

## FOREWORD

When we met in November 2008 for the international conference “Rights that make us Human Beings,” we gathered at a historic location: the courtroom of the Nuremberg District Court, which was the setting for the Nuremberg Trials from 1945 to 1949.

Stéphane Hessel’s appearance there remains especially vivid in my memory. Hessel is a survivor of the Buchenwald concentration camp and French diplomat who participated in the drafting of the Universal Declaration of Human Rights. At this historic location, Hessel spoke about the challenges we face today. He passionately called on young people to work for a solution to an increasingly urgent problem, namely the scarcity of resources and climate change, and especially for a solution to global poverty.

In so doing, he touched on the overarching challenge that shaped the conference: to conceive of the human rights formulated in 1948 as a direct response to war and genocide and as the product of history, and to relate them to contemporary threats to human dignity. One of our central interests in this respect is human rights education, which always entails two things: conveying knowledge and respect for human rights. The link between knowledge and attitudes is important because knowledge alone cannot produce action to protect human rights, just as an opinion without knowledge cannot ground arguments or produce useful action over the long term.

The Foundation “Remembrance, Responsibility and Future” stands for the acceptance of responsibility for past injustices and, against this background, for resisting the threat of new injustices. This relationship between historical awareness and current engagement remains fragile. Awareness of the historical genesis of human rights is part of the understanding of these rights, yet we also know that human rights have a universal validity independent of their original context. By the same token, a human rights perspective on historical injustice helps us move beyond ideology or other prejudices, but commemoration and mourning also require a space that is not necessarily oriented towards current engagement.

One of the central concerns of this volume is to situate the United Nations Charter of Human Rights and its provisions within their historical context. The Foundation “Remembrance, Responsibility and Future” embodies the desire to link our efforts to facilitate understanding between peoples to the historical experience of injustice, and to realize this project by promoting human rights education that takes historical contexts into account. If we learn about rights in their proper historical context, we are better equipped to understand injustice in the present day, and we come to understand the need to struggle against violations of human rights, to demonstrate civic courage, and to draw sustenance from our successes. We also learn that our engagement for human rights is an open-ended struggle, with a history of achievement and ongoing challenges.

This volume is the outcome of papers given at the 2008 conference in Nuremberg, and of our subsequent discussions and reflections. I extend my sincere gratitude to the editor Rainer Huhle, the individual authors, the translator Patricia Szobar and our program manager Christa Meyer.

Martin Salm

Chairman of the Foundation “Remembrance, Responsibility and Future”

Rainer Huhle

## INTRODUCTION: THE COMPLEX RELATIONSHIP OF HISTORICAL LEARNING AND HUMAN RIGHTS

On December 10, 2008, the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights (UDHR) was celebrated around the world. The anniversary occasioned many publications, conferences and other events that addressed the development and significance of the Declaration and the enforcement of the human rights that it envisions. Once again, it became clear that people throughout the world regard the Declaration, with its straightforward prose that has been translated into countless languages, as a binding statement of their human rights.

The Foundation “Remembrance, Responsibility and Future” and the Nuremberg Human Rights Center used the anniversary as an impetus to explore a very special aspect of the Universal Declaration, namely its significance for human rights education. In particular, we addressed the tension between concrete experiences of injustice, as they are reflected in the history of the development of the Declaration, and the pursuit of universal, normative human rights that are temporally and spatially decontextualized. This tension stems from the UDHR’s status as a historical and temporally bound document that is imbued with both universal and contemporary meaning. Drafted at a time when the recognition of human rights was a direct response to the crimes of Nazi Germany, the Declaration provided universal answers to concrete experiences of injustice that remain valid today.

The 1948 Universal Declaration therefore forms an important link between human rights education and historical learning. Against the background of historical experiences of different nations and cultures – for example the crimes committed in and by Nazi Germany, the genocide of the Jews, and the history of the Communist dictatorships of Central and Eastern Europe – we see how human rights can be created, recognized, understood and later implemented as a universal answer to concrete injustice. At the same time, human rights embody the ideals and actions of all those who tried to protect the dignity and rights of humans even in periods of injustice.

Although the Nazi era is unique in its radical denial of certain humans as subjects and its organized mass murder, the historical response to Nazism in the form of human rights remains valid today. Even today, people in nations across the world respond to injustices they have experienced by invoking their inalienable rights, which are guaranteed by the UDHR, by universal and regional human rights treaties, and in the basic rights enumerated in national constitutions. Here too, individuals struggle courageously against violence, oppression and exploitation under the banner of human rights.

The tension between uniquely dramatic experiences and the effort to achieve a universal human rights response was the central theme of the conference organized by the Foundation “Remembrance, Responsibility and Future” and the Nuremberg Human Rights Center in Nuremberg in November 2008.<sup>1</sup> This volume contains papers presented and discussed at the conference, as well as additional chapters by other authors. The volume is the continuation of a compelling debate that has inaugurated a new sphere of action for the organizations represented at the conference.

After the horrific experience of the crimes of National Socialism, the scope of which gradually became apparent after the end of the war, a broad universal consensus developed – beginning at the United Nations conference convened in April 1945 in San Francisco – on the need to implement three steps:

- furthering the normative development of human rights, initially reflected above all in the UN Charter and the UDHR, as a response to the trauma of the “barbarous acts” committed under National Socialism (as cited in the preamble to the UDHR), and other contemporary historical experiences of injustice;
- capturing the specific crime of the Holocaust under a new universal definition of genocide, as it was subsequently formulated in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which was the first international agreement for the protection of human rights;
- the elaboration of international criminal law and establishment of corresponding international criminal courts to adjudicate such human rights violations in the future. The Nuremberg Trials form the basis for a universal criminal court procedure.

The contributions in the first section of this volume elucidate these processes. **Stéphane Hessel** embodies like few others of his generation the step from the experience of suffering under National Socialism to constructive and forward-looking solutions. Born in Germany and raised in France, Hessel joined the French Resistance and survived three Nazi concentration camps. After the war, he joined the French diplomatic service, where he continued to work on behalf of human rights, international cooperation and international social justice. His words of encouragement profoundly affected the Nuremberg conference participants. An interview with Stéphane Hessel opens this volume.

In the first section of this volume, **Johannes Morsink** not only shows how profoundly the crimes of National Socialism affected participants in this debate, who came to the conference from across the globe, but also argues that this trauma represented a necessary precondition for an agreement on the formulation of human rights. According to Morsink, the universal human capacity to feel repulsed by injustice is a necessary precondition for the articulation of human rights. **Rainer Huhle** investigates the question whether we can detect specifically Jewish positions in the codification of human rights after 1945 in light of the unprecedented crime of the Holocaust. His conclusion, which is surprising only at first glance, is that the many Jewish contributions to the debate on the establishment of a new human rights order after 1945 occurred within and not outside the broader currents of the time and enriched the discussion in many different ways. **William Schabas** examines the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted by the United Nations General Assembly at the same time as the Universal Declaration, and its “founding father” Raphael Lemkin, to describe the complex and often contradictory path from specific historical experiences to the development of a universally valid norm for the crime of genocide. One of the many issues that had to be solved at the time was the conceptual distinction between genocide and crimes against humanity or war crimes. The International Military Tribunal at Nuremberg was not prepared to name and prosecute Nazi crimes according to a sustainable human rights perspective. Instead, the Allies clung to the

<sup>1</sup> See also the conference report at <http://www.konferenz-nuernberg08.de/?lang=en>.

established norms of the laws of war, in spite of the fact that the charge of “crimes against humanity” would no longer have required an association with war. William Schabas’ analysis of the concept of genocide and Rainer Huhle’s discussion of crimes against humanity both explore how these most serious crimes came to be defined despite numerous obstacles outside the context of war. This definition paved the way towards a universal international criminal law for crimes against humanity, which was ultimately anchored in the International Criminal Court.

