SPANDANEWS
NEWSLETTER OF THE SPANDA FOUNDATION

eNEWSLETTER

ISSN 1824-7180

eDITORIAL ONLINE EDITION AT WWW.SPANDA.ORG/ARCHIVE.HTML 1/2009

HUMAN RIGHTS & SECURITY

HUMAN RIGHTS OR HUMAN INSIGHTS?

… verum esse ipsum factum …
GIAMBATTISTA VICO

ENVIRONMENTAL ACTIVISTS SHOULD now move on to the next phase. Not only the environment is in danger but also our own old nature: we have to give in to make room to the truly human nature blooming into being with the new state of consciousness gaining its way in us. A new Vichian cycle? No, gods and giants have since long left the scene, a different play, on a different level and of a different order is on stage. What we thought to be near is still far. Before the new paradigm will be actively in place, the South has to reach at least the development the North is enjoying now, a long time indeed. We know that the 'discriminator's devotee forcing his saying into human affairs will hardly agree with this. Still discrimination is a might commanding tool to keep people apart, denying their fundamental right to evolve. Notwithstanding the powerful MDGs call, Aids in Africa, and in the world, is not yet subdued also because of eagerness. Pharmaceutical firms – or those using them instrumentally – are still partaking of an old view, preventing 'development' by keeping patents and prices on hold, indeed a feature of an obsolete set of mind.

→| IN THIS ISSUE

Transformation is taking place. Extensive and substantial changes very often bring about disaggregating co-effects, such as disagreements, dissensions, conflicts and wars. We at Spanda chose to have a soft approach to change, a smooth, non-violent, gradual pace: no wars, no conflicts, no denial of rights; dialogue, understanding and empowerment of rights instead.

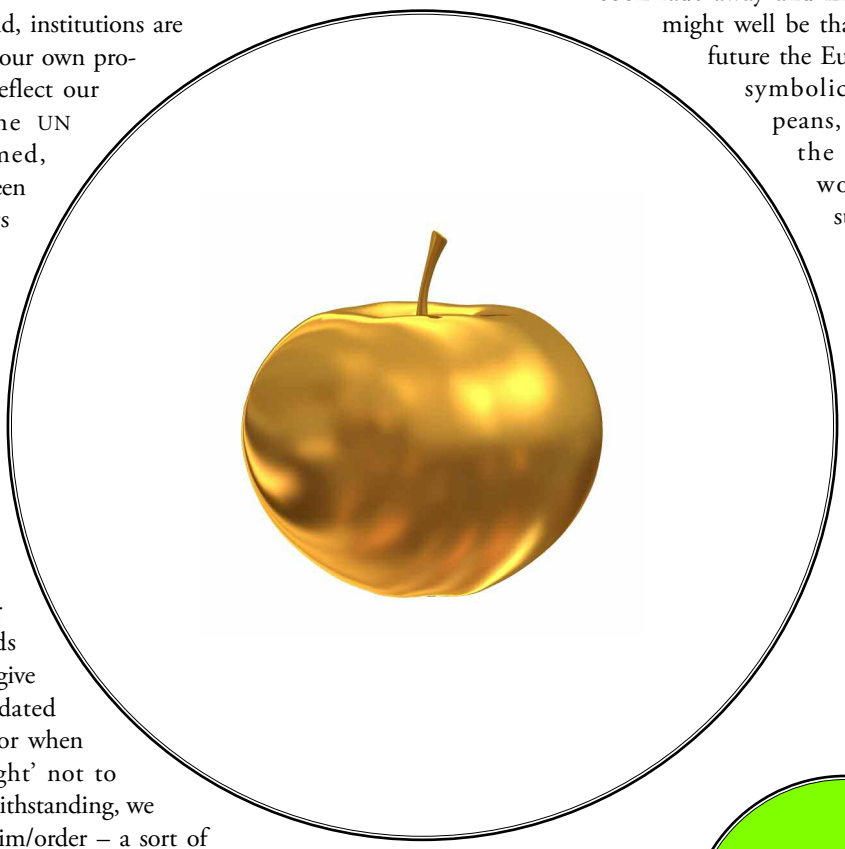
Once all this will be in place, in which rank will human rights be hold, if even by now we are giving away our most fundamental freedom for the sake of security? Need for security springs out of fear, both individual and collective. Fear, that animal drive preventing us to move forward to a really human dimension, and that too many a time has had its way in ruling the world. But which freedom, liberty, could ever have we? Which deliverance will free us from pain in seeing the great majority of our people striving daily to survive themselves to life? Poverty, hunger, disease, injustice, discrimination beget out of greed and fear. We should deliver ourselves from this animal grip and move steadily forward. Time is ripe, things are changing fast: inner and outer will soon blend together into a 'mystical marriage'. Let's be instrumental to this shift: a while into a while, and then…? Then peace. Peace, the most acclaimed superstar of our days, "*tutti la vogliono, ma nessuno la piglia.*" Peace, that we often forget that if it has to rule this world, it has first to abide in ourselves. Inner-outer, the two

are one: two sides of a coin, but one coin. Reality and vision are strolling on the same path, as a coin with its sides.

Human rights universally applied and universal rights humanely applied will be the legacy of our time, of this civilization of ours that at last 'knew' how to recover by complying with the Law and its way *(dharma),* to be free of karma and step forward. Which security? Of our own self, or of this so 'dear' civilization pursing its ultimate goal? – luxury. Societies are made up of individuals, and individual development is the base for any social and economic development, neither social nor economic development are possible without individual growth. Human rights or human insights?

But this is not the only show in town today. Sovranational institutions too need to open up to a different order, the new paradigm will unavoidably demand their transformation in participating-actors to convey and keep a sustainable peace into this world. Greed and fear are still moving this world, institutions are man made entities – our own projection – and they reflect our own make up. The UN needs to be reformed, soon. Conflicts between human rights bearers and sovranational institutions are mainly due to the fear of nations of transferring some of their rights to others. In reality, nations don't have to give up their sovereignty, but simply put it at the service of a higher goal. The same holds true with our fear to give up a certain consolidated position in our self, or when we consider our 'right' not to give in and, this notwithstanding, we subside to a higher aim/order – a sort of partnership in governance? – In this gradual shift, gradual as its pace, those forces hampering now the rights of every human being, once regained their own right place, will also gladly subscribe to peace.

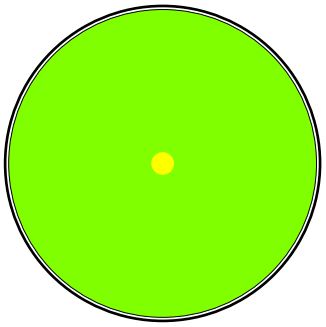
Merchants of war, soon will be your turn! Fear of the future will sweep you away. Behold patent and copyright holders! Your holdings are obsolete too, born out of industrialism they are dieing with it. New shades of rights on the visible and invisible spectrum of light are on sight. It's an empty effort trying to resist them; – yes, it's your right, nobody will force you, but *volens or nolens* you too will bend to the ineffable force that permeates all, *dharma,* cosmic energies, the great life force. The way cannot be said not because of a secret-lore, but simply because there are no 'human' words to describe it, let alone to en-compass it.



Let's purely float in its stream – a very dangerous endeavour indeed, if we don't know how to swim… but who will tell us how to swim? No longer teachers nor gurus, nor longer rites for rights at hand. Rites are will-activated performances that, given certain favourable and replicable circumstances, may awake asleep energies within and around us and allow a higher state of consciousness to take place, but that will vanish with the ending of the rite. Sumerians and Greeks where very fond of them, but that was another epoch, another time, and another past-time. Now, the only reliable audible voice, not activated by the will, is a portion of the Self reverberating in us. Once floating in the stream we no longer need rites to attain a higher state of consciousness: we already enjoy it.

The lack of trust in our human potentialities, and the lack of vision and direction in what we could become – a clear vision clears the path towards its attainment – will soon fade away and make room for joy. It might well be that in a not too far a future the European *Hymn to Joy,* symbolically uniting Europeans, will also attend to the united humane-world *Hymn to Life* sung by the angels…

This sounds right, to me at l[e]ast. A stroke in the heart, an art attack, not to be taken too seriously, of course… One topic, different angles and perspectives: enjoy the issue. ▣



Does the silk-worm expend her yellow labours
for thee? for thee does she undo herself?

CYRIL TOURNEUR

THE RIGHT TO SEEK AND ENJOY ASYLUM UNDER SIEGE

NATIONAL SECURITY AND THE PROHIBITION OF REFOULEMENT

RENÉ BRUIN ~ KEES WOUTERS

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→| ON FOCUS

"Be the change you will like to see in the world."

GANDHI

INTRODUCTION

Ground Zero reminds us of the horrible attacks on the Twin Towers in New York on September 11, 2001. The repercussions, most notably in the field of security measures, are felt throughout the world ever since. Human rights protection, for example in the field of asylum, is under pressure. Immediately after the September 2001 attacks the UN Security Council adopted resolution 1373[1]. States were called upon to

"(f) take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts; (g) ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extraditing of alleged terrorists".

The prohibition of refoulement – or obligation of non-refoulement - was not mentioned in this resolution. In an article we wrote in 2003 we expressed our fear that the prohibition of refoulement could erode due to the pressure of States to give prevalence to security issues above human rights principles[2]. The attack in Madrid, on March 11 2004, on the railway station Atocha, worsened the situation as did the July, 7 bombings in the London Underground in 2005. Although no bloody attacks have occurred in Western Europe since, the measures are still in force and the pressure on human rights supervisory bodies to curtail the right to seek and enjoy asylum is still there. Most recently the International Commission of Jurists (ICJ) presented the findings of a worldwide inquiry by a panel of some of the most prominent jurists into the impact of counter-terrorism laws on human rights at the United Nations in New York[3]. The report of the ICJ's Eminent Jurists Panel concludes that many governments have confronted the threat of terrorism with ill-conceived measures that have undermined cherished values and resulted in serious violations of human rights.

There are reasons to be cautious. The concerns States have regarding their national security may be valid and legitimate. In May 2007 three suspected terrorists were arrested in Germany. The Islamic Jihad Union was said to have planned an attack with more explosive power than those used in Madrid in 2004. In 2009, comments in journals argued that Al Qaeda would misuse the worldwide economic crisis to further destabilize western countries with attacks[4].

Meanwhile the United Nations Security Council Resolution 1373 was reaffirmed by Resolution 1624 of September 14, 2005[5]. The resolution contains several clauses making reference to exclusion from international protection, but acknowledges – contrary to Resolution 1373 – the non refoulement obligation of States under the 1951 Convention relating to the status of Refugees (*Refugee Convention*), together with its Protocol adopted on 31 January 1967. Also, the UN Security Council stresses that States must ensure that any measure taken to combat terrorism must comply with their obligations under international human rights and refugee law[6]. Human rights are not out of sight. Importantly, the obligation of non-refoulement is not only encompassed in the *Refugee Convention* (Article 33) but also in other human rights treaties, most notably, the *International Covenant on Civil and Political Rights* (ICCPR), the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) and regional human rights conventions such as the *European Convention on Human rights* (ECHR).

In this article we will focus on the prohibition of refoulement as entailed in the four mentioned treaties. We will briefly point at the absolute character of the prohibition, on the need to be prudent in using measures to circumvent the prohibition of refoulement to combat terrorism, in particular measures aimed at preventing aliens to reach a State's territory, the use of diplomatic assurances and the listing of persons and organizations as being engaged in terrorist activities.

THE ABSOLUTE CHARACTER OF THE PROHIBITION OF REFOULEMENT

The prohibition of refoulement is the cornerstone of international refugee and asylum law. In the most broadest and general terms it protects people from being removed to a country where they are at risk of being subjected to serious human rights violations. As a result the prohibition of refoulement provides an opportunity for people to obtain protection from serious harm in a country other than their own.

The prohibition of refoulement is formulated in and developed under various treaties. Article 33 *Refugee Convention* and Article 3 CAT contain an explicitly formulated prohibition of refoulement. Under the ICCPR and the ECHR prohibitions of refoulement have been developed under the general prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment entailed in Article 7 ICCPR and Article 3 ECHR. The prohibitions of refoulement contained in and developed under Article 3 CAT, Article 7 ICCPR and Article 3 ECHR are absolute. Under no circumstances or for no reason can the application and implementation of the prohibition be restricted, limited or suspended. Even in times of public emergency or armed conflict a State cannot derogate from this prohibition[7]. The absolute character of the prohibition of refoulement has been acknowledged by the supervisory bodies of the said treaties, i.e. the Human Rights Committee (HRC), the Committee against Torture (ComAT) and the European Court of Human Rights (ECtHR)[8]. States are not allowed to balance the interests of the State with the rights of the individual if there is a risk of torture or ill treatment taking place upon return. As a result no one can be removed by a State because he has committed serious criminal offences or because he poses a threat to the national security of the State or its people if such a risk exists. Conversely Article 33 of the *Refugee Convention* is not absolute. The second paragraph of Article 33 explicitly allows States to expel persons deemed to be a threat to the community or national security. In this regard the reference made by the UN Security Council in Resolution 1624 to the *Refugee Convention* is remarkable. Instead of a general reference to international human rights, refugee and humanitarian law a specific reference to the prohibitions of refoulement contained in and developed under CAT and ICCPR would have been more appropriate. The absolute character of the prohibitions of refoulement contained in ICCPR, CAT and ECHR has important consequences for refugees. While a refugee may be removed under the *Refugee Convention* for reasons of national security he may not be removed in accordance with other prohibitions of refoulement when there is a risk of serious human rights violations.

PREVENTING ALIENS FROM LEAVING AND ARRIVING

States confronted with the absolute character of the prohibitions of refoulement may try to prevent these prohibitions of refoulement to be applicable in the first place by preventing aliens from reaching their territory or even preventing them leaving their country of origin. More broadly, industrialized countries try to impede migrants, refugees included, from departing their region of origin altogether. People who are in need of protection are confronted increasingly with obstacles in their search for protection. They may have difficulty in leaving their country and seeking protection elsewhere and often leave in an irregular manner in mixed flows of refugees and migrants. As a result States increasingly take migration control measures whereby there is a development of pushing the line further. Where it initially started with strict border controls, it has now gone as far as industrialized countries patrolling the shores and territorial waters of asylum producing countries, signing agreements with third countries on the reception of migrants and posting immigration liaison officers (ILO's) at foreign airports. So far such measures have hardly been challenged in a court of law. In fact, they are difficult if not impossible to challenge by individuals but may have a significant impact on the individuals' ability to seek protection elsewhere[9]. Certainly, more legal clarity on the legitimacy of these measures is needed. In addition, industrialized nations have adopted measures such as visa requirements followed by the sharing of passenger lists and sanctioned by carrier sanctions[10].

As a result it has become increasingly difficult for people to leave their own country. Technically speaking this may not be in breach of the *Refugee Convention*. The Convention, including the right to be protected from refoulement, only applies to refugees, being outside their country of origin. But to limit the possibility to leave one's country is at odds with applying the *Refugee Convention* in good faith and with its object and purpose. The prohibition of refoulement contained in Article 3 CAT and the ones developed under Article 3 ECHR and Article 7 ICCPR do not contain a territorial limitation such as the one in the *Refugee Convention*. Measures taken by (the authorities of) a possible asylum State may be in breach of the prohibition of refoulement if and when these measures directly affect the person concerned and his right to be protected from refoulement.

Furthermore, when people have been able to leave their country they are increasingly confronted with pre-entry procedures creating barriers to apply for asylum. And, when they are successful in reaching and entering Western countries in many cases their asylum request is dealt with in a so called accelerated procedure.

DIPLOMATIC ASSURANCES

States confronted with the absolute character of the prohibition of refoulement may try to circumvent their obligations and remove aliens from their territory making use of so called diplomatic assurances. States which want to remove aliens from their territory may request diplomatic assurances from the country to which the alien is removed in order to have his safety guaranteed. Seeking diplomatic assurances has been a practice of States in the field of extradition.

