or the right of asylum to combat the free democratic basic order, then he or she forfeits that abused right. If the government motioned for a decision, the Federal Constitutional Court could apparently apply this provision to specific leaders or members of active neo-Nazi groups.

Article 21(2) provides that political parties that “by reason of their aims or the conduct of their adherents seek to impair or do away with the free democratic basic order or threaten the existence of the Federal Republic of Germany shall be unconstitutional.” Because only the Federal Constitutional Court can define the free democratic basic order, individuals’ freedoms or political parties’ activities cannot be restricted until the court orders it. Therefore, the NPD will remain active in government and politics until the Federal Constitutional Court hands down its decision regarding its future. This ability to ban an established political party successfully addresses the problems left by the Civil and Political Rights Covenant and the Discrimination Convention; parties, by the nature of their leadership and power, cannot destroy individual’s constitutionally guaranteed rights.

The balance between freedom of expression and the free democratic basic order is fragile, so the government files article 18 or 21 motions reluctantly. Many critics of the NPD ban base their fears on the fragility of this balance; they argue that there is not yet reason enough to restrict freedom of expression. For example, they maintain that “to uphold the freedom of expression, as Germany is committed to do, is also to uphold the freedom to offend—however vile that may be.” Another reason cited is that “a democratic system must also be able to tolerate its adversaries, as least as long as the constitutional system is not endangered seriously.” Nevertheless,
problems can arise if the government waits too late to respond; unrestrained freedom of expression can seriously endanger the constitutional system.\footnote{148}{See id.}

Whether or not the government’s recommendation regarding the NPD was justified, Germany’s Federal Constitutional Court must decide the party’s fate. In the case dissolving the Socialist Reich Party (SRP), the court held the party to be unconstitutional because:

The behavior of the (SRP) party and its members, as to the personnel and organizational relationships between the SRP and the NSDAP [Hitler’s Nazis], demonstrates that the goal of the SRP is to topple the free democratic basic order. The very same circles which made it possible for Hitler to lead Germany into the abyss are now again trying to assert their political leadership. They enjoy his means and recommend the same ways that resulted in Germany’s being torn apart. In a very unconcerned manner they declare their approval of Hitler.\footnote{149}{Entscheidungen des Bundesverfassungsgerichts [Federal Constitutional Court] [BverfGE] 2, 1, (78) (F.R.G.), quoted in INTRODUCTION TO GERMAN LAW 59 (Werner F. Ebke & Matthew W. Finkin eds., 1996).}

If this explanation still reflects the court’s method of interpretation, then the NPD’s future should depend on the perceived intentions of its leadership and the existence or extent of its participation in the rise of neo-Nazi activity. Having neo-Nazis in party ranks probably does not provide cause for party dissolution, but openly xenophobic activities may provide the edge. The outcome hinges upon whether the party is within its freedom of expression liberties or abusing them to undermine the free democratic basic order. At this point, the outlook is unclear.

2. Austria’s Constitutional Law

Like the fundamentality of the “dignity of man” in the Federal Republic of Germany, Austria’s constitution values the will of the people.\footnote{150}{BUNDES-VERFASSUNGSGESETZ [Federal Constitution] [B-VG] (Aus.), translated in GISBERT H. FLANZ, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: AUSTRIA 1 (Gisbert H. Flanz, ed., Release 98-1 1998).} Article 1 provides: “Austria is a democratic republic. Its law emanates from the
people." 151 This article serves as the underlying declaration of the Constitution and principle for interpretation of all Austrian law. 152 That Austria places such great value on the will of its citizens makes a successful challenge to Haider and the Freedom Party more difficult to achieve at the outset. The support of twenty-seven percent of Austrians rightfully placed the Freedom Party in the coalition government whether onlookers support it or not. Despite the difficulty, other constitutional provisions exist that have the potential to instigate a response.