In the second section of this volume, the authors examine specific human rights and how their formulation was shaped by different historical experiences and legal traditions. The basis for the development of human rights is the prohibition on discrimination that is so forcefully articulated in the Universal Declaration. Its first two articles postulate the same rights for all humans, while the remaining articles delineate rights for “all” or for “everyone.” **Heiner Bielefeldt** elucidates the historical contours and contemporary challenges of the prohibition on discrimination as the fundamental principle of human rights. The prohibition was understood as the most basic human right – in contrast to the extreme racial discrimination of Nazi Germany – because it is the fundamental precondition for all other human rights. At the same time, the elaboration of this prohibition is especially complex because discrimination has always and continues to take on new forms. For example, agreements that are reached today regarding discrimination on the basis of disability or sexual orientation demonstrate that the learning process did not end in 1948. Rather they show that the experiences of affected groups can continually expand and concretize the prohibition against discrimination. Indeed, it could be argued that the formulation of every human right, particularly after 1945, derived from concrete experiences of injustice. The contributions in this volume consider only three of many possible examples.

The right to the free expression of opinion is one of the classic freedoms that took shape early in the history of human rights in the West. In the wake of the National Socialist repression of all oppositional expression (and in the wake of Stalinist repression), the UDHR redefined freedom of expression with particular emphasis. The concise formulation of Article 19 of the UDHR masks the many heated debates that took place both inside and outside the Commission on Human Rights in the postwar years. The experience of National Socialism not only suggested the lesson that freedom of expression was a fundamental right for the preservation of democracy, but also that it might be necessary to prevent the expression of pro-fascist opinions. This tension, which is also reflected in Articles 19 and 29 of the UDHR, characterizes the elaboration of the right of freedom of opinion and information even today, and has been expressed in a multiple ways within different legal contexts and cultures. **Agnès Callamard** and **Otto Böhm** examine the scope and limits of freedom of expression from two different perspectives. Although the emphasis of their essays is different, they arrive at complementary conclusions.

When human rights were elaborated after the war, nations across the world were experiencing a refugee crisis. Millions of these refugees were not only homeless, but stateless. The dramatic events surrounding the victims of National Socialism, who were unable to obtain refuge abroad, were still vivid in international memory. This resulted in the formulation of a completely new human right, the “right to asylum.” Upon closer examination, the right to asylum as defined in Article 14 of the UDHR is quite modest in scope, entailing only the “right to seek and to enjoy in other countries asylum from persecution.” Even in 1948, no state was prepared to accept an outright obligation to admit political refugees to its territory. An additional difficulty is that no legal body existed that could have monitored such an international law. By its very nature, the right to asylum had to be formulated as a national right. This is what happened in Germany, the country that had been the starting point for the global refugee crisis. In Germany, the Basic Law of 1949 included the article “Persons persecuted

on political grounds shall have the right of asylum.”<sup>2</sup> In his essay, **Patrice G. Poutrus** details the rather meager practical effect this clear-cut provision had even during the early years of the West German state, well before Article 16 of the Basic Law was amended and adapted to the developments of realpolitik. For its part, the 1951 Geneva Convention Relating to the Status of Refugees referred explicitly only to refugees from the Second World War and made no provisions for future refugees, which further highlights the limitations of the human rights lessons that were drawn from the barbaric history of fascism and the war.

The oldest still active human rights movement is the movement for the abolition of slavery and the slave trade. **Aidan McQuade**, director of the organization Anti-Slavery International, shows that the history of slavery did not end with abolition. To the contrary, he argues that the distressing diversity of new forms of slavery in the 21<sup>st</sup> century is an “open secret of the globalizing political economy.” In the anti-slavery movement, learning from history above all encompasses the ability to recognize how the forcible exploitation of humans for an immense variety of purposes continues to assume new forms. Under National Socialism, slavery reached a horrific highpoint in the brutal forced labor of millions of people. For many years, however, the former forced laborers received scant international attention. The Foundation “Remembrance, Responsibility and Future” is the belated culmination of years of struggle on behalf of surviving forced laborers and their representatives to shed light on their experiences and suffering and receive at least symbolic compensation. In his essay, **Günter Saathoff**, a member of the board of directors of the Foundation, examines the history of this belated learning process that was driven by the Federal Republic of Germany together with international organizations. Saathoff also illuminates the legal and political limits of these efforts.

If the formulation of human rights always derives from specific historical experiences of injustice, who are the agents of this learning process? The incipient global human rights movement after the Second World War was multifaceted and heterogeneous in its composition. Many different civic groups crafted the human rights agenda and tried to realize its goals, but as Johannes Morsink shows, human rights also deeply penetrated the spheres of politics and diplomacy. After a long period of stagnation, human rights agreements were revived in many different regions during the 1970s as a result of popular movements against repressive regimes. This volume considers two important points of focus for these new human rights movements. **Uta Gerlant** and **Ernst Wawra** both consider the Helsinki movement in Central and Eastern Europe, which was inspired by the Final Act of the Conference on Security and Cooperation in Europe. The result of years of diplomatic negotiations, the Final Act was initially accorded little significance. The groups that referenced the Final Act as the basis for elaborating concrete human rights demands also demonstrate that human rights rhetoric carries a cost. Indeed, the rhetoric may be taken quite seriously, as the governments of Eastern Bloc nations eventually discovered.

The same holds true for Latin America, which was dominated by violent military dictatorships during the 1970s. After General Augusto Pinochet’s 1973 coup d’état in Chile, a human rights movement began to develop across the continent that for the first time struggled to realize the human rights principles enshrined in UN agreements and inter-American human rights declarations and agreements. As in Central and Eastern Europe, an intensive learning process took place within the Latin American human rights movement regarding the potential for human rights action against political repression. This learning process also led to an intensive teaching process, as **Flor Alba Romero** demonstrates with the example of Colombia. Across much of Latin America, human rights education was seen as a weapon against the regimes that routinely violated human

<sup>2</sup> Press and Information Office of the Federal Republic of Germany, Basic Law of the Federal Republic of Germany, promulgated by the Parliamentary Council on May 23, 1949.

rights. Although human rights education had been on the United Nations agenda since 1948, its global revival and the enrichment of its methodologies and concepts has emerged largely from this new impetus from Latin America. Thus, both the formulation of human rights norms and human rights education stem from concrete experiences of injustice. These experiences require actors – individuals, groups and movements – to articulate them.

The final section of this volume raises the issue of the role of historical experience and historical education in human rights education. The individuals and organizations involved in the historical development of the modern concept of human rights after 1945 always understood that development as a learning process. Examining this postwar learning process helps us better understand the relationship between concepts of history and concepts of human rights, and the relationship between historical learning and human rights education today. The history of the promulgation of the Universal Declaration and the history of national experiences of injustice are particularly fruitful entry points for historically grounded human rights education, as well as for historical education that incorporates issues of human rights.