States, for example, sought to reduce the risk of imposition and/or execution of the death penalty[11]. In general seeking diplomatic assurances in extradition is widely accepted. It can be an effective tool to prevent an alien being subjected to serious human rights violations like the death penalty. But now, this practice is increasingly applied in asylum cases. Usually, diplomatic assurances are sought on an individual basis and relate directly to the individual concerned. There is however a recent development of using diplomatic assurances as general clauses concerning the treatment of deportees in bilateral agreements[12]. The legitimacy of diplomatic assurances depends on their ability to reduce the risk to a negligible level and effectively guarantee the person's safety. In asylum cases that is difficult, if not impossible, to achieve. The irony of diplomatic assurances in asylum cases "lies in the fact that where there is a need for such assurances, there is clearly an acknowledged risk of torture and ill-treatment"[13]. Outside the context of extradition and possible imposition of the death penalty the use of diplomatic assurances is difficult to value. They do not have a clear legal status and there is often no State authority which has the actual power to prevent serious human rights violations from occurring. Also, it is extremely difficult to monitor the treatment meted out to returnees. Furthermore, contrary to the extradition context there is no accountability mechanism or redress possibility available in the event of non-compliance. Moreover, the serious human rights violations from which a person has a right to be protected will often be irreparable. Neither the Committee against Torture, the Human Rights Committee nor the European Court of Human Rights do unequivocally reject the use of diplomatic assurances in asylum cases but have expressed concern about their use and have made clear that States should not rely on assurances coming from States which systematically violate their human rights obligations[14].

LISTING PERSONS AND ORGANIZATIONS AS ENGAGED IN TERRORIST ACTIVITIES

Before and since the War on terror was proclaimed by the former President of the United States, use of UN and EU terrorist lists has been made[15]. Persons and organizations placed on these lists encounter difficulties in their daily life. They cannot dispose themselves of the funds in their bank account and face difficulties when travelling abroad. When asking for asylum, listed persons and persons affiliated to listed organizations may be considered by States to be excludable from international asylum protection, based on Article 1F of the *Refugee Convention*. It may be considered that, when listed, there are serious reasons for considering that these persons have been guilty of very serious crimes and do not deserve protection as refugees. The lists of individuals or organizations suspected of involvement in terrorism is a counter-terrorism preventive measure aiming to address national security concerns and is not meant to determine who is and who is not deserving of refugee protection. The lists have become increasingly important since 2001. The ICJ's Eminent Jurist Panel mentions another regional listing on religious groups deemed "extremist" within the Shanghai Cooperation Agreement[16].

The names on the lists overlap, meaning that organizations and individuals on one list soon find themselves on a number of different lists. Being placed on more than one list augments the difficulty of a legal challenge. Although identifying and freezing the assets of persons, groups, and organizations involved in terrorism is acceptable in order to effectively combat terrorism, the fact listing is almost impossible to be challenged clarifies that any listing process is undertaken without due regard to effective safeguards and eventual remedies. Because of the use of secret information of intelligence institutions, asylum seekers will not be able to challenge the information or to rebut the accusations of being linked to terrorist activities. With regard to Canada, the Human Rights Committee noted with concern the provisions regarding non-disclosure of information, and concluded that they do not fully abide by the requirements of Article 14 of the ICCPR[17]. In the Netherlands the alien confronted with conclusions drawn in a report of the intelligence service will not be allowed to examine the background materials. Also the Immigration Service (IND) has just to accept the information provided by the intelligence service. The impossibility to scrutinize the information is deemed by the Dutch Council of State *[Raad van State]* not to be at variance with the jurisprudence of the European Court on Human Rights[18].

Once on the list it will be difficult to be removed from the list. But here too the international courts have started to halt the almighty States. In a decision of 11 July 2007, in the case of *Jose Maria Sison v Council of the European Union*, the European Court of Justice annulled the decision to put on the list the person concerned[19]. Individuals and entities placed on UN lists of suspected terrorists have still no effective means to challenge this decision. If, as described above, these persons and organisations are also put on regional lists such as the EU list these persons have no redress. The European Court of Justice then will declare the Court not competent to judge the legitimacy of being placed on the UN list. The Dutch Government has stated to stress the UN Sanction Committee to address the problem individuals and organizations face because they do not have a real chance to challenge the listing[20].

CONCLUDING REMARKS

People in need of international protection face difficulties in their search and enjoyment of asylum protection and protection from refoulement in particular. As outlined above this is due to a variety of reasons many of which are based on national security concerns. Since 2001 national security issues have become more and more prevalent in migration matters resulting in, for example, migration control measures, a search for balancing the risks and the use of diplomatic assurances. Supervisory bodies of international human rights treaties have upheld the absolute character of the prohibition of refoulement. Although acknowledging the interests of States to secure the safety of its citizens and the difficulty in combating terrorism this will not be realized by preventing aliens from coming, by relying on ineffective diplomatic assurances when sending aliens back, or by simply making non-transparent and unchallengeable lists of terrorists and terrorist organisations.

In spite of the risks States try to find ways to return people in a speedy way, not giving them time to appeal the decision to expel or to return. Often this is contrary to the explicit and binding requests of international supervisory bodies to halt the deportation while a case is pending before them. Recently Italy has sent back persons to Tunisia while the European Court of Human Rights had issued an interim measure not to do so[21].

The quest to reconcile the real interest of States to secure safety and the risks of persons being tortured upon return has not ended yet.

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[1] UN SC res. 1373(2001), 28 September 2001.

[2] Bruin, R. - Wouters, K., "Terrorism and the Non derogability of Non refoulement", in *International Journal of Refugee Law* (2003), 15: 5-29.

[3] International Commission of Jurists, "Assessing Damage, Urging Action. Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights", Geneva, 2009, available at http//www.icj.org.

[4] See for example: *De Pers*, 27 April 2009, "Al Qaeda spint garen bij crisis". In this article it is stated that the first coming attack will be in Europe.

[5] UN SC res. 1624(2005), 14 September 2005.

[6] *Ibid.*, para. 4.

[7] Article 4 ICCPR and article 15 ECHR.

[8] HRC, *Ahani v Canada*, 15 June 2004, Communication No. 1051/2002, para. 10.10; CAT, *Dadar v Canada*, 5 December 2005, Communication No. 258/2004, para. 4.4 and 8.8; ECtHR, *Saadi v Italy*, 28 February 2008, Appl. No. 37201/06, para. 138.

[9] The only cases we know of are the Prague airport case in the UK concerning British ILO's stationed at Prague airport in the Czech Republic, *Regina v. Immigration Officer at Prague Airport and Another, Ex parte European Roma Rights Centre and Others*, [2004] UKHL 55, House of Lords, 9 December 2004, www.unhcr.org/refworld/docid/41c17ebf4.html, case also published in *International Journal of Refugee Law* (2005): 217-270 and the Marine I case dealt with by ComAT, *J.H.A. v Spain*, 21 November 2008, Communication No. 323/2007.

[10] Hathaway, J. C., *The Rights of Refugees under International Law*, Cambridge: Cambridge UP, 2005: 291-292.

[11] For example, ECtHR, *Soering v United Kingdom*, 7 July 1989, Appl. No. 14038/88. ECtHR, *Nivette v France*, 3 July 2001, Appl. No. 44190/98 (admissibility decision). ECtHR, *Einhorn v France*, 16 October 2001, Appl. No. 71555/01 (admissibility decision).

[12] For example in August 2005 the United Kingdom signed a Memorandum of Understanding with Jordan regulating the deportation of people that contains a general remark that the UK and Jordan will comply with their human rights obligations.

[13] Report by Mr. Alvaro Gil-Robes, Commissioner for Human Rights, on his visit to Sweden, 21-23 April 2004, Comm DH (2004) 13, para. 19. Report by Prof. Manfred Nowak as the United Nations Special Rapporteur on the question of torture in 2005, UN doc. E/CN.4/2006/6, 23 December 2005, para. 31 (b).

[14] Wouters, K., *International Legal Standards for the Protection from Refoulement*, Antwerpen [etc.]: Intersentia 2009: 301-302, 402, 499, 560.

[15] See the UN Consolidated List established and maintained by the 1267 Committee with respect to Al-Qaida, Usama bin Laden, and the Taliban and other individuals, groups, undertakings and entities associated with them, last updated 20 April 2009, available at http://www.un.org/sc/committees/1267/pdf/consolidatedlist.pdf; and EU Common position 2001/931/CFSP on the application of specific measures to combat terrorism. A new list was published on 22 December 2007 (OJ L 340: 109). The list includes 54 persons and 48 groups and entities. Of these, 35 persons and 30 groups and entities are subject to restrictive measures (freezing of assets) pursuant to Council Regulation (EC) No. 2580/2.

[16] International Commission of Jurists, 'Assessing Damage, Urging Action. Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights', Geneva, 2009: 114.

[17] See HRC, *Concluding Observations on Canada*, UN Doc. CCPR/C/CAN/CO/5 (2005), 20 April 2006, para. 13.

[18] Council of State 14 April 2009, 200802086/1.

[19] ECJ judgment 11 July 2007, case T-47/03, *Official Journal of the European Union*, 25 August 2007, C 199/27.

[20] Documents of Parliament, 28 764 N, dated November 13 2008 entailing a letter of the minister of Foreign Affairs dated November 11 2008.

[21] ECtHR, *Ben Khemais v Italy*, 24 februari 2009, Appl. No. 246/07 (admissibility decision), referring to Resolution 1433 (2005) of the Council of Europe. See also eight other cases before the ECtHR against Italy decided on 24 March 2009: Ben Salah (38128/06); Bouyahia (46792/06); C.B.Z. (44006/06); Hamraoui (16201/07); O (37257/06); Soltana (37336/06), Darraji (11549/05) and Abdelheidi (2638/07). ▣

From wrong to wrong the exasperated spirit
Proceeds, unless restored by the refining fire
Where you must move in measure, like a dancer.

T.S. ELIOT

NGOS AND HUMAN RIGHTS

SIMONA SAPIENZA

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Ms Simona Sapienza is a Board member of the Spanda Foundation.

→| OVERVIEW

"The majority has the might – more's the pity – but it hasen't right… The minority is always right."

HENRIK IBSEN

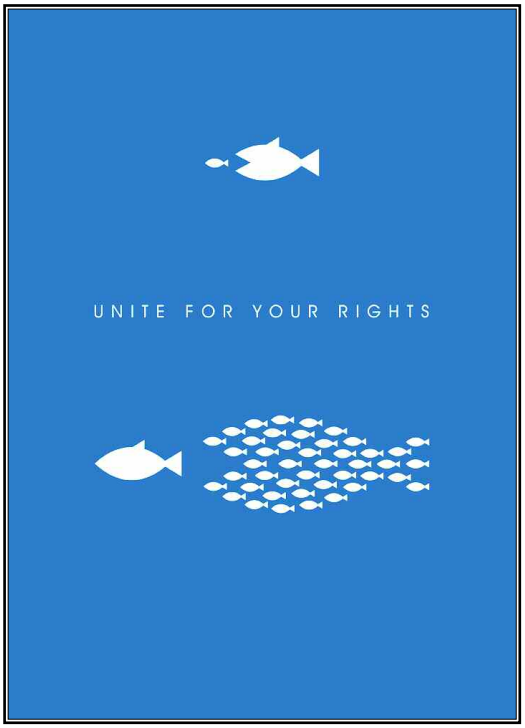
THE ROLE PLAYED BY NGOS IN the advocacy and protection of human rights as well as in the international campaigns against their violations can hardly be over emphasized. The relationship that NGOs have established with the United Nations has seen unthinkable changes over the last fifty years, and United Nations officials and member states have gradually come to recognise that international discussions and policy making to advance human rights presently cannot be legitimate or exhaustive without the participation of NGOs.

Dates and figures speak clearly: while NGOs were instrumental in achieving the inclusion of human rights standards in the *Charter of the United Nations* in 1945, they were very few in number as well as influence at that time. Only 41 NGOs held consultative status with the United Nations Economic and Social Council (ECOSOC)[1] in 1948 and fewer yet focused exclusively on human rights issues and could participate in the strenuous process of preparing and achieving the passage of the *Universal Declaration of Human Rights*[2]. It was at the end of the Sixties, when approximately 500 NGOs were granted the consultative status with ECOSOC that they started to enjoy easier access to social and political processes taking place at the international level. However, it is only since the end of the Cold War that the number of NGOs permitted to participate in international conferences and related preparatory meetings has increased over 1000, and their influence both nationally and internationally has grown exponentially. To date there are 3172[3] NGOs which, when appropriate, may interact with ECOSOC and its subsidiary bodies, this demonstrates that NGOs have now become a recognized integral part of the procedures and structures of global governance. Indeed NGOs have played "a decisive role in transforming the phrase *human rights* from but a Charter provision or a Declaration article, into a critical element of foreign policy discussions in and out of governmental or intergovernmental circles[4]." Since the *Universal Declaration of Human Rights*, NGOs have pressured their national governments to sign and ratify any treaties that embody human rights norms, and have worked to increase the use of those mechanisms necessary to make sure that states comply with these treaties. Despite the remarkable results achieved during the years in the field, problems still do arise with human rights NGOs that criticise specific governments and denounce violations and abuses. The governments being criticised tend to respond by denying the right of any outsiders to interfere in their internal affairs thus generalising their hostility to the activities of human rights organisations in the UN system.

The term *non-governmental organisation,* or *NGO*, was first used within the United Nations system in 1945 with its inclusion in Article 71 of the *Charter of the United Nations* that set the basis for future consultations and interactions between NGOs and ECOSOC[5]. Over the years, some major international NGOs[6] requested broader access to the UN System. Supported by a substantial number of states,

ECOSOC in the early Nineties[7] decided to clear the way for intergovernmental negotiations in order to expand NGOs' rights. To this aim, and to review the arrangements for consultation that had been established in 1968[8], in 1996 ECOSOC passed Resolution 1996/31 which, in implementation of art. 71 of the *Charter of the United Nations,* formalised and defined the consultative relationship between the UN and NGOs.

In particular, Resolution 1996/31 sets out three different types of consultative relationships that ECOSOC may establish with NGOs, depending on the nature and scope of each organisation, and on the assistance that each organisation may be expected to provide to ECOSOC itself or to its subsidiary bodies[9]. In brief: a *general consultative status* may be recognized to those NGOs that are concerned with *most* of the matters falling within the competence of ECOSOC[10]. A *special consultative status* may be granted to those NGOs having *specific* capacity in, and concerned specifically with, *some* of the matters of competence of ECOSOC[11]. NGOs which have neither general nor consultative status, but which can contribute occasionally and positively to the work of ECOSOC, may be included in a roster and, accordingly, are referred to as being *on the Roster* NGOs[12].



Resolution 1996/31 also sets out certain conditions for the interaction of NGOs in consultative status both with ECOSOC itself[13] and with the Committee on Non-Governmental Organizations[14], as well as covers the delicate issue of the participation of NGOs in international conferences convened by the United Nations and in their preparatory process. Although a strong culture of participation has emerged throughout the past years, Resolution 1996/31 grants member states the power to decide whether or not NGOs may participate in particular meetings. It is worth noting that the decision is taken by member states on a case-by-case analysis, and that in the event NGOs have been invited to participate, their participation "although welcome, does not entail a negotiating role[15]." More in particular, only if member states decide so, NGOs might be given "an opportunity to briefly address the preparatory committee and the conference in plenary meetings and their subsidiary bodies" and "to make written presentations during the preparatory process in the official languages of the United Nation as they deem appropriate[16]." Furthermore, "those written presentations shall not be issued as official documents except in accordance with United Nations rules of procedures[17]." At this point it is evident that, despite the formal status that may be recognised to NGOs, their material participation in the United Nations system still very much depends upon the extent to which member states are willing to limit their own powers in crucial international debates.

There is no doubt that NGOs have worked and are still working hard to advance international human rights around the world. To do so their activity is focused on documenting violations, setting standards[18] and lobbying for effective enforcement.

Investigation and documentation by NGOs has been vitally important in bringing human rights abuses to the attention of the UN, the international community, and the public at large. Through reporting facts they are able to promote changes. It is clear that the influence of NGOs is intimately tied to the rigor of their research methodology. A typical method used by NGOs to report human rights violations in specific countries is to investigate individual cases of violations through interviews with victims and witnesses, supported by information about the abuses from other credible sources. The negative media exposure generated through the publishing of such reports has proven fruitful in the past and can definitely still serve as a useful shame sanction in working to increase a government's compliance with international human rights norms.

The importance of the commitment of NGOs in documenting violations of human rights and enhancing their protection can be seen in the role played by Amnesty International[19] when, in 1972, it launched its first worldwide campaign to abolish torture, through the issuing of a groundbreaking report that shocked the world. Refuting claims that torture was a thing of the past, Amnesty revealed that governments of all types, everywhere in the world were using torture, often in routinely institutionalised ways, like the political psychiatric prisons of the Soviet Union. This approach created the first storm of controversy in 1966 when Amnesty reported on the torture of detainees by British officials in Aden, and exposed the Brazilian authorities' use of torture. Within a few years of continuous reporting activity, Amnesty members had succeeded in making governments listen and respond[20]. Human rights were attracting the world's attention and the *United Nations Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment*, adopted in 1984[21], may well be considered among the most important results achieved by the international community thanks to the impetus of a NGO.