Article 7(1) of the Austrian Federal Constitution establishes equal rights before the law for all citizens. 153 It is one of the most important of the fundamental, constitutionally guaranteed rights. The equal protection clause primarily protects individuals against arbitrary acts 154 of the state, the administration or the legislature. 155 Individuals, as a result, can take claims of violations to the Constitutional Court for consideration. There are two limitations to such a challenge. First, article 7's equal protection clause only applies to nationals. 156 Second, the alleged arbitrary act cannot regard a political consideration, because political considerations do not fall under the Constitutional Court's jurisdiction. 157 These limitations provide escape clauses, which make a successful challenge of a Freedom Party's governmental action difficult to achieve.

In addition to the ability to challenge arbitrary acts of the state, the Austrian legal system allows for the prohibition of political parties. 158 For example, section 1 of the Prohibition Statute dissolved the NSDAP and all other National Socialist organizations and prohibits their renewal. 159 Section 3 of the same statute prohibits National Socialist activities. 160

The specific application of the Prohibition Statute to the Nazi party offers little hope of using it to challenge the Freedom Party. 161 Language from the
1992 amendment of the Prohibition Statute, on the other hand, offers hope of success against party members. Section 3(h) expressly penalizes the denial or trivialization of the Nazi genocide.\(^{162}\) Under this section, one could potentially challenge Haider or other Freedom Party members for Nazi references made to the public or for the party's anti-immigrant platform.\(^{163}\)

Regarding the application of international agreements, Austria's constitutional structure creates methods to limit the U.N.'s and E.U.'s power of enforcement.\(^{164}\) Austria's response to an intergovernmental convention depends upon whether it is adopted with ordinary or constitutional rank.\(^{165}\) Austria adopted the International Covenant on Civil and Political Rights as ordinary rather than constitutional law, therefore, "an application ... filed with the Constitutional Court claiming that such protected rights have been violated must . . . fail."\(^{166}\) The European Convention for the Protection of Human Rights and Fundamental Freedoms and implemented principles of the International Convention on the Elimination of All Forms of Racial Discrimination, on the other hand, hold constitutional rank.\(^{167}\) Therefore, a Constitutional Court petition may be filed under these international instruments.

C. Assessing the Best Response for the Future

1. Effect of Recent Actions

Ironically, Austrians' support of the Freedom Party began to wane only after the E.U. lifted its sanctions. Its poll ratings slumped in two October and December provincial elections, and three of its six government ministers resigned or were forced out of power within months of each other.\(^{168}\) In Germany, since the government voted in support of a ban of the NPD, the

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\(^{162}\) Id.

\(^{163}\) See VfSlg [Constitutional Court] 1991/12646 (Aus.) (holding under section 3 of the Prohibition Statute the rejection of party called "No to the flood of foreigners" was lawful since the party's platform resembled Nazi racism).

\(^{164}\) See discussion infra pp. 73-74.

\(^{165}\) See Heller, supra note 152, at 32.

\(^{166}\) Id.

\(^{167}\) Id. at 33.

\(^{168}\) Rahir, supra note 42.
party has attracted a wave of new supporters via an Internet site and has reacted with an increase in xenophobic and anti-Semitic attacks.\textsuperscript{169}

In light of these undesirable changes, one must question the success of methods used thus far by the E.U. and Germany to stop the growth of far-right movements. These movements lead one to think that these national and international backlashes to neo-Nazi activity were worthless. The precise cause of the Freedom Party's loss of support and whether it will continue to wane is unclear. No one knows if the NPD will continue to gain support. Without this information, conclusions as to the value of E.U. sanctions or German political party bans do not show themselves clearly.