In the opening essay of this section, **Monique Eckmann** analyzes historically grounded human rights education by focusing on the central element of the Universal Declaration, the right to be protected from discrimination. Eckmann considers both historically grounded and ahistorical models of anti-discrimination education (especially Holocaust education) to argue for an approach that bridges historical and contemporary experiences of discrimination and, as a result, bridges personal experience and experiences shared with other individuals and groups. **Hasko Zimmer** explores the challenges posed by human rights education for societies that are increasingly shaped by immigration, particularly among their younger generation. In Germany, these challenges are felt especially acutely in human rights education on the topics of National Socialism and the Holocaust. In the process, Zimmer warns against the tendency of majority groups to dominate the framing and interpretation of historical and human rights education. According to Zimmer, the inherent diversity of the experiences of human rights violations serves as the impetus for new articulations of human rights. Recognizing this diversity of experience thus allows us to understand human rights as the outcome of a process of struggle, both in the past and today. **Albert Scherr** also emphasizes the usefulness of historical relationships – with an emphasis on “relationships” in the plural – to effective human rights education. If we wish to avoid teaching human rights as ahistorical dogma, our educational efforts must incorporate the complex and often contradictory history of the social movements that helped shape human rights across the centuries as they paved the way for the overarching consensus achieved in the 1948 Universal Declaration. Incorporating this complex history is essential to creating an effective human rights engagement that avoids moralizing arguments. In the final contribution, **K. Peter Fritzsche** takes up many of the arguments presented by the authors of this volume to propose ten concise theses for historically grounded human rights education as the foundation for further discussion and debate among theorists and practitioners in the field.

In light of these historical examples of concepts of human rights education in social movements and the findings of the Nuremberg conference on topics ranging from the prohibition against discrimination and torture to the freedom of religion, political participation, expression, and information, we must ultimately examine the relevance of our knowledge of historical experiences of injustice and the development of human rights in response to these experiences for contemporary educational work. The question remains what lessons this history provides for the complex relationship of human rights education and the active struggle to enforce human rights.

## INTERVIEW WITH STÉPHANE HESSEL

**The son of writer Franz Hessel, Stéphane Hessel was born in Berlin in 1917. In 1924, he and his parents moved to Paris. He became a French citizen in 1937, and began studying philosophy at the École Normale Supérieure. After joining Charles de Gaulle's Free French Forces, Hessel went to London in 1941 and returned to France as an agent. In July 1944, he was arrested by the Gestapo, tortured and deported to Buchenwald. Hessel was able to escape execution by exchanging identities with a comrade who perished in the camp and was later transferred to the Rottleberode and Dora concentration camps. When the Dora camp was evacuated in advance of the approaching Allied troops, Hessel finally succeeded in escaping from the transport train. Immediately after the end of the Second World War, Hessel joined the French diplomatic service, where his career included postings to the United Nations and to several North African nations. Rainer Huhle interviewed Stéphane Hessel at his home in March 2009. The interview was conducted in German. The footnotes are by Rainer Huhle.**

**Rainer Huhle:** In your book, you wrote that you became a diplomat as a result of your experience of the concentration camp. I found that quite surprising, since it's hard to imagine Buchenwald and Dora as the motivation for a diplomatic career. Could you elaborate on this a bit?

**Stéphane Hessel:** Two different factors played a role. On the one hand, many different nations were represented at Buchenwald. People from all over Europe were interned there, and we had a sense that together we needed to achieve something larger than that terrible concentration camp. There were also Germans at Buchenwald, and in fact the first inmates at Buchenwald were German. In the camps, it seemed that when we succeeded in speaking with each other – which wasn't always easy – we discovered that we all shared the same experience, the experience of suddenly being swept away by the horrifying wave of Nazi terror. So the concentration camp prompted my earliest identification with an international perspective. That was where I first assumed an international outlook, and the camps were responsible for awakening my interest in diplomacy. On the other hand, I lived through one of the longest wars. I enlisted in the French army in 1939, and I wasn't at liberty again until May 1945 – six years later. After that long experience of war, I decided to abandon scholarship, to leave the École Normale and philosophy, and instead work on something I found personally meaningful, something in an international field. "Diplomat" is of course a complex term. In a sense, a diplomat strives

to remain aloof from direct action. But on the other hand, after that terrible war, it seemed to me that refusing to take part in international relations would mean remaining on the sidelines. As Frenchmen, we are naturally interested in what is happening in France, but we also need to remain engaged with what is happening outside our own country. So even then, as a former concentration camp inmate, I believed that Europe and the rest of the world were important as well.

**RH:** Did you experience Buchenwald as a sort of international microcosm?

**SH:** I arrived in Buchenwald with the “Group of 36.” We were thirty-six altogether, and sadly thirty-one of us were executed and hanged. We were from Belgium, France and England, and there was also one American and one Irishman, so it was very international. The same is true of my rescuers: Eugen Kogon, a true German, and Balachowski, a Frenchman of Polish extraction. Buchenwald was not quite the Café du Dôme of 1939, but it was a gathering of immense diversity. I was also incredibly fortunate to be able to speak good German, which made it possible for me to speak with the SS man who arrested me when I escaped. I was able to persuade him to transfer me to a punishment commando rather than having me hanged. That was my first opportunity to speak with someone, to speak with an enemy and try to change his mind. When I was arrested in Paris, I also had the sense that I might be able to negotiate with the people who had arrested me, as I had already learned to negotiate and I spoke English as well as German and French. I was also fortunate in that I didn’t give up my friends after my arrest, which also entailed a kind of diplomacy. So what was it that I as a young man faced, during my years of arrest and imprisonment in a concentration camp? As a young man, I perceived myself as someone with comrades, with whom I could share my experiences, but also someone with enemies, with whom I had to come to terms in some fashion.

**RH:** I see what you mean, and in fact it did strike me that you must have been a skilled diplomat in the concentration camp, since you twice succeeded in negotiating to save your own life. In later years, when you were at the United Nations, you were known to say that your greatest and most important challenge was your work with the Commission on Human Rights. Was the term “human rights” ever mentioned at Buchenwald or Dora? Did you and your fellow inmates have any sense that you were not only being subjected to horrific brutality, but that your human rights were also being violated? You are French, and human rights have always played a greater role in French national identity than elsewhere. Were you already aware of the concept of human rights in the camps, or did that come later?

**SH:** No – in hindsight, of course we realized that our human rights were grossly violated in the camps. But I can’t recall ever discussing the fact that our human rights were being violated at the time. It’s possible we did so, but unlikely. Our enemies were the Nazis – fascism and National Socialism. We talked about democracy and National Socialism.

**RH:** That’s why it’s interesting that you so quickly turned to the issue of human rights. In Germany and in much of France and the rest of the world, the lesson appeared simple: anti-fascism. But you were quick to recognize the international context, and from that you took up the question of human rights. Did you meet Mr. Laugier by chance, or had you already envisioned taking that path?<sup>1</sup>

**SH:** That was sheer chance, or rather a happy coincidence. I should mention that my father-in-law, Mirkine-Guetzevitch, was a lawyer and a Russian expert on the French revolution. (I had already known my wife for

1 Henri Laugier (1888-1973) was a physician and academic who founded the Centre national de recherche scientifique (CNRS) in 1939. In cooperation with de Gaulle’s government-in-exile, Laugier tried to save French researchers from the Nazis and established the foundation for the reorganization of French science after the war. In 1946, Laugier became Deputy Secretary-General of the UN. He was involved in founding the WHO, UNESCO and UNICEF and also contributed to drafting the Universal Declaration of Human Rights.

two years when we married in 1939.)<sup>2</sup> My father-in-law and I often debated whether Robespierre or Danton was more important to the Revolution. So I was already fairly familiar with the concept. Laugier, who became my employer, was a friend of my father-in-law. In this sense, the French Revolution and the 1789 Declaration of the Rights of Man played a significant role in our relationship. I also greatly admired Franklin Roosevelt, and even before the end of the war, I had heard of the Four Freedoms of the Atlantic Charter, which marked the emergence of human rights.<sup>3</sup> Establishing the United Nations was important to me, and of course the fact that the UN was founded on the declaration of human rights was of great interest to me as well. Then in 1946, my father-in-law was put in charge of the *Annuaire de droits de l'homme*, and was responsible for selecting and editing the texts. The UN Charter mentioned the term human rights, and when I arrived in New York, I knew I wanted to be involved with human rights. The fact that it was Laugier who employed me, and Laugier who directed his team in their collaboration with the drafters of human rights – this was a coincidence, but a happy one.