NGOs had also played a significant impact at the World Conference on Human Rights held in Vienna in 1993. As explained by the Office for the High Commissioner for Human Rights, "the search for common ground" on the

issues on the agenda at the Conference "was characterized by intense dialogue among governments and dozens of United Nations bodies, specialized agencies and other intergovernmental organizations and thousands of human rights and development NGOs from around the world[22]." NGO Forum organisers reported that 2721 representatives of 1529 NGOs attended the three-day meetings. Of these, the largest group of 426 organisations was from Western Europe, next came 270 groups from Asia, 236 from South America, 202 from Africa, 179 from East and Central Europe, 178 from North America and 38 from Australia/Oceania[23]. Despite the aversion of some Asian states against certain requests advanced by NGOs during the Conference Preparatory Meetings, especially the formal request advanced by Amnesty International for the establishment of a high commissioner for human rights, and the request advanced by the International Commission of Jurists that proposed the formation of an international criminal court; and despite all the limits and restrictions imposed on the participation of the NGOs at the meetings of the Drafting Committee, their success in obtaining the recognition of the universality of human rights is unquestionable. This is seen in the insertion of Paragraph 1 in Section 1 of the *Vienna Declaration and Programme of Action* which states that "All Human Rights are universal, indivisible and interdependent and interrelated[24]." The establishment of The High Commissioner for Human Rights and the UN General Assembly's adoption of the Statute of the International Criminal Court are also amongst the most evident results of the great steps made by the global community in the field of human rights thanks to non-governmental actors[25]. At the Vienna Conference the so-called *Paris Principles,* which were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in 1991, were also negotiated. They were then subsequently adopted in the UN Human Rights Commission Resolution 1992/54 of 1992 and by General Assembly Resolution 48/134 of 1993. In particular, the *Paris Principles* lay down a set of minimum standards for the establishment of national Human Rights Institutions and put the basis for their cooperation with NGOs. They list a number of responsibilities for national institutions that, according to the principles, shall monitor any situation of violation of human rights and shall be able to advise their governments, parliaments and any other competent bodies on specific violations as well as relate to regional and international organisations educating and informing them in the field of human rights.

NGOs' activity has been also crucial to the creation of special UN mechanisms to enforce international standards. Some of the UN mechanisms, which have been created in great part because of NGO lobbying, include the thematic and country mandates under the United Nations Commission on Human Rights, now United Nations Human Rights Council, like the Working Groups on disappearance and detention; the Special Rapporteurs on torture, arbitrary and extrajudicial killing, violence against women, and racism; the Special Rapporteurs on particular countries, such as Cuba, Sudan, Burma (Myanmar), Burundi and Rwanda; and the Special Rapporteurs or Representatives of groups of countries, such as the UN Special Rapporteur for Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia[26].

To call *crucial* the role played and to be played by NGOs as that of human rights *defenders* is simply not sufficient. They are integral and indispensable. The first major acknowledgement in this respect is the adoption by the United Nations in 1998 of the *Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally recognized Human Rights and Fundamental Freedoms*[27], also referred to as the *Declaration of Human Rights Defenders,* which lays down a set of principles and rules to insure the freedom of action of human rights activists by offering them an exhaustive framework to promote and reinforce the implementation of human rights and fundamental freedoms, as well as to safeguard and strengthen democracy and democratic institutions and processes through investigating and bringing abuses to light.

It is true that primary duty to promote and protect human rights and fundamental freedoms lies with states[28]. However, thanks to the Declaration, it is now formally

QUICK FACTS

HUMAN RIGHTS NGOS MAIN ACHIEVEMENTS

- ✓ **Inclusion of art. 71 in the *Charter of the United Nations*, which opens access for NGOs to the UN system.**
- ✓ **Establishment of the Committee on Non-Governmental Organizations as a permanent standing committee of the ECOSOC.**
- ✓ **Adoption of the *UN Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment.***
- ✓ **Inclusion of Paragraph 1, in Section 1 of the *Vienna Declaration and Programme of Action*, which formally recognises the universal nature of human rights.**
- ✓ **Establishment of the High Commissioner for Human Rights.**
- ✓ **Adoption of the Statute of the International Criminal Court.**
- ✓ **Appointment of UN Working Groups and UN Special Rapporteurs with specific thematic or country mandates to investigate, monitor and recommend solutions to specific human rights issues.**

recognized that non-governmental organizations «have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities[29].

As set out in the *Declaration on Human Rights Defenders*, NGOs have «[…] a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized[30].

If government institutions are responsible for respecting, protecting and promoting human rights, Human Rights, Law-related and Socio-Economic NGOs, together with community organisations, schools, indigenous people's organisations, women's advocacy groups and the media, now also play a crucial role in the sector. The Programme of Action, suggested in the *World Conference against Racial Discrimination, Xenophobia and Related Intolerance (WCAR)*, held in Durban under the auspices of the UN in 2001 may be taken as a cornerstone in this respect. It urged the member states to provide an effective environment to enable NGOs to function freely and openly within their societies in order to make an effective contribution to the elimination of racism, racial discrimination and related tolerance throughout the world and to promote a wider role for grass roots organisations. In particular, according to the Durban official Programme of Action, States were called upon to "strengthen cooperation develop partnership and consult regularly with non-governmental organizations[31].

It has to be noted that, the Conference dealt with several controversial issues, including compensation for slavery and the actions of Israel. This is why the language of the final Declaration and Programme of Action produced by the Conference was strongly disputed in these areas, both in the preparatory meetings in the months that preceded the Conference and during the conference itself.

Parallel to the Conference, was a separately held NGOs Forum that also produced a declaration and programme of its own, which was not an official Conference document and contained language relating to Israel in particular, that the WCAR had voted to exclude from its Declaration, and that appeared to commentators as being the result of every lobby putting its aversions in. It described Israel as a "racist, apartheid state" that was guilty of "racist crimes including war crimes, acts of genocide and ethnic cleansing[32]". The document was not intended to be presented to the Conference, although a copy of it was aimed to be handed over at the conclusion of the Forum, as a symbolic gesture, to the Secretary-General of the Conference[33] who, however, refused to accept the document, expressing her concerns over its language. In a later interview she said of the whole Conference that "there was horrible anti-Semitism […] particularly in some of the NGO discussions"[34].

The NGOs Forum also called upon the United States to ratify all major human rights treaties, including the *UN Convention on the Elimination of Racial Discrimination*, which the US had ratified in 1994, however attaching a reservation that its ratification did not accept treaty requirements that were incompatible with the Constitution of the United States[35]. The NGOs, demanded that US drop its reservations and complied in full with the treaty. The US Department of State had noted specifically that the restrictions imposed by the Convention were incompatible with the First Amendment to the US Constitution. Incompatibility of the treaty with national constitutions was also noted by many other states including the Bahamas, Barbados, France, Guyana, Jamaica, Japan, Nepal, Papua New Guinea, Switzerland, and Thailand. Furthermore, France, Ireland, Italy, Japan, Malta, Monaco, Nepal and the United Kingdom noted that they considered the provisions of the treaty to be restricted by and subject to the freedoms of speech and assembly set out in the *Universal Declaration of Human Rights*.

The Declaration and Programme of Action produced in Durban by the NGOs Forum parallel to the Conference shows that NGOs may have, in certain contexts, a disruptive role. The action taken by extremist and radical NGOs, which usually do not speak out for the global community but represent the interests of a group of states, are only some examples of how certain NGOs, in certain cases, may be an obstacle to international negotiations, and that the reservations expressed by states over their participation and negotiating role at international conferences are not always completely illegitimate or ungrounded.

We hope that the 2009 Durban review conference will effectively contribute to the global fight against racism in all countries and continents, and that NGOs will not blame exclusively western racism, as they did during the 2001 Conference, but speak for the victims of racism and discrimination all around the world bringing forth a meaningful contribution.

Despite any aversion, legitimate or not, against NGOs, their role in supporting certain governments in recognizing and promoting human rights is out of question. The remarkable results that NGOs have achieved in their struggle can be also explained from another perspective. NGOs can carry on their policies and actions on a continuous basis while organisations belonging to the public sector[36] depend too much on the policy appraisal agenda. NGOs can adjust quickly and are more flexible in the implementation of their plans and policies while for public sector organisations it may take too long to decide on appropriate strategies or possible changes in the middle of a project, and they have to wait for instructions and green-lights from *above* which may take weeks, months, or years.

Furthermore, public employees and personnel of NGOs have a very different level of international motivation. Government officers *are told* to do things in which they may have very little enthusiasm. They often have no sense of mission or a specific target to achieve. It is the opposite for NGOs. There is no doubt that a major role for NGOs lies in educating the global community in understanding human rights. Ignorance is a constant threat to NGOs as it

breeds discrimination, intolerance and prejudice. NGOs that are committed in the fight for human rights must fight ignorance in all its forms. The best way for them to do this is through education. "Law cannot teach a person to be compassionate, caring, and sensitive to other people's sorrows and joys and human rights cannot be secured in a society where these qualities are weak[37]".

There can be no true enjoyment of human rights by all where some are excluded by discrimination and prejudice or disadvantage and under development. NGOs must receive all necessary support to make human rights a reality for everyone everywhere. The significant capacity that NGOs have acquired in promoting and supporting the effective recognition of human rights, and the different roles that NGOs may play in this respect suggest that their interaction with international and national governmental institutions is now desirable and inevitable to avoid the fact that millions of men, women and children around the world are born, live, and die without knowing that they possess human rights.

Equal society and human rights need us to interact with NGOs to make them powerful, effective and people oriented. The twin pillars of equality and non-discrimination need NGOs to become the concrete expression of international, national, and local voices and stand up for those who cannot speak for themselves.

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[1] The United Nations Economic and Social Council (ECOSOC) was established under the United Nation Charter as the principal organ to coordinate economic, social, and related work of the 14 UN specialised agencies, functional commissions and five regional commissions. The Council also receives reports from 11 UN fund and programmes, ECOSOC serves as the central forum for discussing international economic and social issues, and for formulating policy recommendations addressed to member states and the United Nations system. It is responsible for: i) promoting higher standards of living, full employment, and economic and social progress; ii) identifying solutions to international economic, social and health problems; iii) facilitating international cultural and educational cooperation; and iv) encouraging universal respect for human rights and fundamental freedoms. It has the power to make or initiate studies and reports on these issues. It also has the power to assist the preparations and organization of major international conferences in the economic and social and related fields and to facilitate a coordinated follow-up to these conferences. With its broad mandate the Council's purview extends to over 70 per cent of the human and financial resources of the entire UN system. In carrying out its mandate, ECOSOC consults with academics, business sector representatives and more than 3,100 registered … The Council holds a four-week substantive session each July, alternating between New York and Geneva. The session consists of the High-level Segment, Coordination Segment, Operational Activities Segment, Humanitarian Affairs Segment and the General Segment. See: www.un.org/ECOSOC.

[2] Although the term *human rights* was introduced in modern language at the end of 17th century by the 1688 *Germantown Quaker Petition Against Slavery* which is the first public document that declared equal rights for all humans, the *Universal Declaration of Human Rights* adopted by the UN General Assembly with Resolution 217 A (III) on 10 December 1948 unquestionably represents the first worldwide charter of rights, proclaimed *Universal* and *Fundamental* freedoms, which transcend national, religious, cultural and ideological factors.

[3] See http://www.un.org/esa/coordination/NGO . Last visited: 4 March 2009.

[4] KOREY W., "*NGOs and the Universal Declaration of Human Rights: 'a curious grapevine'*", St Martin's Press, New York 1998.

[5] According to art. 71 of the *Charter of the United Nations* adopted in San Francisco on 26 June 1945 and in effect as of 24 October 1945, the ECOSOC may "make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned."

[6] The World Federation of Trade Unions (WFTU), the International Cooperative Alliance, the International Association of Democratic Lawyers (IADL) and the Women's International Democratic Federation (WIDF) are only some of the NGOs which played a major role to open up NGOs access to the UN system.

[7] *ECOSOC Review*, E/1993/80 of 30 July 1993.

[8] Economic and Social Council Resolution 1296 (XLIV) of 23 May 1968.

[9] *Consultative Relationship between the United Nations and non-governmental organizations*, Resolution 1996/31, United Nations Economic and Social Council, 49th Plenary Meeting of 25 July 1996.

[10] With regard to the general consultative status, Resolution 1996/31, Part III, para. 22 provides that: "Organizations that are concerned with most of the activities of the Council and its subsidiary bodies and can demonstrate to the satisfaction of the Council that they have substantive and sustained contributions to make the achievement of the United Nations in the fields set out in paragraph 1 above, and are closely involved with the economic and social life of the peoples of the areas they represent and whose membership, which should be considerable, is broadly representative of major segments of society in a large number of countries in different regions of the world shall be known as organizations in *general consultative status*."

[11] According to Resolution 1996/31, Part III, para. 23: "Organizations that have a special competence in, and are concerned specifically with, only a few fields of activity covered by the Council and its subsidiary bodies, and that are known within the fields for which they have or seek consultative status shall be known as organizations in *special consultative status*."

[12] According to Resolution 1996/31 Part III, para. 24 "Other organizations that do not have general or special consultative status but that the Council or the Secretary General of the United Nations in consultation with the Council or Committee on Non-Governmental Organizations, considers can make occasional and useful contributions to the work of the Council or its subsidiary bodies or other bodies of the United Nations bodies within their competence shall be included in a list (to be known as *Roster*). This list may include organizations in consultative status or a similar relationship with a specialized agency or a United Nations body. These organizations shall be available for consultation at the request of the Council or its subsidiary bodies. The fact that an organization is on the Roster shall not in itself be regarded as a qualification for general or special consultative status should an organization seek such status."

[13] Resolution 1996/31 determines how NGOs can propose items for the Council's agenda, attend meetings, submit written statements and carry out oral presentations to meetings of the Council. The resolution also provides the conditions under which NGOs may participate in international conferences convened by the United Nations and in their preparatory process.

[14] The Committee on Non-Governmental Organizations is a standing committee of the ECOSOC. It was established by Council resolution 3(II) on 21 June 1946. It reports directly to ECOSOC. The current terms of reference of the Committee are detailed in Resolution 1996/31. In its proceedings the Committee is guided by the rules of procedure of the Council. The main tasks of the Committee are: i) the consideration of the applications for consultative status and request for reclassification

submitted by NGOs, ii) the consideration of quadrennial reports submitted by NGOs in general and special categories, iii) the implementation of the provisions of Council resolution 1996/31 and the monitoring of consultative relationship, and iv) any other issues which the ECOSOC may request the Committee to consider. See http://www.un.org/esa/coordination/NGO/committee.htm .

[15] Resolution 1996/31, para. 50.

[16] *Ibid.*, para. 51.

[17] *Ibid.*, para. 52.

[18] *Standard Setting* means establishing international rules which make it possible to measure or judge the conduct States.

[19] Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights for all. Supporters are outraged by human rights abuses but inspired by hope for a better world. Amnesty has more than 2.2 million members and subscribers in more than 150 countries and territories. Ever since Amnesty started campaigning in 1961, it has worked around the globe to stop the abuse of human rights. British lawyer Peter Benenson launched the worldwide campaign *Appeal for Amnesty 1961* with the publication of a prominent article, 'The Forgotten Prisoners', in *The Observer* newspaper. The imprisonment of two Portuguese students, who had raised their wine glasses in a toast to freedom, moved Benenson to write this article. His appeal was reprinted in other papers across the world and turned out to be the genesis of Amnesty International. The first international meeting was held in July 1961, with delegates from Belgium, the UK, France, Germany, Ireland, Switzerland and the US. They decided to establish «a permanent international movement in defence of freedom of opinion and religion». On Human Rights Day, 10 December, the first Amnesty candle was lit in the church of St-Martin-in-the-Fields, London. See: www.amnesty.org

[20] See: http//www.amnesty.ca/about/history/historyofamnestyinternational.

[21] General Assembly Resolution 39/46, *Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment* adopted in New York on 10 December 1984 and in force as of 26 June 1987. At 17 December 2008 the Convention has been ratified by 146 States. See: www2.ohchr.org/english/countries/ratification/9htm.

[22] High Commissioner for Human Rights, World Conference on Human Rights. Excerpt from DPI/1394/Rev.1/HR-95-93241, April 1995. See: www.unhchr.ch/html/menu5/wchr.htm.