In any event, other problems continue to brew in Europe, so decisions about future action must be made quickly and carefully. The next test could come from the results of Italy's May 2001 general elections. Conservative Silvio Berlusconi won in parliamentary elections through an alliance with the increasingly xenophobic Northern League.\textsuperscript{170} The coalition immediately faced open hostility. For example, France's minister for E.U. affairs said that, "for people of a certain political sensibility," Mr. Berlusconi's victory "is not good news."\textsuperscript{171} Nevertheless, there appears to be little threat of E.U. sanctions like those imposed on Austria.\textsuperscript{172}

European nations and international organizations need to balance their responses, so that their laws work together to stop the neo-Nazi movement. Germany banned two parties in the past, but extremist behavior continues. This trend shows questions remain regarding the efficiency and effectiveness of the government's methods. Similarly, the ineffectiveness of the E.U.'s sanctions against Austria showed the difficulty of trying to contain far-right movements from the outside alone. Both entities need to work together.

2. Pros and Cons of Current Methods

No single cure-all to the discrimination problem spreading across Europe exists. Otherwise, manifestations of hate would have stopped years ago. Different countries may have to react differently within their borders. Therefore, understanding the pros and cons of various ideas is beneficial.

\textsuperscript{169} Tony Paterson, \textit{German Government attacked over ban on neo-Nazi party}, \textit{SUNDAY TELEGRAPH}, Nov. 12, 2000, \textit{available at} 2000 WL 29563892.


\textsuperscript{171} \textit{Id.}

\textsuperscript{172} \textit{Id.}
Regarding the sanctions in Austria, not all E.U. members fully supported the action taken. Some member states feared that others would choose not to support new E.U. legislation. Smaller E.U. members feared being bullied by the larger members. At worst, current members could reject continued membership. For example, most Austrians do not support pulling out of the organization, but public opinion could shift if Austria or other countries continue to feel threatened. Any loss in membership would limit the role and impact of the E.U. in controlling hate crime across Europe, thereby defeating the purpose of sanctions and hate crime legislation altogether. If reduced membership does not result, the threatened feeling of E.U. members could result in vetoes halting future progress for the E.U. in combating hate crime and xenophobia. Vetoes and decreased membership could stop E.U. efforts in their tracks.

Despite support from the German government, the German police union, a Vienna-based watchdog agency, and the European Monitoring Center on Racism and Xenophobia, some political leaders and law enforcement authorities in Germany argue that banning political parties is not an effective response either. They claim that party bans prompt new alliances with other mainstream groups or force members underground where they are monitored less easily and effectively. Alternatively, banning the NPD would likely increase support for and shift control of the violence to other equally racist right-wing parties, such as the Deutsche Volks Union and Republican parties.

The length of time taken by the German Federal Constitutional Court to decide whether to ban a party heightens the potential for such an alliance. This passage of time offers the NPD leadership plenty of opportunity to continue its right-wing efforts or make new plans for its future involvement in

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173 See Ford, supra note 48, at 7 (reporting fear existed that sanctions might cause the Dutch to vote against adopting the euro in September 28, 2000 referendum); Charlemagne: Wolfgang Schüssel, Austria's steely chancellor, supra note 66, at 54 (reporting that Austria made such a veto threat regarding procedural reforms for allowance of new members if the sanctions were not lifted).

174 See Ford, supra note 48, at 7.

175 Charlemagne: Wolfgang Schüssel, Austria's steely chancellor, supra note 66, at 54.

176 Weiss, supra note 11, at 937; see Rick Atkinson, Bonn Orders Close Watch on Far-Right Nationalists, INT'L HERALD TRIB., August 24, 1994 (citing this alliance prompted German authorities to place the Republican Party under federal surveillance for anti-constitutional activities).

177 Weiss, supra note 11, at 937.

178 A decision is expected later this year. See German Police Raid Extreme-right Party Headquarters, supra note 103.
the case of a party ban. "If the NPD is banned today, a new organization will rise in its place tomorrow with the exact same people, and [we would] have to run after them with a new banning order," said Eckert Werthebach, head of police and security affairs for Berlin. In other words, the courts and governments would continue to assess the future in an ad hoc manner rather than have an effective plan for the future.