**RH:** To begin with, the UN met in a suburb of New York, at Lake Success on Long Island...

**SH:** Yes, in a basement factory. That was a strange feeling for me, because I had only just left another basement factory, at the Rottleberode concentration camp, and both of these factories were used for military aircraft production.<sup>4</sup>

**RH:** The Nuremberg Trials had begun by the time you started working there. Did you follow the trials from Lake Success?

**SH:** Of course. The trials were immensely important. The project of reconstruction, the invaluable effort of founding the UN, the UNRRA, which rebuilt the European and Asian states, and the Nuremberg trials – these were the key issues of the time.<sup>5</sup> We followed them very closely, and we had friends in Nuremberg. My wife's uncle Léon Poliakov, for example, attended the trials in Nuremberg with Edgar Faure.<sup>6</sup> So we were aware of the trials, and naturally we followed them from afar.

**RH:** One of the reasons I'm interested in this question is because it often seems there were two separate and distinct worlds: one world centered around Nuremberg and other places where criminal prosecutions took place, and a second world centered around the United Nations, populated by individuals who were engaged in more forward-looking and constructive human rights and international work. I would even say there was competition between the two worlds. Raphael Lemkin, for example, disapproved of the members of the Com-

2 Boris Mirkine-Guetzevitch was a Russian lawyer. After the February Revolution, Mirkine-Guetzevitch became a representative of the Mensheviks. He was forced to flee after the October Revolution. During his exile in France, he became a famous constitutional lawyer and a founder of political science in his adopted home. He was also a fervent defender of human rights, and joined the Ligue des droits de l'homme. Mirkine-Guetzevitch was forced into exile again in 1940 and went to New York, where he became a co-founder of the International League of Human Rights. For the rest of his life he taught at several institutions in New York, including Columbia University and the New School for Social Research. Nonetheless, Mirkine-Guetzevitch continued to publish his many academic writings in French. In 1946 he began publishing the *UN Yearbook on Human Rights*.

3 In his State of the Union address in January 1941, President Roosevelt propounded the Four Freedoms (freedom of speech and expression, freedom of religion, freedom from want, freedom from fear). In August of the same year, Roosevelt and Churchill proclaimed these freedoms in the Atlantic Charter, which established a vision for the new postwar world order.

4 The camp in Rottleberode on the edge of the Harz mountains was a sub-camp of Buchenwald and Dora-Mittelbau. In Dora, inmates assembled V-2 rockets; in Rottleberode they assembled aircraft parts.

5 The United Nations Relief and Rehabilitation Administration (UNRRA) was founded during the war by the Allies for future reconstruction and support of refugees. It was subsumed into the UN after the UN was founded. All member states contributed to it on a fixed-rate basis.

6 Léon Poliakov was born in St. Petersburg in 1910 and fled to France with his parents in 1920. He studied law and later became a leading historian of anti-Semitism. His best-known work is the four-volume *History of Anti-Semitism*. He was a co-founder of the Centre de documentation juive contemporaine, which began documenting Nazi atrocities in 1943. Poliakov also served as consultant to the French delegation at the International Military Tribunal in Nuremberg. In 1951 he published the first comprehensive study on the Holocaust in France, the *Bréviaire de la haine*, compiled with reference to the material available to him in Nuremberg. Edgar Faure was a lawyer, a member of the French Resistance and a member of General de Gaulle's government in exile after he fled France. He served as French counsel for the prosecution at the Nuremberg Trials. He also served twice as French Prime Minister and as a minister in various governments.

mission on Human Rights, and believed they were stealing his thunder.<sup>7</sup> And conversely, many of the people involved with the Commission on Human Rights weren't interested in what was happening at the Nuremberg Trials. What was your impression at the time?

**SH:** The people who drew up the Universal Declaration of Human Rights quite clearly did not want to be influenced by Nuremberg. They believed Nuremberg belonged to the past, whereas they were looking to the future. Of course there were also some personal issues at stake. Lemkin, for example, was strongly supported by my boss, Mr Laugier, and made every effort to push through the United Nations Convention on Genocide on the day before the Universal Declaration on Human Rights.

So in that sense, there were two conflicting priorities: how to come to terms with this terrible enemy we had defeated, and how to shape and create our new future. I can no longer remember how much of this might have been tied up with personal issues. At the time, it seemed to me that no one was terribly interested in that. We were glad for the Nuremberg trials, but preferred to focus on the Universal Declaration of Human Rights.

**RH:** In addition to the Universal Declaration of Human Rights, there were two other very important issues at the time – drafting the Human Rights Convention, and establishing a framework for human rights implementation. Of course, the criminal prosecutions were central to the issue of implementation, although it seems that Nuremberg played only a minor role in that respect. What was René Cassin's role at the time?

**SH:** Cassin actually played a very important role. For a start, when it came to drafting the text, Cassin was the best writer in our group. We had to decide whether to write in French or English. Lauterpacht and the other British contributors to the Universal Declaration of Human Rights favored a draft that was very different from the one envisaged by Cassin.<sup>8</sup> Cassin was substantially influenced by the French Declaration of the Rights of Man of 1789 and was always urging us in that direction. He was popular with other members, especially the Latin Americans. So Cassin certainly played a key role. John Peters Humphrey was known to claim that he was the key figure in the process, rather than Cassin, and of course Humphrey was correct to an extent. The Secretariat laid the groundwork for the declaration, and when you lay the groundwork it is only natural to believe the groundwork is the most important thing. And there is a great deal of truth to this. But the difficulties we encountered in formulating the articles, the different ideas that had to be debated – these were mainly a conflict between East and West. After all, the Russians played an important role (in the Universal Declaration of Human Rights).

But to return to Cassin: first, he was a personal friend. Cassin and I were both in de Gaulle's government-in-exile in London, where he was very influential. Cassin was also a friend of my father-in-law, and that relationship was also very important to me. I collaborated with Cassin very closely, and I was always there when he was trying to push things through. But it's hard to say who was the most important person there. Eleanor Roosevelt was very important, for example. She maintained cohesion and made sure that we didn't stray too far apart, which was no easy task. In 1948, the tension between East and West was palpable, and in fact they (the Russians and the socialist states) abstained in the end.

**RH:** While we're on the subject of Cassin, there is one thing that troubles me somewhat, which is seldom mentioned in his biographies: I don't understand how Cassin was able to reconcile his work for human rights with

7 Raphael Lemkin was a Polish lawyer of Jewish descent. His 1944 study on the Nazis' extermination policies in Europe, *Axis Rule in Occupied Europe*, coined the term "genocide." Lemkin played a key role in achieving recognition of the crime of genocide in international law.

8 Hersch Lauterpacht (1897-1960) was born to Jewish parents from Galicia in East-Central Europe. He studied law in Lviv and then in Vienna. After emigrating to London in 1923, Lauterpacht became one of the most influential experts on constitutional and international law of his generation. In 1951, Lauterpacht was appointed to the United Nations International Law Commission and from 1954 until his death in 1960 he was a judge at the International Court of Justice. During the war, Lauterpacht helped develop British policy on war crimes. He was critical of the work done by the UN Commission on Human Rights because he believed it failed to anchor human rights adequately in binding legal norms.