[23] GAER F.D., "Reality Check: Human Rights NGOs, Confront Governments at the UN", in *NGOs, the UN, and Global Governance*, (ed. Weiss Thomas, Leon Gordenkes) Boulder, 1996, 51-66.

[24] World Conference on Human Rights, General Assembly, A/CONF.157/23, *Vienna Declaration and Programme of Action*, Vienna, 25 June 1993, Section I, para. 5.

[25] The High Commissioner for Human Rights was established by the UN General Assembly on 20 December 1993 with Resolution 48/141. The Statute of the International Criminal Court was adopted in Rome on 17 July 1998 and it entered into force on 1 July 2002. There is no doubt that the NGO Coalition for an International Criminal Court which counted more than 800 NGOs at the time the Diplomatic Conference on the establishment of an international court was open in Rome (15 June 1998), was a strong impetus behind the establishment of the court.

[26] Later the Special Representative of the Commission on Human Rights on the Situation of Human Rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia.

[27] *Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally recognized Human Rights and Fundamental Freedoms*, adopted by General Assembly Resolution A/RES/53/144 of 9 December 1998.

[28] See the *Declaration on Human Rights Defenders.*

[29] *Declaration on Human Rights Defenders*, art. 16.

[30] *Ibid.* art. 18.

[31] World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration, para. 210. See: www.unhchr.ch/pdf/Durban.pdf.

[32] "The different shades of hatred", article published on the online edition of The Hindu. See: http//hindu.com/thehindu/2001/09/09/stories/05091344.ht.

[33] Mary Robinson, High Commissioner for Human Rights (1997-2002), and Secretary General of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

[34] BBC News, 21 November 2002.
See news.bbc.co.uk/1/hi/talking_point/forum/1673034.stm .

[35] The reservation of the US is due to the Supremacy Clause of Article Six of the United States Constitution, which does not permit treaties to override the Constitution.

[36] The public sector is usually composed of organisations that are owned and operated by the government. This includes federal, provincial, state or municipal governments. Organisations in the public sector are usually called public bodies or public authorities. Some examples of public bodies are educational bodies, health care bodies, local and central government bodies and their departments.

[37] Abstract from the speech of the Prime minister of India, Atal Bihari Vajpaye, in June 2000 at the presentation of Rotary India award on human rights to justice Venkatachaliah. See: www.indianembassy.org /special/cabinet/primeminister/pmspeeches.htm

COME LOVELY AND SOOTHING DEATH,

ONDULATE ROUND THE WORLD, SERENELY

ARRIVING, ARRIVING, IN THE DAY,

IN THE NIGHT, TO ALL TO EACH,

SOONER OR LATER,

DELICATE DEATH.

W A L T W H I T M A N

DISABILITY, HUMAN RIGHTS AND HUMAN SECURITY

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DISCUSSION

"Thus freedom now so seldom wakes,
The only thorb she gives,
Is when some heart indignat breaks,
To show that still she lives."

THOMAS MOORE

INTRODUCTION

On 3rd of May 2008, the United Nations *Convention on the Rights of Persons with Disabilities* entered into force, which exemplifies the era when human rights have entered into the arena of both disability and development discourses as a key concept. A human rights-based approach (HRBA) has become increasingly important in tackling existing inequality at different settings.

At present, the number of persons with disabilities (PWDs) around the world is estimated at 650 million, which occupies 10-12% of the total population. The human rights-based approach to disability connects this largely neglected part of the world population with the development discourse.

A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede the development process (OHCHR, 2006). The human rights ideology has four implications. First of all, it effectively draws all human beings into mainstream discourse, and includes the most vulnerable groups of people such as PWDs. Secondly, the approach requires rights-based action instead of charity, which has been predominant. Thirdly, the approach stipulates state obligations to secure the human rights of concerned people. Fourth, this approach demands transnational obligations (Katsui ~ Kumpuvuori, 2008).

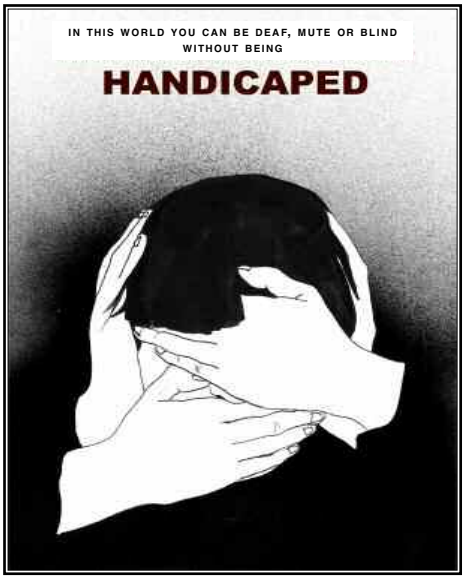
Disability is above all a critical human rights issue and respecting these rights is critical for the sake of justice, equality and inclusion. To achieve a genuine development process, DPOs [organisation of PWDs] must address human rights issues too (The Secretariat of the African Decade of PWDs, 2009:7).

Human rights and disability are inseparable concepts today. This article elaborates this realm with the case studies on the advocacy work of organisations of PWDs related to the enactment of specific laws in Uganda and Finland. Firstly, the cases are respectively described. Secondly, forms of advocacy are analysed with the special attention to political and legal advocacy. Thirdly, challenges of the advocacy processes are reviewed. Fourthly, the personal experiences of the studied advocacy activities are linked to the concept of human security. The concluding remarks present a few observations from our case studies. The arguments are enriched by interviews with key stakeholders of the cases in both countries that were conducted during 2008 and 2009. Disability study is multidisciplinary in nature. This article is written by two scholars from different fields, namely law and social sciences. Hence, the analyses utilised in this article are also multidisciplinary: evidence-based situational analysis combined with legal and theoretical ones. That is, the conclusions drawn in the article are the result of the effective combination of different methods of analysis.

UGANDAN CASE: LOCAL GOVERNMENT ACT 1997

The Local Government Act 1997 legally secured the political representation of PWDs in all local government structure

with the introduction of quota system. The Act was enacted as a series of decentralisation efforts of the ruling political party, the National Resistance Movement (NRM) since 1986. After the military regime of Idi Amin (1971-1979) which centralised the power, and the following regime of Obote (1980-1985) that did not take any major change in its structure, there was the vacuum of local government structure. Therefore, the new NRM regime and the President Museveni gave high priority to democratic governance (Mugabi, 2004). In 1987, right after the change of the regime, National Union of Disabled Persons of Uganda (NUDIPU) was established as the umbrella organisation of 17 DPOs (Ndeezi, 2004:12). NUDIPU is said to be "one of the strongest national advocacy and lobbying organisations championing the cause of marginalised groups in Uganda" (Ndeezi 2004:17). The ruling political party, NRM, has morally facilitated the growth of disability movements (*ibid.* 17). The Affirmative Action Policy 1989, for instance, promoted representation of the marginalised groups including PWDs.



In the Constituent Assembly for the formation of the Constitution in 1995, late Eliphaz Mazima with physical impairment, who had the background of disability activist and the first elected chairperson of NUDIPU, represented PWDs and the Constitution succeeded in having many clauses related to PWDs (Ndeezi, 2004:23; Kokhauge, 2008). It has become a legend among the present disability activists how Mazima managed to convince other delegates, especially other vulnerable groups (Millward et al, 2005:161; Asamo, 2008). Consequently, the 1995 Constitution includes the following clauses among others:

Rights of PWDs.

35. (1) PWDs have a right to respect and human dignity and the State and society shall take appropriate measures to ensure that they realise their full mental and physical potential.

(2) Parliament shall enact laws appropriate for the protection of PWDs.

In 1996, national elections took place using affirmative action policy following the Parliamentary Statute (Government of Uganda, 1996) that made five Members of Parliament (MPs) with disabilities representing PWDs (Millward *et al.* 2005:154). Along the same line, the Local Government Act resulted in 47,000 disability councillors representing PWDs at different levels of the local government structure, half of which are women with disabilities. The representation has been gradually making changes on the grassroots level as these councillors have become the channel to relevant decision makings (Lule, 2009). They have been improving the quality of life of PWDs at different levels. The Act is cited as a "top-down initiative" of the NRM rather than a movement-oriented bottom-up initiative (Tamale, 1998:255), which has some implications. An MP, Sekabira (2009), and Mwesigye (2009) point out the good political will of the President as a positive factor in the formation of the Act. However, including PWDs into the Local Government Act was not automatic. There was a vigorous advocacy for realising this Act to be inclusive of PWDs.

FINNISH CASE: PERSONAL ASSISTANT SYSTEM

The Personal Assistant System for PWDs is based on the Act on Services and Support for Persons with Disabilities (law 380/1987, later 'Disability Service Act'). It provides support for PWDs to enable them to hire a personal assistant to assist them in their daily activities.

From the beginning of the enactment of the Disability Service Act, the right to sustain a personal assistant has been a discretionary right, in which the municipality can legitimately argue on the lack of resources to deny PWDs from getting the support. This has led to the highly varying situation of PWDs needing personal assistance depending on what is their place of domicile.

The problems in the Personal Assistant System also have their constitutional dimensions, which relate to the fact, that the Disability Service Act was enacted before the constitutional reform in Finland that took place in 1995. Because of this, the Disability Service Act has not been looked at from the point of view of a strong system protecting the fulfilment of basic rights of individuals. In the context of Personal Assistant System and PWDs, Section 19 of the Constitution of Finland (Act 731/1999) is particularly relevant. It regulates as follows:

Section 19 – The right to social security.

Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care.

The right to receive indispensable subsistence and care means that PWDs need to be provided personal assistance to enable them to live a life of dignity. Hence, the legislator has the obligation to make laws that guarantee this right, i.e. to make effective laws on the Personal Assistant System (Tuori, 2005:3). Maintaining the right to a personal assistant as a discretionary right or a moral obligation cannot be seen as an effective legislation.

The goal of the organisations of PWDs has been that there would be a legislative change of the right of PWDs to a personal assistant from a discretionary to a subjective right. The pressure from organisations of PWDs to change the Personal Assistant System was increasing towards the end of the term of Matti Vanhanen's I Cabinet (24 June 2003 - 19 April 2007). Especially the Association of Employers of Personal Assistants was performing very intensive and sophisticated political lobbying using the latest forms of electronic communication towards decision makers and also contacting them by telephone and physically. In autumn 2006, when the campaigning for Parliament elections of March 2007 was very heated,

a demonstration took place in the stairs of the Parliament on 29 September 2006 to increase the pressure on the Government. Another demonstration took place on 6 December 2007, the Independence Day of Finland with the slogan, "Independence for PWDs". As a result of all these advocacy works, 2008 became a groundbreaking year in the development of the Personal Assistant System.

Practically the same core group that had been active during the whole process, negotiated intensively with the Government. It is significant that they actually negotiated. There was enough political support for the change because this was a very valuable source of information and ideas to the Government. The Minister for Social affairs, Paula Risikko, led the process, which resulted in the proposal to change the law in October 2008. The proposal was accepted by the Parliament on December 2008 and the amended law enters into force on 1 September 2009.

FORMS OF ADVOCACY: POLITICAL OR LEGAL?

In the context of DPOs, legal advocacy and political advocacy can be distinguished as follows. In legal advocacy, both arguments and methods used are primarily legal. This means using arguments such as "We, PWDs have the constitutional right to X" and employing legal methods such as filing complaints to legal bodies. In political advocacy, both arguments and methods used are primarily political. This means using arguments such as "You politicians should change the law, otherwise your political support of our group will decrease rapidly" and employing political methods such as negotiations with the politicians. The two types of advocacy do not exclude each other. The following analysis on the two cases reveals that the two support each other.

In the Ugandan case, disability activists recognise the process as political advocacy. This is due to the inseparable relationship between NUDIPU and MPs (Katsui, 2009). Almost all the MPs with disabilities have the background of disability activism prior to their political positions. Therefore, even though their ideological background of the advocacy work is much based in the human rights framework, such as the human rights-based 1995 Constitution and the 1989 Affirmative Action Policy, it is considered as a political advocacy, not a legal one. The advocacy for the Act did not utilise legal institutions, which led to the recognition of political advocacy.

"Multi-party politics" was introduced only in the national elections of 2006, which to some extent began to facilitate legal processes against the ruling party, NRM. The concerned Act was enacted during the time of the nation building, which had minimised a confrontational approach including legal measures particularly against the NRM. In this way, PWDs were positively included as part of an important constituency for the common goal of democratic nation building. Only after the enactment of Persons with Disability Act 2006, legal advocacy means started to be used for revealing violation of human rights against PWDs. NUDIPU and other Ugandan DPOs have been involved in filing court cases based on the Persons with Disability Act. However, the recognition of human rights among PWDs on the grassroots level is too limited despite the great efforts of sensitisation and awareness raising of NUDIPU (Kinubi, 2008; Ndeezi, 2008). Even lawyers working for PWDs try to settle cases without going into court because of resource constraints (Kanushu, 2008). Purely legal advocacy, therefore, is a very recent phenomenon as well as "last and expensive choice" in Uganda.

In the Finnish case, DPOs had lobbied also before to decrease the regional inequalities in the implementation of Disability Service Act, also in terms of services and support other than the Personal Assistant System. The way to make a societal change had been very politically (mostly non-party) oriented. The first sign of an awakening in the field of legal advocacy came about in 2005, when a prominent legal scholar Professor Kaarlo Tuori was asked by the Association of Employers of Personal Assistants, the organisation established to advance this particular advocacy, to write a constitutional analysis of the Personal Assistant System and the grounds for securing a life of dignity for PWDs through that system (Tuori, 2005). A constitutional analysis from a prominent legal scholar was not at all a minor change. It was a totally new way of analysing the situation of PWDs also outside the scope of the Personal Assistant System, as there had not been many writings on the rights of PWDs, particularly not from professor-level legal scholars. Besides the *per se* importance of the analysis, the importance of disability activists asking for it was a huge change. It meant moving towards a more legal way of thinking toward societal change, towards legal advocacy. The importance of this analysis in the whole process cannot be undermined:

> "During the fight, the analysis of Tuori acted as a cornerstone all the time. In the final stages of the fight, it was not so much marketed because its arguments were well accepted even amongst the preceding Parliament (Tiri, 2009)."

The analysis of Professor Kaarlo Tuori can be said to have had an instrumental role with regard to the political advocacy, which in an interesting aspect in relation of these two types of advocacies. The arguments of the analysis were later used in actions of political advocacy.

After the demonstration a group of people and organisations supporting them started a new project that was very human rights based. They decided to write a complaint to the Chancellor of Justice. In the complaint the organisations asked the Chancellor of Justice to investigate, whether Matti Vanhanen's Cabinet had neglected the development of the Personal Assistant System, even though they had the legal obligation. The complaint was signed on 24 October 2006, about a month after the demonstration. Even though the organisations were serious about the legal grounds of the complaint, it was clear that the main purpose of filing it was to get political pressure to Matti Vanhanen's Cabinet. Even though the result of the complaint was not the one DPOs wanted, legal machinery was used to make a change in the political sphere. Again, legal and political advocacy intertwined.

The analysis of the two cases allows us to understand that the concepts of legal and political advocacy intertwine in practice. Particularly, legal arguments around the human rights ideology based on existing laws and constitutions have been utilised in both cases. When it comes to methods

of legal advocacy, such as filing complaints, it is ultimately seen as a "final stage." Another observation is that even if methods of legal advocacy are used, they are primarily for getting extra-arguments for political advocacy. Legal advocacy is, however, increasingly emphasised in both countries particularly in terms of arguments but also means. Utilisation of legal advocacy more in the future is very likely among DPOs in both countries.

CHALLENGES OF THE ADVOCACY PROCESS

In both cases, the desired laws were realised or are about to be realised. The law making is only a process of disability movements for "putting things correct that had gone wrong for decades, if not centuries (Mwesigye, 2009)." The processes, including the implementation of the laws, have entailed a number of challenges in both countries. This part sheds light on those challenges so as to highlight the specificity of disability in human rights advocacy works: discrimination (OHCHR, 1996-2003), heterogeneity among PWDs (Katsui ~ Kumpuvuori, 2008) and resource constraints (Shakespeare, 1993).