3. Alternative Methods

Ironically, the E.U. has not scolded Germany, despite the extent of its right-wing violence problem. Instead, the E.U. responded in Austria where a political leader, who was never officially part of the coalition government, uses hateful slogans and espouses hateful beliefs. Germany has strict laws and adopts many new laws in response to E.U. and U.N. treaties, yet crime continues to rise—without any E.U. reaction. These results show that there must be more effective international and national intervention to create positive change.

Legal measures are greatly important for combating racism and intolerance based on the protection their remedies offer to victims and on their effect in molding society's impressions. On the other hand, enforcement of laws does not work alone. The E.U. cited this protection and the demonstration of society's commitment to curbing racism as reasons for strengthening the organization's legal instruments against racism, but the success of their changes are not clear. For this reason, the campaign against racism must continue across Europe.

Whether the E.U. sanctions in Austria were effective and whether the NPD is banned, more importantly, the E.U. and Germany have sent a strong message to society. They clarified their values and expectations to those people inciting hatred and discrimination. As opposed to the Ben Noui defendant in Germany who did not learn his lesson, the E.U. and Germany are making efforts to keep recurring activity at bay. Whether or not these messages are heeded, the E.U. and its member states must clearly speak with a unified voice for change to begin.

Many people think that education and employment are better methods to curtail hate crime than are those presently in use. German Chancellor

179 Id.
180 See id.
181 Equal Treatment Proposal, supra note 75, at 56.
182 See Germany's neo-Nazis, supra note 12, at 19; see Hall, supra note 20, at 13 (describing
Gerhard Schroder supports a campaign to preach racial tolerance. The federal government announced August 16, 2000 that it plans to spend an additional $35 million on educational and social projects in the next three years to fight right-wing extremism.

Three investigators appointed by the European Commission to evaluate the Freedom Party’s governmental role and whether to lift the sanctions suggested that the E.U. amend its founding treaty to include a human rights monitoring mechanism. Doing so would avoid the hurried, ad hoc nature of the decision regarding Austria. At first glance, this response definitely appears to be the strongest way to effect change.

Despite the hope offered by these new efforts, the E.U. should expect little change until it re-defines its role from condemning intolerance based on guilt and appealing to consciences to condemning intolerance with action. A 1997 resolution proclaimed that the E.U. should carefully scrutinize its policies to determine its containment abilities and should promote initiatives aimed at mutual knowledge and understanding. Such promotions are noble causes, but they represent the same course that the E.U. has been on since its inception. Tweaking the policies will not make the organization more effective in containing racism, but overhauling them will do so. Unfortunately, the latter would likely either exceed the mandate of the organization or the trust of the member states. Therefore, it is doubtful whether the E.U. will ever be the leader in initiating change rather than prodding change within the member states legal systems.

The E.U. will not effect change if it only “urges,” “calls on,” “condemns,” “expects,” “regrets,” “supports,” etc. legislation or other action. Member states may oppose the use of stronger words because of the potential for loss of power or control if the E.U. tells them what to do, but these weak words are the educational strategy as involving seminars in towns and villages aimed at proving how badly Nazism failed and an exit program for neo-Nazis wishing to make a clean start, which might include amnesty for previous offenses).

183 Holley, supra note 14, at A4; see Hall, supra note 20, at 13 (describing how money from the European Social Fund will support protective measures and that there is a pledge for a compensation fund to reimburse victims and to pay security forces).

184 See Ford, supra note 48, at 7.

185 See id.

186 See Resolution on racism, xenophobia and anti-Semitism and the European Year against Racism, 1997 O.J. (C 55) 17 [hereinafter European Year Resolution].