French foreign policy in those years. Cassin had already been a senior civil servant in Algeria, and Algeria and Africa as a whole were the springboard for de Gaulle's return to Europe in the Second World War. De Gaulle frequently mentioned the topic of empire, and I've never found any suggestion that Cassin was disturbed by French colonialism. Cassin's name never appears in the debates on the struggle against colonialism. How is it possible to reconcile the proclamation of universal human rights, while at the same time continuing to exercise colonial rule in Vietnam, Algeria, Tunisia and sub-Saharan Africa?

**SH:** Cassin was a patriot and at that time the French took colonialism for granted. The French told themselves, "We are a great empire, a colonial power, and we take this very seriously. Our motives are entirely honorable, and we are bringing freedom to the unfortunate Africans." Later, of course, this would change. In the 1950s, Cassin and many of my friends pushed for decolonization. Cassin often urged the end of colonialism, particularly in the case of Algeria. During the drafting of the Universal Declaration of Human Rights, Cassin and Madame Roosevelt were able to convince the authors that the preamble should apply not only to the member states, but also to the populations of their dependent territories. In other words, it was already clear that decolonization, which was underway in India, would be the pre-eminent issue of the next half century, or at least the next twenty-five years. In this sense, Cassin was not someone who opposed decolonization. But Cassin was not the official representative of France. Like everyone else, he was just one individual within this larger group. In fact, that was one of the innovations at the time: the Secretary General personally selected the members of the Commission on Human Rights, naturally in consultation with the principal nations.<sup>9</sup> There was always tension between Cassin and Alexandre Parodi, who was the French ambassador to the UN. It was Parodi's job to make sure that nothing in the declaration would create difficulties for France with its colonies. And in fact, the rights of colonial populations were formulated in a very oblique manner in order to ensure that no objections would be raised. This was an issue not only for France, but for Great Britain and the Netherlands as well.

To return to Cassin: he was a true democrat who helped found not only the national commission but also the European Court of Human Rights. He also lobbied for the Council of Europe. He was a true defender of human rights. So it was of course clear to him that many human rights were not being respected in the colonial states. But at the time, there was still no awareness that this was a major problem that should have been addressed long ago. We were full of confidence and we believed France was at home in Algeria, that France had treaties with Morocco and Tunisia, and that France had colonies. We took pride in this colonization.

**RH:** From today's point of view, it's very disturbing. This wonderful declaration of human rights was drafted in 1947-48, at the very same time that the powers who had contributed in such a positive fashion to its drafting were carrying out massacres in Madagascar, Indonesia and Malaysia. How could it have been possible to continue with the former, without calling a halt to the latter, as if these were two separate planes of existence? The British simply excluded their colonies from the scope of the declaration. That was quite apparent, and in a certain sense it was also honest. But in the Netherlands, for example, it was completely swept under the carpet. As far as France was concerned, it appears this contradiction was never really addressed.

**SH:** No. I think you're absolutely right although I'm not sure if "addressed" is the right word. Rather, I would say that the issue was perceived differently by different nations. For example, at the time many believed the French empire was in need of modernization. The methods that dated back to the 1884 Berlin Conference were obsolete, and the nations had to be brought together. France had colonies in West Africa and Central Africa,

<sup>9</sup> That method of appointment was employed only in the initial phase, especially in 1946, when the core commission was comprised of only nine members. Beginning in 1947, the now 18 members of the Commission on Human Rights were appointed by their respective governments.

and France also wanted to keep giving Algeria another chance. An attempt to gradually modernize the colonial states was already underway. Pressure from the UN was ultimately decisive in bringing about decolonization in a very brief period of time, and all the colonies gained their independence in a span of less than 17 years. The UN turned up the pressure, but France, the Netherlands, Spain and Portugal continued to resist decolonization. But this did not entail denying the colonies human rights, as the British had done. Instead they hoped to do a better job tending to the colonies, and to recognize human rights there gradually.

**RH:** You mentioned Roosevelt and the Atlantic Charter. The Atlantic Charter ended up being something of a time bomb in the colonies. As a young man, Nelson Mandela embraced it enthusiastically, and the Charter spurred Ferhat Abbas to write his first declaration for Algeria. The Charter was quite explosive, and Churchill was rather displeased by that. In this respect, it's not surprising that human rights became finally visible at an international level. They represented a tremendous boost to the colonies' efforts to gain independence. That's why I find it all the more astonishing that so many Europeans remained so blind to the situation.

**SH:** I agree, although "blind" is perhaps too strong a word. I think countries such as France, the Netherlands, Portugal and so on soon realized that colonial rule had run its course. Now that the Universal Declaration of Human Rights was on the table, it was time to work towards the liberation of the colonized nations. Nevertheless, for the colonial states of the period, the conditions of this liberation, and the time-frame in which it was to be accomplished, were important political concerns. The general sense at the time was that the various options and possibilities should be explored with care, and that this would require time, and that ultimately liberation would become reality. Thus when de Gaulle gave his speech in Brazzaville in 1944 in which he said that in the future everyone would become free, this meant the end of the colonial era.<sup>10</sup>

**RH:** There are some historians who believe that de Gaulle had already decided to grant Algerian independence in 1958, and that de Gaulle in essence set off the Algiers coup. What do you think?

**SH:** I don't know whether that's in fact true, but I do believe that de Gaulle had known since Brazzaville that things were headed in that direction. But how would it be possible to ensure that our beloved France would retain special relations with her former colonies? The British maintained relations via the Commonwealth, and the Queen was the head of the Commonwealth.

**RH:** Returning again to France: when the Algerian War broke out, the great human rights issue in France was torture and the struggle against torture. Were you involved with this at the time through your connections with human rights organizations? And what about the other members of the Resistance, who had fought the Nazis inside and outside France (for example in London)? Did they all take part in the struggle against torture in France or were there differences of opinion?

**SH:** Yes, there were. I myself joined the Club of 1958, also known as the Club Jean Moulin.<sup>11</sup> I worked with them, and our first priority was the liberation of Algeria. We sent letters to the parliament saying that it was time to liberate Algeria.

**RH:** But you didn't sign the Manifesto of the 121?<sup>12</sup>

10 On January 30, 1944, de Gaulle opened the Brazzaville Conference in what is today the capital of the Democratic Republic of Congo and what was at the time the temporary seat of the French government-in-exile. At the conference, he made a number of ambiguous references to the possibility that the African states might be granted greater rights. See [http://www.charles-de-gaulle.org/article.php?id\\_article=399](http://www.charles-de-gaulle.org/article.php?id_article=399), accessed on April 14, 2009 (original in French).

11 The Club Jean Moulin was named after the famous French Resistance fighter Jean Moulin, who was murdered by the Nazis. It was founded by former members of the Resistance, including Hessel, after the events of 1958 triggered a political crisis in France. Made up of leftist and liberal intellectuals and politicians, the Club was frequently very influential in France and its *Bulletin* was regularly reprinted in *Le Monde*. The Club was dissolved after the political upheavals of May 1968.

12 The *Déclaration sur le droit à l'insoumission dans la guerre d'Algérie* was signed in 1960 by 121 leading French intellectuals, including Claude Lanzmann, Simone de Beauvoir and Jean-Paul Sartre as well as other figures from the arts such as the actress Simone Signoret and composer Pierre Boulez. The call for civil disobedience alleged that the war in Algeria was not lawful. Many of the signatories lost their jobs as a result.