First of all, severe discrimination and ignorance of the society is a common challenge both in Uganda and Finland. This means in practice that PWDs and DPOs are considered responsible for the required changes because others are not well aware of their needs and rights. This gives massive stress to disability activists as they have to make necessary social changes for the human rights of PWDs in a discriminatory society, the personal experiences of which will be elaborated further in the following chapter. In the Ugandan case, the enactment of the Act expected that the NUDIPU had had a structure in all districts to be able to elect those disability councillors, which it did not have before the Act. NUDIPU was a Kampala-based organisation then. Nevertheless, NUDIPU realised this as an opportunity and created the nation-wide structure "with the record fast time (Kokhauge, 2008)" which enabled the election of the 46,000 disability councillors in time. As many of the disability councillors did not have qualifications, NUDIPU created an "empowerment package" so that they could negotiate with others in the decision making processes. Consequently, PWDs have been officially mainstreamed in the political space in practice, while empowerment of them is still lagging behind. The policy cannot solve the discrimination (Tamale, 1998:255). This has been seen as one of the biggest challenges of this Act.

In the Finnish case, DPOs have trained PWDs to become "bosses" over their personal assistants. Being a boss to somebody is not easy. It is especially not easy when one has not done it before, which is usually the case when a PWD hires the first personal assistant. The Threshold Association, which is a human rights organisation of PWDs, started to organise "Boss Trainings" with the aim of empowering PWDs to become bosses. The level of knowledge on the rights and obligations relating to being a boss was very weak among the disability community. Over the decades, the knowledge has spread but as there are always new PWDs who become bosses, the training is ongoing. The training is predominantly organised based on peer-support. In both cases, DPOs are taking the heavy responsibility in the implementation of laws.

Secondly, human rights advocacy of DPOs means in practice that heterogeneity among PWDs has to be overcome and harmonised as one appeal. In the Ugandan case, the grouping of "PWDs" was not questioned.

> "When it came to fighting own issues, for the issues of people concerned whom I'm representing, you know, we could forget those differences, and we can fight for the issues of PWDs. I think also that was very fundamental (Nalule, 2008)."

It was questioned when the demography of the elected 47,000 disability councillors was clarified after the election. Among the elected councillors all over Uganda, marginalised groups, such as deaf (Murangira, 2008), children with disabilities and their parents (Millward et al, 2005:161) among the PWDs are represented to a very limited extent or are non-existent.

In the Finnish case, a lot of conflicts among different groups of PWDs and their organisations arose during the advocacy process. Conflicts were about disagreements in some definitions in the draft laws that were presented by some DPOs and the Government. Few persons with physical impairments were the leaders in the series of activities. The timeframe was too tight to get consensus from the individual members of the organisations. One interviewee describes this phenomenon:

> "I said myself all the time that we cannot afford any differing views. […] To some extent were forced to make decisions by ourselves, we did not have the possibility to get acceptance to everything from everybody. The timeframe was tight and we jus needed to get the papers done – we just put a few people to work on them and the core group commented (Heikkonen, 2009)."

The 'civil war' amongst DPOs and their leaders was very much affecting the public image of the whole advocacy campaign. Members of the Parliament were blaming the demonstrators that they did not have the legitimacy of the whole disability movement in Finland. This raised a lot of frustration among the demonstrators because they actually had the support of the Finnish disability movement. The diversity and disagreements were solved among the few leaders who started to trust each other.

Every movement has to contend with a "plurality of orientations" (Melucci, 1989 cited in Dowse 2001). The diversity under "PWDs" is very challenging to overcome (Katsui ~ Kumpuvuori, 2008:234). "Effective leaders" of the disability movement have been widely recognised to move the agenda forward (Foster-Fishman et al. 2007:341). They are central in transforming individuals from passive recipients of discrimination into agents of change (*ibid.* 342). From the above-mentioned cases, we can draw the preliminary conclusion that when an advocacy project is on-going, decisions have to be made quickly. There is no time to negotiate or to get acceptance from the individual members. This has at least a few implications: the leaders in charge need to have strong support from their organisations to withstand the turbulence relating to the advocacy, otherwise they actually lose legitimacy and people can pass over them and invalidate their mandate. Alternatively, collective identity formation among them and maintenance of values have become important today as a form of new social movements (Dowse, 2001:125). Morover, the core group has to be small enough to enable fast processes in drafting and accepting the

advocacy papers. This is known as "'The Law of Michels', the Iron Law of Oligarchisation" (Michels, 1911 cited in van Houten and Jacobs, 2005). Finally, groups of PWDs that are traditionally in politically strong positions cannot advocate successfully by themselves, allies need to be obtained.

Thirdly, the implementation of the Laws is divided into two types of obligations: moral and binding (Millward et al, 2005). In the Ugandan case, the negative attitude of the society has hardly been changed with this Act. "Some still feel it is the duty of the donors to come in and help (Mwesigye, 2009)" especially when the resources are limited and the resources required for changing a historically discriminatory society and for impairments-specific needs are not small. "More resources" is one of the most important implications (Millward et al, 2005). Hence, negotiation with colleagues has been very challenging. Some district disability councillors managed to plan budgets for disability causes, but many others have little or no resource allocation for any activities for their constituences with disabilities. Poverty is a great challenge as well as a good excuse for the responsible public agencies not to fulfil their duties as mere moral obligations. As a result, little changes have taken place and they are not even monitored in Uganda (Lule, 2009; Mwesigye, 2009).

In the Finnish case, different municipalities have implemented the personal assistant system to a different extent and created inequality among PWDs living in different places. In a small scale, this has led to "domicile-shopping', which means that PWDs choose their place of domicile in regard to where they get the best services. That is, in both cases, laws are at times understood as moral obligations with the excuse of resource constraints by of the primary duty-bearers justifying their limited implementation.

All of these challenges are deeply rooted in the local community where PWDs live and cannot be easily changed over a short period of time with enactment of laws. The analysis of these challenges has clarified that law making is important but is more a process rather than a goal in itself. These challenges often affect success and too frequently failure of the implementation of a law to the lives of PWDs in both countries. At the same time, these challenges and structurally rooted causes explain part of the reasons for the disability movement to use both political and legal advocacy for making necessary changes today.

PERSONAL EXPERIENCES AND HUMAN SECURITY

Personal experiences are always involved in any type of self-advocacy. Experiences of PWDs on discrimination are surprisingly similar around the globe, while personal accounts are as important. An interesting phenomenon in both cases was that personal experiences on their advocacy activities were framed very closely to the organisational level and the results of the advocacy project:

"Taking the thing forward was at some points very hectic and also tiring but at the same time also rewarding, because we got our own goals included to the law. It felt like one could actually make an impact on some issues and that the dialogue with the legislator worked (Keski-Korhonen, 2009)."

"We fought to have a gender balance within the representation. That's why you see we have one man and one woman at LC-5 and LC-3 [different levels of the local structure]. Those are the districts and sub-counties. Those are the gender rights that we are looking at. Those were the things that we fought for (Nalule, 2008)."

The phenomenon described above has most likely to do with the hectic nature of the advocacy activities. People involved in the core group do not necessary have time to reflect on their own situations and feelings during the activities. This could be very serious because it may endanger the future capabilities of the movements because the members of the core groups are likely to get tired (Akaan-Penttilä, 2009; Lule, 2009). Besides individuals getting tired, this may have an effect of reinforcing the introvert nature of the core group, because they do not have the time to listen to other people. On the other hand, producing a good result from an advocacy activity has tremendous potential in empowering people, which would result in new and better advocacy activities.

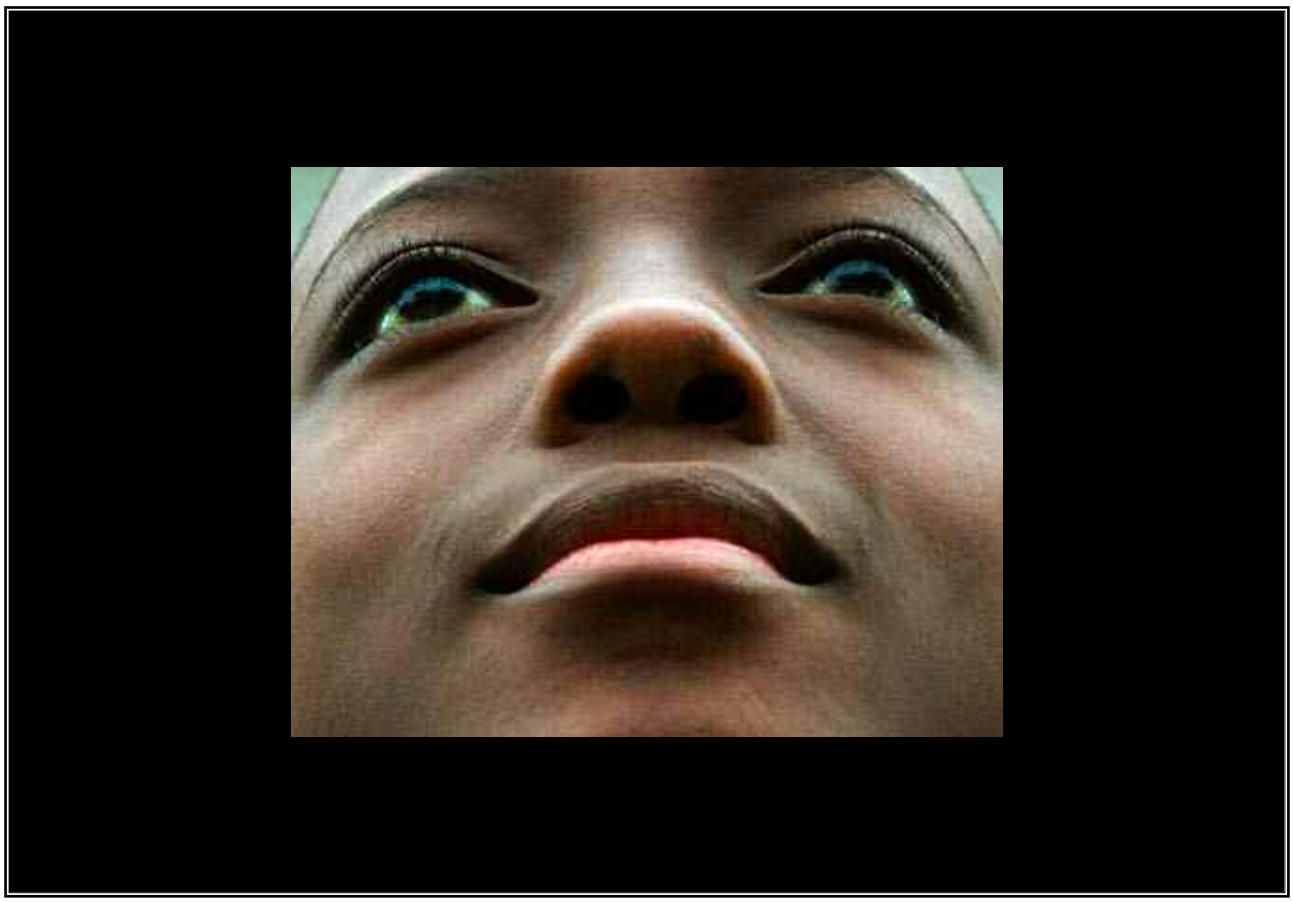
Finally, it is necessary to make an important link to the concept of human security and explore its significance in the context of human rights advocacy of DPOs. Human security starts from the recognition that people are the most active participants in determining their well-being (Commission on Human Security, 2003). In these cases, it means that to achieve the highest possible level of human security, PWDs and their organisations need to be the key players in changing society on the issues that concern them. The autonomy is also relevant to the closest persons when PWDs have severe impairments and barriers to communicate with others. Including the closest persons is an important approach particularly in Uganda where individuals belong to a bigger unit such as family, clan or community, which is different from an individualistic approach of Western countries. It is common that when discussing about the realisation of human rights of PWDs, the attention turns to the actions and omissions of the state. Almost as commonly, the state pleads successfully to the lack of resources. The significance of this dialogue in the sphere of international law has little or nothing to do with individuals with disabilities on the ground. The human security of this group of people does not come true.

Human security is not achieved through multiple and complex international human rights protections mechanisms. Achieving human security is not just protecting people but also empowering people to fend for themselves (Commission on Human Security, 2003). Dersso (2008:6) argues further that in achieving human security by empowerment it is critical to enable people to actively defend their freedoms and to develop the capability to address insecurities.

Human security in the context of PWDs and their closest people can come true through self-advocacy activities. "Personal is political" but also vice versa; "political is personal." Performing advocacy activities, any type of them, is very much about PWDs and their closest people being exposed to the public domain. This has the implication that whatever happens in the public domain, be it a success or a failure, it has a direct effect to the person and to the realisation of his/her human security.

CONCLUDING REMARKS

This article has discussed different dimensions of advocacy activities of DPOs and the connections of those to PWDs in the context of human security, and will be concluded with three observations on this topic.



First, different types of advocacy activities complement each other. Legal, political and any other type of advocacy activities do not work alone very effectively. All types of advocacy are needed to make societal change. A very legally oriented way of acting leaves big gaps on the political sphere, just as a very politically oriented way of acting ignores possibilities of the legal nature. And one can be sure that there are many more types of advocacy that fall only partly or not at all to either of the two aforementioned. The selected cases revealed the clear trend of advocacy activities of DPOs to increasingly incorporate legal advocacy arguments and methods in their political advocacy works.

Second, the comparative discussion implemented in this article is an important one. By exploring two cases of advocacy activities, it managed to tease out similarities and differences in utilising different types of advocacy activities. The ways to take an attitude to different types of advocacy activities had naturally its reasons in the particular societal situation in each country-context. Having said this, one could say that while learning from other domains is essential in developing new ways to work, direct assimilation of a type from totally different societal environments will most likely lead to difficulties. For example, very right-conflict-oriented thinking that utilisespure legal advocacy in the Anglo-American world would not fit in the more consensus-oriented societal atmospheres of Uganda or Finland.

Third, it is easier to make a solid link between empowering PWDs and their organisations, utilising different types of advocacy activities and human security. Human security cannot be realised if PWDs are not given the opportunity to make their own decisions or if their closest persons are not given it, especially when PWDs have severe impairments and barriers to communicate with others. Including the closest persons is an important approach. There are many tools to choose from to go on with advocacy activities or even to decide not to take part in them. The most important implication with regards to achieving human security is the empowerement to make own decisions for onself.

ACKNOWLEDGEMENTS

We would like to thank our research participants for sharing their experiences with us. Without them, this article

would have been impossible. The study is funded by the Academy of Finland (for more about the study, please visit http://disability-uganda.blogspot.com/), while Katsui's fieldworks in Uganda were funded by the Tokyo Foundation (JIP Award) and Nordic Africa Institute. We are grateful for all of the above supporters. However, the views expressed in this article are ours, as is the responsibility for the content.

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HUMAN RIGHTS AND CULTURE:

FROM DATASTAN TO STORYLAND

ARLENE GOLDBARD

Arlene Goldbard is a writer and consultant whose focus is the intersection of culture, politics and spirituality. Her blog and other writings may be downloaded from her Web site www.arlenegoldbard.com . She was born in New York and grew up near San Francisco. She now lives in Kansas City, Missouri. Her most recent book, New Creative Community: The Art of Cultural Development *was published by New Village Press in November 2006. She is also co-author of* Community, Culture and Globalization, an international anthology published by the Rockefeller Foundation and Clarity, a novel. *Her essays have been published in* In Motion Magazine, Art in America, Theatre, Tikkun, *and many other journals. She has addressed countless academic and community audiences in the US and Europe, on topics ranging from the ethics of community arts practice to the development of integral organizations. She has provided advice and counsel to hundreds of community-based organizations, independent media groups, and public and private funders and policymakers including the Rockefeller Foundation, Global Kids, the Independent Television Service, Appalshop and dozens of others. She is currently focusing on three projects: a book about artists working to heal the prison-industrial complex; a film about Rabbi Arthur Waskow; and a campaign to create Cultural Recovery for the US, including a "new WPA" for artists. She serves as President of the Board of Directors of The Shalom Center.*

→| NEW DIRECTIONS

"The antidote to dispair is to remember the world to come."

RABBE NACHMAN OF BRATSLOV

THE RIGHT TO CULTURE IS A new human right, first articulated in the United Nations' *Universal Declaration of Human Rights* of 1948[1]. Today, what began with these 18 words is transforming the world:

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Rights are mere abstractions without the means to implement them, as was pointed out in 1970 by Rene Maheu, then Director-General of UNESCO (the United Nations Educational, Scientific and Cultural Organization):

It is not certain that the full significance of this text, proclaiming a new human right, the right to culture, was entirely appreciated at the time. If everyone, as an essential part of his dignity as a man, has the right to share in the cultural heritage and cultural activities of the community – or rather of the different communities to which men belong (and that of course includes the ultimate community – mankind) – it follows that the authorities responsible for these communities have a duty, so far as their resources permit, to provide him with the means for such participation. […] Everyone, accordingly, has the right to culture, as he has the right to education and the right to work[2].