187 These words are commonly used in EU communications and proposals. The problem is that they carry little force. See id.; Equal Treatment Proposal, supra note 75; Discrimination Communication, supra note 68.
ineffective. When the governmental and political leaders toward whom these words are directed are part of the problem, there is little hope that they will be heeded. In fact, the E.U. all but admitted that its hands are tied with these words in a 1995 resolution: “Racism, xenophobia, and anti-semitism must be tackled mainly at [the] local and national level.”

Perhaps the international organization was only trying to inspire the member states to act with the resolutions and treaties that followed that statement. Or, it could be that the organization was in denial as to its capabilities. In any case, despite the passage of time, the E.U. was true to its word. It must strengthen itself if it hopes to have a role in halting the spread of racism, discrimination, xenophobia, and hate crime in Europe.

IV. CONCLUSION

Based on all of the treaties, conventions, and other international agreements, the E.U. and U.N. clearly aim to curb discrimination and to ensure equal rights for all people. The problems that remain in the face of increased neo-Nazi power derive from the gaps in the methodologies to effect these goals. Part of the reason that the E.U. and U.N. are so ineffective is that they are so restricted as to when they can act. As is stated in article 5 of the Treaty of Amsterdam, the E.U. can only take action when member states cannot sufficiently address a problem. Despite increased problems across Europe, it has not been shown that Germany’s and Austria’s laws are ineffective and insufficient to deal with racism and xenophobia within their borders. It has not been shown that the E.U. would better achieve the goal of opening the minds of citizens and of silencing the hate speech of the parties in these countries. If anything, the failure of the sanctions in Austria is supporting evidence of the contrary conclusion.

Resolutions and communications in the past have discussed ideas hinting that the E.U. and U.N. foresaw the problems existing today, yet their leadership and members were unable to resolve the problems before they grew worse. The U.N. designated 1995 to be the International Year of Tolerance, and the Council of Europe launched a youth campaign against intolerance that same year. In May 1996, the European Parliament wrote a resolution partly in response to the “racist parties constitut[ing] the locus of crystallization for xenophobia, racism, and anti-semitism in society” and noting that “in order to

189 Resolution on racism, xenophobia, and anti-semitism, 1995 O.J. (C 126) 75.
190 EC TREATY art. 5.
191 See European Year Resolution, supra note 187, at 17.
combat racism and anti-semitism it is necessary to ostracize them and isolate their political leaders, such as . . . Mr. Haider.” That same resolution also called on politicians, lobbyists, and political parties “to refrain from exploiting xenophobic instincts and to condemn all forms of intolerance and racist statements in their actions and policies.” The E.U. also designated the year 1997 as the European Year against Racism. A resolution dated April 9, 1999, lauding the new article 13 of the EC Treaty “urge[d] all politicians to refrain from any form of exploitation or encouragement of xenophobic sentiments, to condemn all forms of intolerance and racist remarks in a manner which deprives them of any impact, and to combat any racist tendencies or groups within their own ranks.” As time passed, the issues remained in the discussion, but no significant action was taken. Any or all of these remarks might have been made with the understanding of the rising threats in the NPD and Freedom Parties, but they obviously have not been heeded. The national laws are better suited to respond than the international organizations. Therefore, member states must recognize their own obligations to take legal action inside their borders. If the U.N. and E.U. cannot force member states to address the flaws in their legal measures, then the situations in Germany and Austria threaten the political cohesiveness and effectiveness of the international organizations. Inaction condones the spread of neo-Nazi support; it turns the focus of the organizations away from their values of democracy, tolerance, and human rights. Until member states’ governments strengthen local enforcement laws, the power of enforcement remains minimized and threatens the shift of international organizations away from working for social values toward purely economic and defense partnerships.

192 Resolution on the communication from the Commission on racism, xenophobia and anti-Semitism, 1996 O.J. (C 152) 57.
193 Id.
194 See European Year Resolution, supra note 187, at 17.
195 Resolution on racism, xenophobia, and anti-Semitism and on further steps to combat racial discrimination, 1999 O.J. (C 98) 488.