**SH:** No. For some reason I wasn't in Paris at the time. Perhaps I was already in Algeria, but at any rate I did not sign the 121. Well, I was not personally involved but of course I was always in touch with the various groups working for decolonization. I was especially interested in Algeria. I lobbied to be sent to Algeria to help establish a new relationship between a free Algeria and France. The term "decolonization" is extremely complex, and entails not only liberation but also a certain responsibility: are these nations ready to maintain their own independence? Do they need more help? If so, what kind of help and for how long? We couldn't simply say, "We're leaving now, and they'll have to set everything up themselves."

**RH:** These were certainly difficult political issues, but the human rights question was of course bound up primarily with the torture issue. I assume that Cassin and others were also involved. Were you in the Ligue des Droits de l'Homme?<sup>13</sup>

**SH:** Yes. I was always a member, since the end of the war. Both the Ligue and also Cassin and Teitgen were trustworthy organizations, trustworthy people.<sup>14</sup> But we weren't satisfied. We always sensed the French government was influenced by the colonialists and it was hard to get away from that. Pierre Mendès-France was a good friend of ours and we liked the way he treated Bourguiba, for example.<sup>15</sup> But Mendès-France did not call for immediate independence either. Instead he pushed for greater freedom and autonomy, which would lead to the ultimate goal of independence. We felt we could not simply walk away. It was a complex situation.

**RH:** You've written there came a time when you were very disappointed by the UN, and were then glad to be able to leave. How do you see the development of human rights work at the UN since?

**SH:** I still view it very favorably, and believe their work is extremely important. There is no other place apart from the UN where human rights can find their rightful place. The centrality of human rights in the UN Charter means that whatever happens, how the various institutions develop depends on the states. The institutions are run by states and states can behave badly. For example, the majority of states in the Human Rights Council at the moment are not democratic states, and they can cause difficulties, as was demonstrated by the Durban Review Conference against Racism. It's possible there will be many more conflicts. That is sad, very sad. It can also be tragic, but on the whole, progress is still being made. For one, the Council is now calling those states to account, which is very important.<sup>16</sup> And we now have a number of international tribunals, one of which has indicted Omar al-Bashir, the first head of state to be indicted while in office.<sup>17</sup> In other words, High Commissioner Pillay, the Human Rights Council and various non-governmental organizations are continuing to build upon the architecture of human rights.<sup>18</sup> Much work is being done within the aegis of the UN to protect human rights, but it continues to be limited by state sovereignty. So the struggle remains a difficult one.

13 Founded in June 1898 in the wake of the Dreyfus affair, the Ligue des Droits de l'Homme is one of the oldest civic organizations for human rights.

14 Pierre-Henri Teitgen (1908–1997) was a member of the Resistance and of de Gaulle's government-in-exile and transitional government. As Minister for Justice in 1945–1946, Teitgen organized the trials of leaders of the Vichy Government. Later he made a significant contribution to drafting the European Convention on Human Rights.

15 Pierre Mendès-France (1907–1982) was a member of Léon Blum's Popular Front government in the 1930s. During the war, Mendès-France was a member of the Resistance and of de Gaulle's government-in-exile. After the war he served as a minister in de Gaulle's provisional government. A fervent anti-colonialist, when French forces were defeated by the Vietnamese Communists at Dien Bien Phu in 1954, Mendès-France formed a government to address the French withdrawal from Indochina. As a result, Mendès-France was subjected to an anti-Semitic smear campaign, with Jean-Marie Le Pen as one of its leaders. Mendès-France led talks on Tunisian independence with Habib Bourguiba, leader of the Tunisian independence movement, and over Algeria he broke with the majority of his party, who backed the war and later de Gaulle's Fifth Republic. This break spelled the end of Mendès-France's political career.

16 The Human Rights Council, created in 2006 to replace the Commission on Human Rights, introduced a process known as the Universal Periodic Review (UPR). This involves a review of the human rights records of all 192 UN member states, including the members of the Council themselves, once every four years.

17 The International Criminal Court indicted Omar Hassan Ahmed Al Bashir, President of Sudan, on March 4, 2009, and issued an arrest warrant against him on counts of war crimes and crimes against humanity committed in Darfur.

18 South African judge Navanethem Pillay first served as judge in the International Criminal Tribunal for Rwanda in Arusha and then on the International Criminal Court in The Hague. Her four-year term as High Commissioner for Human Rights began in 2008.

**RH:** If the Charter were a soccer match between the principle of sovereignty and the principle of human rights, we would have to say the debate resulted in a draw. The relationship between sovereignty and human rights remains unresolved in the Charter.

**SH:** Yes, we have both Article 2(7) and Article 55.<sup>19</sup>

**RH:** In fact, we're still in much the same place as before. The two articles co-exist.

**SH:** The two articles are still in force because they were part of the original Charter, which has never undergone real reform.

**RH:** If my memory serves me correctly, the original plan was to hold a conference ten years later to review the Charter and consider amendments. But this conference never took place.

**SH:** The conference didn't take place. Twenty years into the Charter, another attempt was made to conduct a review, but this again failed to materialize. Today we are still in the same position as 1945. But there's also a great willingness to adapt. The Security Council has the power to do more, and sometimes it exercises this power. We are making progress. Today the 192 nations include many more democratic governments than 50 years ago. The example of Amnesty International is quite interesting in this respect. Every year, Amnesty International publishes a report on abuses in individual states. Today, only a few states commit a significant number of abuses, and even those states generally do not commit extremely serious abuses. Governments and heads of state are heavily influenced by public opinion and by pressure from states that wish to promote developments within the UN.

Looking back at development of the UN, the most wonderful period was the formative years from 1945 to 1948. We were still buoyed by the battle against fascism and the hope for a new and better world. That was followed by a long period until about 1989, which was marked by the Cold War and the impasse between the two power blocs. But even during this period, there were significant advances, including the major human rights pacts. After 1989, the UN was shaped by a series of major thematic conferences, including the 1993 Human Rights Conference in Vienna and the Climate Conference in Rio, which set the course for new developments. Finally, the Bush administration marked a new ice age, which we hope has now come to an end.

<sup>19</sup> Article 2(7) of the UN Charter proclaims the sovereignty of all its members: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII." Article 55 (c) sets as a goal for the United Nations "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

Morten Kjaerum

## HUMAN RIGHTS AND THEIR HISTORY FROM A EUROPEAN PERSPECTIVE

Thank you for giving me the opportunity to speak today about human rights and their history from a European perspective, and about the European Union's responsibility for the protection of human rights.<sup>1</sup> Last weekend I read the first draft of my agency's upcoming report on child trafficking in the EU. Although we know very little about this issue, we do know that thousands of children enter the EU officially each year and are cared for in asylum centers or elsewhere. A few days later, they leave the centers without a trace. Most likely they are sold to the sex industry, sent to work in the worst jobs in European industry and farming, or perhaps exploited as domestic labor. These are not stories from the 19<sup>th</sup> century or from a novel by Charles Dickens, but the realities of twenty-first-century Europe. The protection of human dignity remains as much an issue today as it was in the past.

In my speech today I will concentrate on three key points. First, I begin by considering the history of human rights in Europe and recent developments. Second, I address some of the current human rights challenges in the European Union. And third, I provide an overview of the EU's efforts to protect and promote human rights.