It is safe to say that Mr Maheu had no idea how questions of cultural rights would expand and multiply in the decades to come, how often they would generate fiery public debate[3]. For example, In 2006, then-Prime minister Tony Blair made headlines in Britain and beyond with his comments about Muslim women wearing the *niqab*, a face-covering veil with no opening other than slits for eyes.

"It is a mark of separation," said Blair of the niqab, *"and that is why it makes other people from outside the community feel uncomfortable […] No one wants to say that people don't have the right to do it. That is to take it too far. But I think we need to confront this issue about how we integrate people properly into our society[4]."*

Blair spoke of separation and discomfort, saying nothing about security concerns. But surely such fears are part of the subtext, rooted in the invidious habit of associating Muslims with terrorism, else he would long since have reacted in similar fashion to others whose dress stood out as different. Similar controversies have arisen in France, in Italy, in my own country and elsewhere around the globe, almost inevitably focusing on one type of cultural difference: aspects of costume that proclaim minority religious identity.

Blair's remarks on that occasion perfectly encapsulate the challenge of security in a time of rapid cultural change. Humanity is in the midst of a massive period of adjustment. Out of aspiration, coercion or necessity, people are moving from their home countries to other lands in unprecedented numbers, particularly from the global South to the North, with enormous impact on the places that attract immigrants. Where work prospects or social services are available to immigrants, communities are

becoming much more diverse. We are seeing a process that Carlos Fuentes has described as "the emergence of cultures as protagonists of history," calling for

[…] a re-elaboration of our civilizations in agreement with our deeper, not our more ephemeral, traditions. Dreams and nightmares, different songs, different laws, different rhythms, long-deferred hopes, different shapes of beauty, ethnicity and diversity, a different sense of time, multiple identities rising from the depths of the poly-cultural and multiracial worlds of Africa, Asia and Latin America[5].

Until this new reality settles into normalcy, the old order will push back. So far, the methods typically employed embody a very old idea of security: if you can't build the barricades high enough to keep strangers outside, at least limit their liberty, keeping them under watch and under control.

Is it working? Only if a condition of perpetual fear is an acceptable way to live. Can we afford the cost? Only if we neglect everything that lifts human life above mere existence, everything that has been sacrificed in my country to finance the planet's largest defense establishment side-by-side with a prison-industrial complex with a population larger than some small nations. Indeed, the US prison population has tripled in the last twenty-five years, with more than seven million individuals – one out of 31 adults – in prison, jail or under correctional supervision[6].

I have high hopes for the administration of President Barack Obama. But no individual has the power to instantly reverse decades-old policy trends, each with its own elaborate, expensive and self-perpetuating bureaucratic apparatus. The antidote to a culture that equates security with conquest and punishment is a culture that prizes connection and creativity. While we work toward this remedy, we must live through a period of enormous social imbalance and anxiety. The crusts of the old way of understanding crash into the tectonic plates of the newly emergent reality. We cannot say how long this will last, but to help it along, each of us must choose a role, consciously or by default, guardian of the old order or midwife of the new.

I don't think artists are better or smarter than other people. No one can predict the future with accuracy, but many of us have developed skills of observation acute enough to read subtle signs. When I wrote the introduction to *New Creative Community: The Art of Cultural Development*[7], I thought of the riots that had overtaken the Parisian suburbs in 2005 – violent clashes between young immigrants and the police. The *New York Times* carried an article by Alan Riding entitled, "In France, Artists Have Sounded the Warning Bells for Years." Riding pointed out that musicians and other artists had consistently predicted this conflict, whereas newspapers and politicians had "variously expressed shock and surprise, as if the riots were as unpredictable as a natural disaster." Once again, artists are pointing the way to what is emerging: a new understanding of reality grounded in human stories and connection, a new understanding of human rights grounded in cultures.

I have a name for the emergent paradigm, the unfolding reality that recognizes the importance – the sacredness – of culture, and that name is "Storyland." In Storyland, artists work with communities to capture and use the stories that support resilience, connection and possibility. Every year, more and more artists work in community cultural development, in participatory projects in which artists collaborate with others to express concerns and aspirations, recovering histories, beautifying communities, teaching, expressing cultural creativity as a universal birthright and a bottomless source of resilience. Conditioned on the values of Storyland, these community artists pursue the democratic interest in cultural life, promoting vibrant cultural citizenship rich with cross-cultural sharing, creating sites of public memory commemorating community history and pride, making works of dance and theater that deepen and refresh understanding, stories that heal, creating opportunities for young people to express themselves and learn through artistic practice.

Right now in the United States, we are engaged in a project of national recovery. Like most of the world, the US is in the grip of an economic crisis of unprecedented proportions. Fear is epidemic, each day bringing new headlines to feed it. Calls for the spirit of citizenship are heard everywhere. President Obama has proposed a program of public investment in infrastructure, energy, health care, and education. He hopes that these, along with bailouts and regulatory interventions in the banking system, will revive the economy, unblocking the flow of credit, adding jobs and thus initiating prosperity. Realistic housing policies and close scrutiny of financial markets have been advocated to help to neutralize the laissez-faire mistakes that produced this crisis. But few have been looking very seriously at the culture's role in recovery, and so we are in danger of missing a very important opportunity.

In Storyland, we understand that the resilience that sustains communities in times of crisis is rooted in culture, in the stories of survival and social imagination that inspire people to a sense of hope and possibility even in dark times. Sharing our stories as song, drama, dance, in word or image supports resilience by showing people how others met similar challenges, survived and prospered.

We understand that through art, people prepare for life's challenges in the safe space of imagination, strengthening their creative judgment before it is tested. Artists expand social imagination, helping us envision the transformations we hope to bring about, stimulating our thoughts and feelings toward the new attitudes and ideas that will drive recovery.

We understand that anyone who wishes to make significant headway on a social problem or opportunity must engage with people's feelings and attitudes about it. For example, no financial intervention will save the economy unless confidence is restored. Challenges to social well-being must be addressed by cultural as well as practical means: whether it's promoting safer sex, reducing the incidence of diabetes, treating addictions, promoting green consumer habits – these and countless other public aims are helped by artists' skill at engaging people in considering their own views and communicating freely with others.

Consider El Teatro Lucha de Salud del Barrio[8] in Texas, using theater to help immigrant families learn what they need to act on their very real health concerns, the epidemics of asthma and diabetes swamping our most economically distressed communities. In times of great economic pressure, those at the margins of society are burdened first and most,

bearing the brunt of environmental injustice. Whether on account of their cultural difference or because they cannot afford to remove themselves from the most polluted areas, every breath increases their very real insecurity.

In Storyland, we are imagining what could happen if every agency of government collaborated with community artists to tell the important stories in ways that bring policy goals home, showing people what they could do locally to improve their children's education, reduce environmental damage and create jobs.

In the United States today, as in every past moment of crisis, artists and cultural activists are once again ready to place their gifts at the service of democratic public purpose. Right now, they are demonstrating their readiness, hoping its potency will shine through cracks in the crust of the old paradigm, to be recognized by those who have the power to offer support. Their desire is to create the same opportunities for every community member that have always been available to the privileged, as Francis Jeanson expressed so beautifully in defining cultural democracy:

[I]ts aim is to arrange things in such a way that culture becomes today for everybody what culture was for a small number of privileged people at every stage of history where it succeeded in reinventing for the benefit of the living the legacy inherited from the dead[9].

The old paradigm is all around us every day too, the counterforce that co-creates our disequilibrium. My name for this old way of seeing is "Datastan," a flatland nightmare that worships hyper-efficiency, hyper-rationality, hyper-materialism and domination.

Datastan is conditioned on the scientism that was one of the most bizarrely reductive features of twentieth-century culture, borrowing methods and ways of thinking from the physical sciences and misapplying them to highly complex human endeavors, where they don't work at all. If you can arrive at solid truth about the behavior of minerals or gases by measuring them, this line of thinking goes, you should also be able to reduce human stories to quantitative data, and this should enable you to understand and control them.

Scientism is not science, which entails as many creative leaps as measurements. It is another thing altogether: the misguided and distorted view that human beings, in our infinite complexity, ought to behave just like computers, or at least allow our behavior to be controlled by computers.

Scientism is the US No Child Left Behind Act, our primary Bush-era federal educational legislation, where the phrase "scientifically based research" appears 111 times, premised on the idea that the quality of education can be measured best by control-group research that yields quantifiable data. Scientism is arguing that babies should be exposed to Mozart because it makes them grow up to score higher on IQ tests.

Scientism is the mountain of money that has been wasted by public and private agencies in the US, trying to come up with "hard" justifications for public arts subsidy, such as the "economic multiplier effect" of arts expenditure, which means that when people buy theater tickets, they also spend money eating and parking, multiplying the flow of capital. The trouble is, exactly the same economic benefits adhere to football tickets or a shopping trip.

But such studies keep being subsidized, because part of Datastan's orthodoxy is that economic arguments are the only valid basis for cultural development expenditure. As the director of a national arts research program told me, "Legislators love these charts. Gotta speak their language." Nor has this conviction been shaken by countervailing evidence. For instance, the budget of the National Endowment for the Arts (NEA), the chief federal cultural agency, was US$ 159 million in 1981, just after Ronald Reagan took office. Correcting for inflation, it would take US$ 372 million in 2008 dollars to equal that allocation. What is the 2009 NEA budget? US$ 155 million. Another US$ 50 million supplement was included in the American Recovery and Reinvestment Act of 2009, the "stimulus bill" passed by Congress just after President Obama took office. Add them all up, and we discover that all those decades of "speaking their language" have yielded a net loss in real value of nearly 45 percent.

As Storyland emerges, encroaching on the old paradigm, knowledge from many different spheres reveals how culture is key to creating the conditions that enable human rights and therefore, security rooted in caring rather than coercion. Let me offer a few examples.

Science is showing us the critical role creativity plays in personal and social development. For our brains to serve a humane future, we would be wise to develop our creative imagination and empathic capacities through arts participation. Antonio and Hanna Damasio of the Brain and Creativity Institute and the Cognitive Neuroscience Imaging Center at the University of Southern California are leading brain scientists who have become advocates for arts education. "[M]ath and science alone do not make citizens," they said in a speech at the 2006 UNESCO World

Conference on Arts Education. "And, given that the development of citizenship is already under siege, math and science alone are not sufficient."

The Damasios explain that rapid, significant changes in the way we spend our time, the way we communicate and process information, have created

[…] a growing disconnect between cognitive processing and emotional processing […]. It has been classically claimed that cognition and emotion are two entirely different processes for the human mind and for the human brain. And that, somehow, a rational mind would be one in which cognitive skills developed to a maximum and emotional processing would be suppressed […]. We have to tell you that not only do we not agree with this claim but that everything that has occurred over the past 10 years of cognitive neuroscience reveals that this traditional split is entirely unjustified[10].

They point out that cognitive processing constantly accelerates as we interact with computers and other machines, but that emotional processing cannot keep pace, with the result that young minds are emotionally underdeveloped, leading to a loss of moral compass, of the emotional sense and imagination that guide a well-rounded human being. Through the imaginative empathy that is the essence of art, through stories, theater, songs and visual imagery, it is possible to build needed emotional and moral capacity. As many eliminate arts classes to focus on the science, math and reading prioritized in federal educational legislation, American schools are treading a deeply dangerous path.

Cognitive science has shone a light on Storyland. Indeed, as we discover more about our brains, our understanding of the role of cultural expression deepens. Observing the brain in action demonstrates that when we remember or imagine experience, our brains behave very much as they do when we enact the same experience with our bodies. Athletes have learned to train in their imaginations for the physical feats they will perform in actual competition. Artists have always known this: when we weep at the suffering or rejoice at the triumph of a character in a book, play or film, it's because, having allowed ourselves to enter imaginatively into the story, our capacity for empathy and compassion activates the same neurological impulses as when we experience a real loss or gain in our own lives.

If our higher purpose is to develop societies securely grounded in possibility, compassion, and connection, our task is to collectively imagine these things. There is no more powerful way to do that than by making art that rehearses the future we wish to help into being.

Scientists are also learning how our brains process trauma, how we do or don't recover from psychic injuries. They tell us it can be healing for a traumatized person to tell his or her story in fullness and in detail, so long as the telling is received in a way that stands in strong disparity to the original trauma. A traumatized person is disrespected, used, harmed, shamed, blamed, made to feel worthless and dispensable. In retelling the story, if those insults are restimulated, the result is more likely to be a repetition of the injury than its healing. For healing to begin, the story must be received with respect, presence and caring.

The same is true in healing social trauma. There are many sore spots in the global cultural matrix, aching wounds where people have been told they are less than full citizens of the world, even less than fully human. One of the highest tasks of community cultural development in this time is to help heal those injuries.

I am inspired by work such as the Documentary Project for Refugee Youth[11]. It was designed as a collaboration among young refugees, the Global Action Project, the International Rescue Committee and other community organizations and artists in New York City. The twelve young refugees comprising the project's core group were from Sierra Leone, Bosnia, Burundi and Serbia. In September 2001, the group began working together to share and understand their own experiences, collect testimonies from others, learn photography, write and create powerful short films. Here's how one participant described the healing and empowering impact of this work on her own life:

I felt like there is no person who suffered more than me. But then, talking to other people and finding out that it's not just me, that it's half the world. Before I didn't know there were so many conflicts and wars, and now that I know, and have the opportunity to do something about it, I want to let other people know.

Oral historian Mary Marshall Clark described an experiment in "theater of witness":

[T]he group Theater Arts Against Political Violence brought artists and survivors of political torture together to explore dramatic uses of testimony. Oral histories were conducted with torture survivors as a way for others to enter into the experiences of remembered torture, but in a broader landscape than one-to-one therapy (or oral history) could provide.

The actors modeled the experience of torture through their bodies, symbolically transferring the words into a lived experience that would be witnessed by the public to break down the conspiracy of silence that often confines the survivor in a world of isolation […] The project developed in close collaboration with those who lived through political torture. The project included three testimony sessions held in a group setting to avoid re-creating isolation. In between, the theater company met to develop and rehearse scenes from the stories. The goal of the production was to give the torture survivors the ability to stand outside their own experiences and to witness the transformation of their suffering on stage in the company of friends and fellow survivors. The survivors became the critics, and ultimately the authors, of the transformation[12].

Spiritual teachings, too, reinforce what we learn from nature, from cultural diversity, from science and from politics. Rebbe Nachman of Bratslov, the great 18th century Hasidic teacher, said, "The antidote to despair is to remember the world to come." How can we remember what has not yet occured? I believe he meant that the antidote to despair is a taste of a perfected world, imagining the experiences that remind us what it is to feel entirely alive and connected. One of the most powerful ways this can happen is in the flow of creativity, when – as Paulo Freire taught us – we speak our own words in our own voice, when we name the world, when we proclaim our desires and visions. When we make art.

When we make art ourselves, and when we teach, support and invite others to dive into the ocean of creativity, we administer an antidote to the epidemic fear and despair we can catch from Datastan. We help our fellow human

beings to imagine, rehearse and prepare for the world of beauty, connection and meaning we all wish to inhabit.

Cultural action can create the container that enables people to face each other and to enter into dialogue even about the most polarized, heated issues. In the body politic as portrayed by the US commercial media, most issues are reduced to a simple pro and con. But issues are complex. The flourishing of civil society requires us to create genuine meeting-places and promote genuine dialogue instead of the media's angry tennis match.

Artists are doing this better than anyone else. Consider the Thousand Kites project[13] (in prison jargon, to "fly a kite" is to send a message). In 1999, Nick Szuberla and Amelia Kirby were volunteer disc jockeys at WMMT-FM, "Listener-Supported, Consumer-Run Mountain Public Radio," the radio station of Appalshop, a multidisciplinary arts and education center based in Whitesburg, Kentucky, a remote and economically stressed rural region. As co-hosts of the Appalachian region's only hip-hop radio program, "Holler to the Hood," Szuberla and Kirby received hundreds of letters from inmates recently transferred into nearby Wallens Ridge, a new "Supermax" prison built as part of one of the United States' remaining growth industries, installing prisons in regions facing economic decline. (In this case, new prisons and prison jobs were proposed as an antidote to Appalachia's shrinking coal economy.) The Supermaxes are panopticon prisons where inmates typically remain isolated in cells for 23 hours a day, constantly under armed guard.