### The History of Human Rights in Europe

Human rights in Europe have a long history; a number of different strands within this history have shaped human rights as we know them today. The first strand that shaped our contemporary understanding of human rights is the development of democracy. The English Revolution ("Civil War") of 1640 under Oliver Cromwell, the United States Declaration of Independence of 1776, which significantly affected Europe as well, the French Revolution of 1789 and the revolutions of 1848 across Europe, all promoted increased political and civic participation. These developments helped create space for freedom of expression, freedom of assembly, freedom of association and the right to vote. The second historical development that shaped our contemporary understanding of human rights is the development of the rule of law, or what Germans call the *Rechtsstaat*. This trajectory can be said to have begun with the English Magna Carta of 1215, which for the first time granted the right to oppose unlawful imprisonment. Some centuries later, Montesquieu's theory of the political division of powers laid the groundwork for the right to a fair trial, the prohibition of torture, the abolition of slavery, and the modern insistence that each person should be respected as a legal entity in his or her own right. A third important development has been the expansion of protections for minorities. An early turning point in

<sup>1</sup> This chapter is based on Morten Kjaerum's address to the 2008 conference "Rights that make Us Human Beings," and has been revised for publication.

this development was the Peace of Westphalia in 1648, which granted religious freedoms and ended three decades of religious wars and minority conflicts. Minority rights also encompass the prohibition on discrimination based on race and ethnicity, including the right to seek asylum due to persecution stemming from racial prejudices and ethnic conflict. Advances in social and economic justice constitute the fourth important development. In Denmark in the late 1800s, for example, the average life expectancy was 55 years. In Copenhagen it was 35 years because of the appalling housing and health conditions. Social and economic rights include the right to housing, health and education. From the late 1700s onwards, all of these developments gradually began to inform the new constitutions of European countries.

Being here in Nuremberg, I could have opened this speech with the modern history of human rights, which starts with the tragedy and the crimes of the Second World War. The heinous atrocities and crimes committed both before and during the Second World War spurred the international community to take several important steps. The Nuremberg Trials had a massive influence on the development of international criminal law. They influenced proposals for a permanent international criminal court, which came into being 55 years later, in 2003. It was also the crimes against humanity committed in the Second World War that inspired the Universal Declaration of Human Rights of 1948, some 60 years ago. In 1950, the Council of Europe's European Convention on Human Rights was adopted and the European Court of Human Rights became a reality soon thereafter. Furthermore, the creation of the European Community was a direct response to the war; today the European Union is a crucial guarantor of fundamental rights.

The Universal Declaration of Human Rights was and remains fundamental to the protection of human rights worldwide. But what kind of force does a political declaration have? Before 1948, many countries, especially in Europe, had enshrined human rights in their national constitutions. Why did the Universal Declaration represent such a significant step forward? I see two main reasons. First, the Declaration was not merely political in nature. Its context, content, and impact were immensely powerful and unique. After the Declaration, human rights were transformed from a national concern and a matter of national law to an international concern and a matter of international law. The Universal Declaration was far more than a political statement, and most of its provisions gradually became part of international customary law.

Second, human rights were for the first time no longer predicated on a contract between a state and its citizens. After the Universal Declaration, human rights became a basic underlying principle for all persons, regardless of citizenship. The famous Article 1 states: "All human beings are born free and equal in dignity and rights."<sup>2</sup> People are born free and entitled to basic rights from the start, irrespective of the state or law. Human rights are universal.

It is interesting to look at the context of the Declaration in 1948. Work on the Declaration began after the atrocities of the war, at a time when the world was ready for tangible progress in recognizing and protecting human rights. However, it also took shape during a small window of opportunity, since the first signs of the Cold War were already overshadowing the debate. While the West focused more on political rights, the East advocated increased economic and social rights. Within this context it was fortunate that the drafting Commission decided to separate the initial political declaration from the legally binding covenants. The Declaration was endorsed in 1948 with only the Soviet Union and affiliated countries abstaining. But the two covenants that define the specific obligations of each state (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) were not ready for ratification until 20 years had passed. Since the mid-1960s, additional legally binding conventions have been elaborated

<sup>2</sup> United Nations, *Universal Declaration of Human Rights*, accessed on Nov. 2, 2009 from <http://www.un.org/en/documents/udhr/>.

that gave substance to the political statements in the Declaration.

Parallel to the legal developments, human rights were exploited as tools in the Cold War. The West used the issue to highlight violations of political rights in other countries. From the 1950s until the 1980s, human rights work, whether governmental or non-governmental, was primarily about naming and shaming human rights violations that happened from China to Chile, from South Africa to the Soviet Union, and in other countries behind the iron curtain. For decades, human rights were a part of our foreign policy in Western Europe. At the same time, human rights were hardly ever mentioned or questioned in relation to our own domestic situations.

This foreign policy approach started to change in the early 1990s, when human rights increasingly found their rightful place as an integral part of democracies throughout the world. They also started becoming the core of domestic political debates and legal developments in Western countries. A landmark event in this domestication of human rights was the World Conference on Human Rights in Vienna in 1993. Over 150 countries reaffirmed their commitment to the Universal Declaration of Human Rights and adopted an international program of action, providing guidance and inspiration on how to move ahead with the implementation of human rights within the domestic legal order.

Shortly after the Vienna conference, the first democratic election in South Africa took place, which was another milestone in the human rights process. In my previous position, my organization collaborated with the Danish police academy in training the police in South Africa. One evening over dinner, a Danish police officer suddenly raised an obvious question about why we were teaching human rights to the police in South Africa but not at home in Denmark. Shortly afterwards, human rights also became part of the curriculum in general police training in my country.

The domestication of human rights, and the increased awareness of the issue, also bolstered the drive to build independent national institutions that work on human rights. The emergence and growth of these institutions illustrate the profound depth of the new “domestication agenda.” In 1990, there were only five national human rights institutions worldwide. Today, there are more than 100. A move from 5 to 100 in only 18 years is a remarkable development. These independent bodies are entrusted to monitor human rights developments domestically and to advise governments and other state institutions. They inform the public about human rights norms and provide human rights education at all levels of the school system. In some countries, they are also empowered to deal with individual complaints about human rights violations.

Another key indicator of the domestication of human rights is that important parts of the corporate sector are now integrating human rights into their business strategies. Only 10 years ago this would have been almost unthinkable. In Europe, the inclusion of the new democracies in the Council of Europe and their subsequent accession to the European Union provided another key impetus for the domestication of human rights. After the fall of the Iron Curtain, the former Soviet-bloc nations incorporated human rights into both their laws and societies with impressive speed.

What we have witnessed in Europe in terms of integrating human rights represents a logical step in the development of democracy. Democracy without human rights is not true democracy. Democracy without freedom of expression, without participation, without the right to education or the prohibition of discrimination is at best a defective democracy. Human rights have become integral aspects of democracy.

## Human Rights Concerns in the EU

It is a positive sign for our vibrant democracies that human rights have taken center stage in the political debate of the EU and in the domestic politics of EU Member States. We used to conceive the EU as an economic giant but a human rights dwarf. This has changed: eight years ago, the EU declared its own Charter of Fundamental Rights. The EU has successfully started to adopt and implement anti-discrimination legislation. In March 2007, it set up its own body to follow human rights developments and advise on human rights implementation, the European Union Agency for Fundamental Rights (FRA). The FRA is still unique in the world today.

Almost the entire range of human rights concerns is relevant for contemporary Europe. The EU Fundamental Rights Agency deals with multiple human rights issues of grave concern on a daily basis. Some of the most pressing human rights issues in Europe today include racism, xenophobia, Islamophobia and anti-Semitism. These issues exist in all parts of Europe, and we can anticipate that scape-goating may accelerate in the wake of the financial crisis. The way in which European states and societies treat asylum seekers and immigrants raises serious human rights questions. One example is the prolonged detention of asylum seekers, who have committed no crime whatsoever. Other highly disadvantaged groups are minorities like the Roma, who face major problems with housing, health, education and employment. There is also vast evidence of homophobia and of unequal treatment of people with disabilities. Work remains to be done to promote gender equality, most urgently in the areas of domestic violence and equal pay. Other issues which have thus far been neglected include the rights of the mentally ill and the rights of children. Additional issues include the protection of sensitive personal data with regard to the fight against terrorism, access to justice and the right to a fair trial. The importance of these issues should be obvious – yet too often, ignorance and complacency hinder progress in addressing them. Moreover, opposition from key groups in society makes minorities more vulnerable. In many countries, racist political discourse is no longer the sole preserve of extremist political groups, but has seeped into the mainstream political environment. These developments should be of concern to us all. They can lead to the legitimization and trivialization of racist language, which can ultimately help justify discrimination, harassment and even violent assaults on minorities.