Mostly African American and Latino prisoners were shipped into Wallens Ridge and its sister Supermax prison, Red Onion, from overcrowded prisons elsewhere, bringing millions of dollars into the state's general fund. The prisoners were far from home and family, guarded by white former coal miners and National Guard members for whom the jobs were a simultaneously desired and resented last resort, and a double-edged opportunity to re-enact the rituals of domination in which they had previous played the part of victim. Thus, what was proposed as an economic development scheme for Appalachia wound up as the bleeding edge of a culture clash, affecting families and communities close to home and thousands of miles away.

"Holler to the Hood" became an on-air meeting-place for prisoners and their distant loved ones, broadcasting heartbreaking messages from families too far away to visit and letters from prisoners reporting human rights violations and racial conflicts between prison staff and inmates. These letters inspired H2H's founders to investigate. Szuberla's and Kirby's resulting documentary film, *Up the Ridge*, explores the domestic prison industry, particularly the social impact of moving large numbers of inner-city prisoners to distant rural settings.

From response to the radio program and film, Szuberla and Kirby and their colleagues at Appalshop realized there was a much bigger task here, to surface all the facets and layers of this incredibly complicated story to a larger society unaware of the effects of the US having become "Incarceration Nation," with the globe's largest prison population. The Thousand Kites project is a multiyear partnership between H2H and Appalshop's Roadside Theater, collaborating with prisoners and prison employees, their families and their communities. Roadside has a long track record of participatory play creation and presentation. Their main research modality is holding story circles with those directly involved. The *Thousand Kites* play, based on the highly specific stories of these two Appalachian prisons, has been adapted by and for urban and rural communities that have been touched by the prison-industrial complex. Through its Web portal, organizers and participants around the world have been able to link up, share stories and access a huge array of tools and artworks.

Storyland's approach to security is to recognize that the mutual recognition, interaction, sharing and connection that can be nourished through the exercise of artistic creativity are more powerful guarantors of peace than any number of prisons, weapons systems and human rights restrictions.

This insight carries tremendous challenges, not least of which is stretching our hearts and minds to embrace the types of difference that daunted Tony Blair in 2006. In truth, the tolerance for diversity that is being demanded of western societies – and which is often denounced by Datastan as a retrograde demand to honor outmoded customs – is in fact a call for liberty far beyond that available in some of the countries that originated the customs of dress Blair condemned.

In the grand scheme of things, a controversy like this is minuscule. Yet just such human stories, such specific demands for cultural rights, provide the true test of our capacity to inhabit the future Carlos Fuentes described: to undertake "a re-elaboration of our civilizations in agreement with our deeper, not our more ephemeral, traditions," conditioned on "the emergence of cultures as protagonists of history. This is why, in the interests of true security, such demands should be granted.

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[1] *Universal Declaration of Human Rights*, Article 27, section 1.

[2] Quoted in Augustin Girard, *Cultural Development: Experience and Policies*, UNESCO, 1972: 139-140.

[3] Indeed, he could not foresee how dated and grating his gendered English would come to feel even a few years later, nor the transformation in understanding of gender and sexism that would produce that result.

[4] Alan Cowell, "Blair Criticizes Full Islamic Veils as 'Mark of Separation,'" *New York Times*, October 8, 2006.

[5] Carlos Fuentes, *Latin America: At War With The Past*, Massey Lectures, 23rd Series, CBC Enterprises, 1985: 71-72.

[6] Pew Center on the States, *One in 31: The Long Reach of American Corrections* (Washington, DC: The Pew Charitable Trusts, March 2009).

[7] Arlene Goldbard, *New Creative Community: The Art of Cultural Development*, New Village Press, 2006.

[8] John Sullivan, "El Teatro Lucha de Salud del Barrio: Theater and Environmental Health in Texas," Community Arts Network, http://www.communityarts.net/readingroom/archivefiles/2005/10/acrobats_of_the.php .

[9] From Francis Jeanson's "On the Notion of 'Non-public,'" quoted in *Cultural Democracy* (February 1982), 19.

[10] Download Antonio Damasio's speech from UNESCO's website: http://portal.unesco.org/culture/en/ev.php-URL_ID=2916&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[11] www.global-action.org/refugee.

[12] Mary Marshal Clark, "Oral History: Art and Praxis," in Adams and Goldbard, *Community, Culture and Globalization*: 102.

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FEAR & SECURITY

SIMONA SAPIENZA

If we compare the world we live in today with the world as it was before the events of 11 September 2001, one can perceive that it has gone through very deep changes. Before September 11th, 2001 security was seen as a common good that states gave to citizens. State security meant protection of territorial boundaries, institutions, societal values as well as citizen protection. Politics and military power were seen as the legitimate means to protect the public from external interference and our right to security was assured without severe impacts on our fundamental rights and freedoms. Since September 11th, 2001, however, the matter has turned into something else entirely and our daily life looks very different today.

Some say that the root of all changes is fear: the fear of an enemy who does not adhere to the rules and has nothing to loose. Some identify, or have been led to identify, this enemy with terrorism that comes from faraway lands, and speaks a language that most of us do not understand. Some believe that in order to defend ourselves from such an enemy more intense controls and more invasive security measures are necessary, regardless if they are detrimental to our fundamental freedoms, or our democratic principles.

Fear has always been a close companion of mankind. Primitive men have looked for shelter and discovered fire because they were afraid of atmospheric phenomena and wild beasts. Fear accompanies babies taking their first steps and the beating heart of a first date. The internet was born as a result of the fear that a catastrophic phenomenon could interrupt the communications between military research centres. It really seems that fear is a necessary spark for the human intellect, which spurs men's capacity to find solutions and brings men on the way to progress. If this is true, why is fear no longer an inspiring companion, but instead has turned into the cause of restriction to our fundamental freedoms? Why does it not raise new ideas and progress anymore? Why has it become the cornerstone of our narrow-mindedness with respect to the *other*, to the *different one?*

→| ALTERNATIVES

"I disapprove of what you say, but I will defend to the death your right to say it."

VOLTAIRE

The most immediate answer is that we are afraid to be afraid. We are afraid to face our enemy and discover that it is not exactly what we thought. Maybe we are already aware of what lies behind this irrational fear that makes us believe we are doing the best, whereas, instead, we are reducing our level of freedom and, in some ways, our possibilities for peace, equality, non discrimination and progress by repressing effective debate between Eastern and Western countries, as well as the inspiring of dialogue among cultures and faiths.

Since September 2001, the security-strategy wave has hit several states. Most of the Western nations, overcome by the emotional rush caused by the tragic attacks, have perceived the menace of Islamic terrorism as the most serious threat for, and violation of, fundamental rights and freedoms and, paradoxically, it is in the very fight to defend such rights that many states, in an uncritical manner, have given responses and adopted tools whose compliance with fundamental rights and freedoms is truly questionable. Through the adoption of measures facilitating personal data retention and transmission, and intensifying the monitoring of personal communications in particular, states have increased the risks of breaching the individuals' right to the respect of privacy. Furthermore, by extending the powers of the law enforcement services, and by imposing more restrictive legislation on the admission of foreigners, nations have put bona fide refugees and asylum seekers in serious danger. In this scenario it seems that citizens owe rights to the state, which clearly sounds like a paradox.

According to eminent scholars of law[1] fundamental rights and freedoms are owed to citizens by states, they determine the percentage of freedom that the members of a certain society have in relation to state power, thus limiting the size of self-existence and self-determination of every human being. Presently fundamental rights and freedoms are usually set out in constitutions and, therefore, have increased formal power. This means that they cannot be abrogated or changed by a formal law or any

regulatory deed of the executive power, and that they lay down the limits and the legal framework within which state agents should act as it regards their relations with the citizens. In this sense, fundamental rights and freedoms have an interdisciplinary legal character, as they lay down the core rules of administrative law, criminal law, civil law, as well as overall procedural law.

In ancient times, individual freedom was a real state and not a legal safeguard, as the words of Aristotle "in turn, to rule and be ruled"[2] may well prove. The road to legal safeguarding of fundamental rights and freedoms has been a long one. Today the right to life, freedom of thought, conscience and religion, freedom from torture or cruel, inhuman or degrading treatment, and the principles of precision and non-retroactivity of criminal law, except where a later law imposes a lighter penalty, are recognised by national constitutions as fundamental human rights that cannot be derogated. For other fundamental rights, including the right of movement, of assembly and to privacy, derogation is only permitted in special circumstances defined in international human rights law as is incorporated in national laws. In this case derogation must be of exceptional character and carefully weighted. Any such measures must be strictly limited in time and substance to the extent required by the exigencies of the situation, and subject to regular review. Derogations must be consistent with established national and international procedures and mechanisms. Considering the essential importance of human rights and fundamental freedoms in a free and open democratic society, states must ensure that any measures restricting human rights in response to criminal actions and terrorism strikes a fair balance between legitimate national security concerns and fundamental freedoms that is fully consistent with their international law commitments.

Discussions regarding the conflict between security and freedom inevitably fall on a biased, statist view, which takes for granted that the state provides security and, by extension, we must choose between security and freedom. Politicians, legal experts and public opinion are more and more frequently divided when the right to security of persons is in conflict with the right to exercise fundamental rights and freedoms.

The question of balancing state security and safeguarding fundamental freedoms is crucial and in finding the answer we must not forget that the *Universal Declaration of Human Rights* of 1948[3] recognises that all the power resides and emanates from the people. Moreover, the *Human Development Report* of 1994[4] states clearly that global security should deal with economic development, food, health and environmental issues. This is the path that states should follow together to combat the old problems of misuse of power by the strong on the weak, social differences, wars and destructions. However, the intensification of cooperation between states which have different standards on the issue of fundamental rights and freedoms puts them at risk. Especially when certain confidential and private data are communicated between states which have different levels of data protection, or when extradition or transfers between states are facilitated to the detriment of the guarantee of non liability to the death penalty, to torture or other inhuman treatment or deprivation of the right to a fair trial which must be given to every individual. In addition, the international dimension of the phenomenon can be a menace for the free movement of people and potentially the right of asylum, in particular when certain states are considered as a possible shelter for potential criminals. All this clearly may well encourage discriminatory attitudes vis àà vis people belonging to certain religious beliefs or to certain nationalities.

Most Western countries consider themselves among the 'good ones' for a reason: because they believe in universal values, which emerged during the Enlightenment and developed into the inalienable rights of every human being. States do need to fight any actual threat to homeland security with all means available to democracies under the rule of law as, in doing so, they are not only defending their physical integrity, they are, above all, defending their core principles of democracy.

To alleviate the fog around the debate on security and fundamental freedoms a more dynamic starting point must be adopted. This starting point must be the concept of freedom in its many forms. In doing so, analysis of both the *pro-security* and the *pro-freedom* arguments is crucial. The concept of security is empty if it is not accompanied by freedom. Essentially, we are safe if we are not vulnerable to potential or actual harm from others, if we are free to act without the occurrence of illegitimate violence. State violence is no better than other forms of violence if it omits to protect individual freedom. This key point must be stressed.

If nations give up their moral high ground by collaborating with those systems that legitimate the use of violence in the name of (inland) homeland security, democracies lose in the fight for fundamental freedoms. If states change our way of living by abolishing civil liberties and creating an atmosphere of constant fear, they fall into a trap. If nations give up their respect for human dignity and rule of law by using confessions made under torture – even in third countries – they cancel centuries of fights for the recognition of fundamental rights and freedoms.

The conflict is a conflict of ideals. The defeat of *pro-security* arguments is evident from the beginning, since they are grounded on the assumption that obscure and self-illuminated bureaucratic or political powers, may create security. As a matter of fact, this only transfers the sources of insecurity. It is clear that no one would feel safe if secret services under the noble mask of the fight for homeland security – gather information about our political activities, sexual orientation or health status. On the other hand, we have *pro-freedom* arguments that provide us with a more uncertain terrain. Freedom is the core issue. The proof of this is plain, as even when we weigh it against the concept of security, we do so in order to ascertain what the most balanced position is. We don't want freedom to be utilised against freedom. Thus, we must put it under some restraints. Defending the rule of law is a political, ideological, and moral obligation. Pragmatically, and historically speaking, it is the best way to defend security. Nevertheless, we must also remember that a law that is not able to protect individuals from harm, whatever the source of such harm and whatever the origin of this law's inefficiencies may be, amounts to nothing.

Across Europe, in particular, the debate on whether fundamental rights and freedoms may be compromised for the sake of the common good is still very animated. Yet, behind this debate lies the more complex question of who protects Europeans' fundamental rights and how.

In the European Union, the risk to fundamental rights posed by the adoption of measures to fight terrorism are all greater since democratic and juridical controls are still very inadequate in the current institutional equilibrium.

Basic freedoms are often guaranteed in national constitutions. At a continental level the *European Convention for the Protection of Human Rights*[5] is frequently used to uphold the rights of the individual over the power of the state. The EU has its own *Charter of Fundamental Rights*[6], though the partial defeat of the European Constitution means that it is not yet fully binding.

These various layers offer Europeans a degree of fundamental rights and freedoms protection denied to most of their fellow human beings around the world. But they can also lead to confusion. Which court has the authority to decide which rights can be claimed by a given individual? And then, to which higher court can that individual appeal? And what should happen if conflicts emerge between rights defined at national, EU, or pan-European levels?

It is not difficult to imagine a problem arising one day when the European Court of Justice in Luxembourg – long the highest court within the EU – will have to judge fundamental rights cases. By then the EU may well have joined the European Convention on Human Rights, so if the plaintiff objects to the judgement, he or she may still appeal to he European Court of Human Rights in Strasbourg – and the Luxembourg judges will have to get used to deferring to an even higher judicial authority.

Do Europeans need all these different sources and layers of fundamental rights protection? As long as Europe remains a complex political entity that respects both diversity and common values, the answer is yes. This multiplicity allows different cultural traditions to emphasise different rights and freedoms, whilst reinforcing common values such as the freedom of conscience and religion, which is more strongly protected in Europe than in almost any other part of the world.

So protection of fundamental rights and freedoms needs to be co-ordinated but its multiplicity maintained. Without co-ordination, regional variations and conflicting jurisdictions will scrape off the rights of all Europeans. Sharing the responsibility for fundamental rights between different courts and sources of law ensures that hard-won rights cannot be easily eroded. The balance between freedom and security in Europe today cannot be determined by a single government, but requires a debate involving all those responsible for Europe's common heritage of fundamental rights. The protection of fundamental rights and freedoms, as the beginning and the end of any political decision, will allow us to have at least a rational criterion for decision-making.

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[1] Amongst others: Augusto Barbera, Gustavo Zagrebelsky, Peter Haberle and Josef Isensee.

[2] Aristotle, *Politics*, VI, 2.

[3] *The Universal Declaration of Human Rights* was adopted by the General Assembly of the United Nations on 10 December 1948. Following this historic act, the Assembly called upon all Member countries to publicize the text of the *Declaration* and «to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

[4] *The Human Development Report* of 1994, published in the context of the United Nations Development Programme, introduced a new concept of human security, which equates security with people rather than territories, with development rather than arms. It examined both the national and the global concerns of human security. The Report sought to deal with these concerns through a new paradigm of sustainable human development, capturing the potential peace dividend, a new form of development co-operation and a restructured system of global institutions. New York-Oxford, Oxford University Press, 1994.

[5] *The European Convention for the Protection of Human Rights*, also known as the *European Convention on Human Rights*, effective as of 3 September 1953, was adopted under the auspices of the Council of Europe on 4 November 1950 to protect human rights and fundamental freedoms in Europe. All Council of Europe member states are party to the *Convention*.

[6] *The Charter of Fundamental Rights of the European Union* was as signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000. ▣

HUMAN RIGHTS AND CORRELATIVE DUTIES

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→| ETHICS

"No free man shall be taken or imprisoned or dispossessed, or outlawed or exiled, or in any way destroyed, nor will we go upon him, nor will we send against him except by the lawful judgement of his peers or by law of the land."

MAGNA CARTA (1215 AD)

INTRODUCTION

Human rights have become a dominant reference point for a variety of international and transnational discourses. It is therefore all the more surprising that in the end, there is a huge amount of unclarities in these discourses. It is, firstly, contested what the *conception* of human rights is: what is one saying when one claims that human rights are or are not at stake? Secondly, there is the question of the *content* of human rights: what possible rights should be included in the protection of human rights? Thirdly, how is the idea of human rights connected to corresponding (or correlative) *duties*? And fourthly, more specifically, *who* bears which correlative duties in relation to which human rights? On a more general level we could identify behind all these four dimensions the question *why* we should assume that there are human rights (the question of *justification*).