However human rights are not always straightforward, especially where they require mediation between ostensibly conflicting perspectives. I want to discuss two recent examples: the Mohammed cartoons in Denmark and the fight against terrorism after 9/11. The Mohammed cartoons have been debated worldwide, primarily in terms of a confrontation between freedom of speech and freedom of religion. I believe that much of this debate focused on the wrong question. The issue should not have focused on freedom of speech versus freedom of religion, which are both fundamental human rights. The real debate should have centered on whether the Mohammed cartoons can be classified as hate speech, or more broadly, whether hate speech should be prohibited. These questions are notoriously difficult to answer, but our democratic societies must constantly discuss and debate them. All democracies choose to set limits to freedom of expression in order to protect the other fundamental rights of individuals, for example to protect individuals from intentional acts of hate speech that incite violence or hatred. But how do we achieve the appropriate balance between protecting people from racist speech and ensuring that freedom of expression remains a key pillar of our democracies?

My second example relates to the fight against terrorism. 9/11 opened a new chapter in the fight against terrorism and had profound consequences for our vision of human rights today. Many nations have amended or introduced security legislation that would have been unacceptable to parliaments, the media and public opinion before 2001. The delicate balance between justifiable security concerns and the protection of fun-

damental freedoms has figured prominently in parliamentary debates, scholarly discussions and reports by human rights bodies. As the historical development of human rights has shown, human rights are profound principles that must remain central in our democratic societies; yet because human rights are shaped by past experiences, they do not exist apart from a society's security concerns. Security measures must therefore inevitably operate on a human rights basis and within a human rights framework. International human rights law must carefully balance individual freedoms and security under our existing human rights conventions. Moreover, human rights law itself conveys past experience to new generations. For example, in their war in Algeria, the French learned the lesson which many before them had learned: violating human rights in a conflict merely exacerbates the conflict. With Abu Ghraib and Guantanamo, we are yet again learning that lesson. Human rights are universal. They belong to our enemies and even the most egregious offenders. These two examples, involving freedom of speech and the fight against terrorism, show that there are no easy solutions or quick fixes. The need for further debate on human rights remains pressing. Human rights continue to evolve, and we need to openly discuss their complexity.

## A Vision for the Future

How can the EU protect and promote human rights? Human rights have made immense progress, but still need additional legislation and improved implementation. Europe can point to many advances in the field of human rights. The European Court of Human Rights is a beacon for the legal development of human rights throughout the world. The EU's anti-discrimination directives have had a great impact on developing national legislation and equality mechanisms. There are unquestionably best practice models that the EU can share with other parts of the world. Moreover, the EU Charter of Fundamental Rights will help advance the protection of human rights.

In general, people in the EU enjoy a high level of protection, and there is an admirable human rights basis. But there are also major gaps. Currently, in many Member States, legislation unevenly protects different groups. For example, we can sue landlords for discrimination on the basis of ethnicity or gender, but not on the basis of age, disability or sexual orientation. Disabled people are protected from discrimination in employment, but not to the same degree in education. The list continues. Human rights must be universal, and all humans must have equal rights to equal treatment – unless there are very compelling reasons for differentiating. The European Commission proposed new, more far-reaching anti-discrimination legislation in July 2008, which would help close existing gaps.

Yet even the best legislation is useless if it is not properly implemented. As part of implementation, we have to make people aware of their fundamental human rights. According to a recent Eurobarometer survey, only one third of EU citizens would know their rights if they were victims of discrimination. The survey attests to the amount of work we have ahead of us. Every airport has posters that advise passengers of their rights as passengers. The right of equality needs the same visibility – in town halls, companies, schools, even at the local post office. Government campaigns, school curricula and the media should all make human rights more visible. Politicians, lawyers and judges, the police, teachers, service deliverers and providers also need to understand human rights; they have a crucial role in ensuring the promotion and protection of human rights. The nurse in a hospital for the mentally ill is potentially an important human rights defender.

Once we have guaranteed sufficient legal protections for human rights, and people understand their human rights, we must have channels available for redressing discrimination. Therefore, the next urgent need is the development of competent bodies to assist the victims of human rights violations. EU legislation obligates

Member States to create bodies to monitor discrimination, and the UN urges States to establish national human rights institutions. Yet by the end of 2007, three Member States had not even set up anti-discrimination bodies. In many Member States, such equality bodies and human rights institutions, although existent, are somewhat invisible with regard to addressing key issues. We need national institutions and mechanisms to protect and promote human rights. They must be independent, adequately funded, and empowered to do their job effectively.

Up until now, NGOs greatly supported victims of human rights violations. Such active civil engagement and an active civil society provide crucial sustenance for human rights. Silence always nourishes oppression. Civil society provides the eyes, ears and voice to protect and promote human rights. As such, the importance of NGOs cannot be overstated. Civil society and NGOs play a key role in holding European governments, public institutions and businesses accountable. They conduct research and lobbying work, raise public awareness and give people a forum for expressing their views. They often generate useful proposals.

Civil society organizations are in the best position to assess the reality of fundamental rights implementation on the ground, not least because they are closest to the victims of violations. The Fundamental Rights Agency's official mandate is to maintain a constant dialogue with civil society organizations; the FRA has established a specific structure to facilitate this dialogue – the Fundamental Rights platform. This platform is the Agency's network for cooperation and information exchange with civil society. It is the first large European platform for different groups to work together on a wide range of fundamental rights concerns.

It is the role of the EU Fundamental Rights Agency to underpin all these points – legislation, implementation, raising awareness, supporting the creation of competent equality bodies, and dialogue with civil society. This comprehensive approach provides an important opportunity to jointly promote fundamental rights in a novel and effective way. We can support the advancement of human rights through our analytical and advisory capacity. But an important precondition for the advancement of human rights is our network of human rights experts and civil society organizations across the EU, and our relations with those who bear responsibility for human rights protection in Europe – EU institutions, Member State governments, and local authorities.

Many burning human rights questions remain on the EU agenda. They include the treatment of minorities, the rights of vulnerable groups like children or the disabled, and human rights issues that can affect all people, such as age discrimination and the protection of our personal data. We must ensure that human rights violations and discrimination have no place in our democracies. There is still a need for more and improved legislation, for raising awareness and for installing competent bodies to protect the victims of human rights violations. The declaration of the Charter of Fundamental Rights and establishment of an Agency for Fundamental Rights underscores the importance of human rights for the EU.

I would like to conclude with a quote by the “mother” of the Universal Declaration of Human Rights, Eleanor Roosevelt. Eleanor Roosevelt said, “Human rights exist to the degree that they are respected by people in relations with each other, and by governments in relations with their citizens.”<sup>3</sup> The quote is from 1948. We must still work together to fully realize this promise, to return to the beginning of my speech, before we can ensure that children are no longer trafficked.

3 Allida Mae Black, *The Eleanor Roosevelt Papers: The Human Rights Years, 1945-1948* (Detroit, 2007): 904.