Our essay will concern mainly questions of correlative duties and the determination of duty-bearers. Nevertheless we will start with the discussion of some general conceptual questions. This essay begins with an elaboration on the *importance* of clarifying the duties that correlate to human rights followed by some general remarks on the nature of human rights, especially the relationships between the moral, legal and political dimension of human rights. In the core of the paper *different kinds of accounts of how human rights-theories relate to the determination of duty-bearers* are proposed and critically investigated. Finally we summarize, and briefly consider the *implications* of our findings for future research as well as their practical implications.

1 ~ THE IMPORTANCE OF CLARIFYING DUTIES

There seems to be a consensus that without clarification about corresponding or correlative duties – whether there are any, and if so, which ones and who bears them -, talk about human rights would be rather *meaningless*, since we would have no way to determine what concrete actors would have to do. Some worry that human rights even would be *conceptually incoherent* if there is no clarity about correlatieve duties. We can reconstruct this worry as follows: references to human rights are used to make forceful claims. Those claims aim at overriding or 'trumping' (Ronald Dworkin) other considerations. But it seems that making claims is only sensible if there is someone to whom these claims can be addressed. National legal regulations are normally specifying who the right-holder and the duty-bearer is and what the normative content of a right is, meaning: what liberty I have, what claim I am allowed to make or which entitlement I have, when I have a right to something (see Hohfeld). It is a feature of human rights that specific discussion is needed concerning the question of who bears the correlative duties. Following older opinions the human rights are only obligating the national states that have committed themselves to the human-rights-regime. Nowadays it is often defended that human rights also have horizontal effects (Pattinson and Beyleveld), meaning that they are also generating duties between citizens or even between all human beings. Furthermore, rights are often not only seen as negative rights (protection of negative liberty of all agents) but as positive rights as well, that is rights to support and empowerment, especially social and cultural rights (see Gewirth 1996, 31-70). However, the growth of possible contents of rights and the broadening of the scope of possible

duty-bearers, make the question more urgent towards whom those rights are addressed.

Some see this as a reason for holding that we can only speak of a right if we can *identify* certain institutional or other agents that bear a duty to fulfill this right (cf. O'Neill). Some go even further and say that we can only speak of a right if it can be *enforced* that some party or parties carry out a duty to fulfill that right (Susan James). In the end, the worry here is that there is a risk of an *inflation* of rights language as such. Rights are fundamentally different from e.g. ideals. If we speak about rights without identifying the duty-bearers, this could have the danger of blurring the borderline between a right and an ideal. On the other hand one can hold the position that it is necessary first to determine what agents may claim or to which goods they are entitled before one can ask who the addressee of the corresponding duties is. As long as we have no idea about legitimate claims or entitlements there is no reason to search for duty-bearers in the first place. When we see human rights as those liberties that all humans should have or as those goods to which all humans should be entitled, independently from the society they belong to, then it could make sense first to find out what those fundamental rights are, before we ask who the responsibility for the fulfillment of the corresponding duties lies with.

But in any case, the point that right claims are rather *meaningless* if there is no way to gain clarity about the duty-bearer, suffices to motivate a search for correlative duties and to set this question highly on the agenda.

2 ~ THE NATURE OF OUR INVESTIGATION

Before getting to the different ways to specify corresponding duties, it is necessary to say something about the nature of our investigation and the status we attribute to human rights. These clarifications are necessary because human rights are on the one hand regulated in international contracts; but they are not only legal entities. Most codifications of human rights are presupposing some pre-legal normativity of those rights. One position would be that the codification of human rights is grounded in moral rights, rights that humans should attribute to each other (for the history of this concept see Tuck 1979 and Tierney 1997). Another position would be to see human rights as grounded in general moral commitments (concepts of justice, egality etc.). However, there are also attempts to defend a non-moral political justification for human rights. But it seems very likely that human rights cannot be reduced to legal commitments. For such rights function partly (or even mainly) as enforcement for legal regulations: reference to human rights expresses the conviction that legal regulations *should* ensure them; human rights are saying something about what law *should* contain and states that lack a commitment to human rights are normally condemned or even put under pressure. However, it is contested how that pre-legal normativity should be conceptualized. Some see human rights (and here many specifically refer to those things listed in the Universal Declaration of Human Rights) as specifying 'substances' the enjoyment of which should be socially guaranteed for everyone everywhere; others see human rights (and here they may well refer to lists different than the one provided by the UDHR) as foreign policy standards, in the sense that fulfillment of these standards in certain societies is sufficient for making foreign intervention unwarranted. Still others hold other views yet. It is clear that all reference to a pre-legal normativity of human rights is in need of strong justification: Why should we assume that we are normatively committed in this way?

We cannot discuss those questions in detail here but it seems obvious that the legal human rights discourse is referring to a pre-legal normativity of human rights. We are analyzing human rights therefore in some normative function that differs from the normative function that law has. But even if there is disagreement about what non-legal human rights standards express, those rights cannot be understood without telling a story about how (non-legal) human rights relate to (non-legal) duties of institutional and/or individual agents.

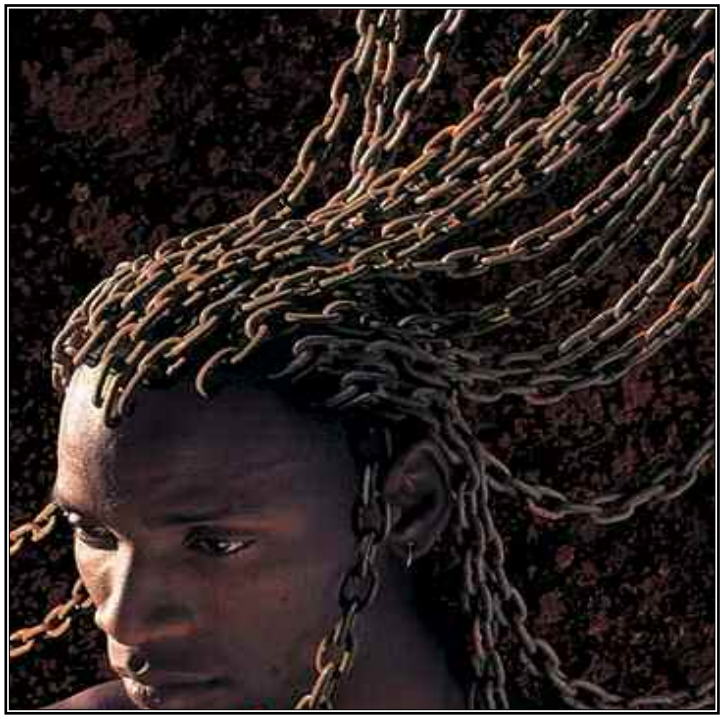
3 ~ TWO KINDS OF ACCOUNTS OF HUMAN RIGHTS

The main focus of this article, as said before, is on the question of who bears the duties that correlate with human rights. At the beginning of the article, we identified four types of issues related to human rights that require clarification: (1) the *conception* of human rights, i.e., the question of what human rights *are*; (2) the more specific question of *which* human rights there are; (3) the clarification of the relationship between human rights and correlative *duties*; (4) and the more specific issue of *who* bears the duties that can be said to correlate with human rights. With all these questions, we may add, come related questions to *justify* the positions that are taken: Why should there be something like human rights? Several theories of human rights are incomplete in the sense that they do not provide much in the way of justifications, or in the way of clarifying the relationship between duties and rights; some theories are even incomplete in the sense they do not have much to say on the question of specifically which human rights there are. One can have doubts whether that is acceptable for a theory of human rights or not. But if they are to be theories of human rights at all, they have to provide some clarity on the question of what human rights *are*; in other words, these theories *have* to provide a *conception* of human rights, or, in still other words, they *have* to provide an account of the *role* of human rights.

With this as a background, it is possible to propose a subdivision of human rights theories that pertains to the question that interests us, namely, *who* more specifically are the duty-bearers with regard to human rights. It will be introduced and developed now, and only after this we go into existing theories of human rights. The subdivision is as follows. On the one hand, there are human rights theories whose conception of human rights – in other words, whose accounts of what human rights are - determines *conceptually* who, specifically, are the main duty-bearers in relation to human rights. On the other hand, there are human rights theories whose conception of human rights does *not* in the definition of human rights determine who, specifically, are the main duty-bearers in relation to human rights. Let us call, even if the labels

may be somewhat awkward (and are surely ugly), the first kind of theories '*duty-bearer-fixed* theories of human rights' and the second kind of theories – which we have characterized in a *negative* way – '*duty-bearer-open* theories of human rights'.

This distinction is not common, so it is incumbent on us to explain why we make it, what its status is, and how extant theories fall in or fail to fall in with this distinction. But let us first give a few examples to clarify the distinction. A prime example of a duty-bearer-fixed theory of human rights would be a theory that defines human rights as those standards that ought to be socially guaranteed to individuals in a certain country as a necessary and sufficient condition for making foreign intervention in that country's affairs unwarranted. If something like this is what human rights are, or what their role is, then it follows almost by definition that they are primarily addressed to governments – who, on the one hand, may or must intervene in a country if certain standards are not fulfilled, or who must act so as to prevent (grounds for) foreign intervention on their territory. By contrast, a theory that would, for example, hold that human rights are the justified claims that humans can make in virtue of being human then it is quite clear that such a theory of human rights does not by definition point to certain specific duty-bearers, thus that it is duty-bearer-open in our sense of that expression.



The distinction has only the function to point to a specific problem and necessarily it will not cover all aspects of human-rights theories. Furthermore, there is a respect in which the *great majority* of plausible theories will be duty-bearer-fixed: they will hold that certain rights imply certain *negative* duties (whether or not they also imply certain other duties), e.g. the negative duty not to murder a human being; and it *is* immediately clear to whom these *negative* duties are addressed, namely to everyone (nobody is allowed to murder someone). This point will be taken up again shortly.

Given that there are many ways to classify or make a typology of theories of human rights, it may be asked what can be learned from grouping them as either duty-bearer-fixed or as duty-bearer-open. An answer is that, as remarked above, talk of human rights is rather meaningless if it is not clear who bears the duties that need to be fulfilled in order to realize the commitments those rights ask for. Against this background, one may look for an account of human rights that is in a good position to make clear who, more specifically, the duty-bearers in relation to human rights are. Identifying which theories of human rights can count as duty-bearer-fixed is also interesting because, even if the distinction between duty-bearer-fixed and duty-bearer-open is not common, it is not far-fetched, but does have a foothold both in the history and in the existing theoretical accounts of human rights. The distinction is not far-fetched, that is, if we take it as a distinction that can function as an ideal-typical one and/or that is considered of heuristic value, rather than as a distinction that can serve to neatly, exactly, and one-to-one categorize actual accounts of human rights into two camps.

With all this borne in mind, let us make some observations. Firstly, historically accounts of human rights more often than not bore quite specific relationships to historical events and (national or international) contexts; we can think here of the *American Declaration of Independence*, of the *Déclaration des Droits de l'Homme et du Citoyen*, or of the *Universal Declaration of Human Rights*. In these declarations (although less so in the UDHR) human rights were in an important part conceived as claims that citizens, or human beings generally, should in certain ways be protected against their government, or against governments more generally. From the outset, then, and closely related to the ideas about what human rights *were* in the first place, governments were conceived as the most important duty-bearers in relation to human rights; and these historic conceptions of human rights therefore were, in the terminology introduced above, to an important extent duty-bearer-fixed. Historically this conceptual relationship is related to the context of the declarations: The *American Declaration of Independence* defines human rights in the context of the building of the nation and the UDHR is formulated as the basic document for the building of the United Nations. In both cases, the formulation of human rights has to do with the formulation of basic commitments of states and their governments.

The same is true for various contemporary ideas of what human rights are. John Rawls sees them, in his treatise *The Law of Peoples*, as the standards whose fulfillment is sufficient to make foreign intervention in a country unwarranted. Here, once again, the link to governments as primary duty-bearers in relation to human rights seems fairly direct. Charles Beitz takes up Rawls's idea and draws it more

broadly when he defends what he terms a 'practical conception' of human rights: in this conception, human rights are *not* seen as claims that *independently* of the international realm and doctrine, every human being is justified in making; but they are seen as standards that are to fulfill certain *practical* roles, in foreign policy, international institutions, aid, intervention etc.. Not all of these practical roles do by their nature point to certain specific duty-bearers, but some do. In the end, a practical conception of human rights in Beitz's sense may often be able to specify to a great degree nearly all duty-bearers for the specific human rights; but the specification may sometimes need additional forms of argumentation that are not directly given with the very concept of human rights.

Thirdly, it is often held (for example, by Thomas Nagel and Ronald Dworkin) that demands of justice are associative in nature, more specifically, that they can justifiably be made where individuals are coerced by certain institutions (and not otherwise), because coercion that is not justified is indeed *mere* coercion. We could try to extend this thought to human rights: we could suggest that human rights are the standards whose fulfillment or non-violation is required if the coercion exercised by certain institutions is not to become mere coercion. However, we should add that Nagel, and probably Dworkin too, would not accept such an account of human rights; but if it could be developed as an acceptable account, it would again be a rather duty-bearer-fixed account.

On the other side, we find for example theories (such as Henry Shue's) saying that human rights claim that certain '*social guarantees* to the actual enjoyment of certain goods' should be provided; and we find theories (e.g. Thomas Pogge's) which conceive of human rights as claims made against *social institutions*, understood in a broad sense (as a society's 'basic structure'). In a sense, both kinds of theories do point to duty-bearers in their explanation of what human rights are; but they do this in a rather vague way, so that they can hardly be said to be duty-bearer-fixed.

Duty-bearer-open, furthermore, are those theories that say that duties in relation to human rights are to be distributed according to the *capacity* of agents to discharge such duties effectively and/or at little cost to themselves (cf. Henry Shue). Also quite duty-bearer-open, lastly, are theories that advocate a distribution of human-right duties according to the degree to which agents were *causally* responsible –whatever exactly that may mean – for the origination of some human-rights problem. This approach is in line with moral theories that give a large place to backward-looking considerations in their account of what agents should do; also, Pogge has considerable affinity with this approach.

One could add that there is the possibility that a theory would be *conceptually* open concerning who are the duty-bearers, while it *would* at the same time *provide clarity* about duty-bearers, and that it would do so by considering the *nature* of specific rights. Such a theory could proceed as follows: negative duties are directed towards all agents (nobody is allowed to murder anybody) and states are obliged to organize adequate provision to ensure that. Positive rights, rights to support for individuals in general (education, shelter) or for individuals with specific needs (e.g. people with disabilities), have the states as duty-bearer (because no individual can provide them). The international community has subsidiary obligations in relation to their ability to fulfill those obligations. For our context it is important that such a concept would be open on a conceptual level (duty-bearer-open) but it would offer a hermeneutic to determine concrete duty-bearers.

So much for a brief survey of how a number of important theoretical approaches to human rights would fit into the distinction between duty-bearer-fixed and duty-bearer-open – where, once again, this contrast is not intended as hard and fast but as idealtypical and/or heuristic.

We end with some evaluative remarks. Duty-bearer-fixed theories of rights human theories have the advantages that they are the sort of theories that provide relatively much clarity about the question of *who* bears duties in relation to human rights, and doing this prevents human rights talk from descending into meaninglessness. Moreover, many of these duty-bearer-fixed theories, although not all of them, have their origin in a political practice of some kind, and they may therefore seem to be more feasible than duty-bearer-open accounts of human rights – more feasible in the sense that the way in which they conceive of human-rights related duties is closer to how such duties are already being perceived and carried out by various parties, as well as closer to the actual motivations of moral agents.

As for duty-bearer-open theories of human rights, they are obviously a diverse lot (we defined them in a merely negative way), so little if anything can be said in general on whether they fare better than duty-bearer-fixed accounts of human rights. Let us point to some possibly strong points of duty-bearer-open theories.

A preliminary point is that some duty-bearer-open accounts of human rights can ultimately be fleshed out to be rather specific about duty-bearers, too; in other words, we do *not* by definition *need* a duty-bearer-*fixed* account of human rights to save human rights discourses from meaninglessness. Next, there is reason to think that we *are* actually going to need certain elements of duty-bearer-*open* theory: some natural and arguably indispensable thoughts about what human rights are (that they would belong to human beings qua human beings etc.) do seem to point in a quite duty-bearer-open direction; it seems that strongly duty-bearer-fixed accounts of human rights end up doing violence to certain plausible intuitions. Secondly, and relatedly, there seems something unavoidable about such ideas as those that the capacities that agents have, as well as the causal contributions that they made to the origination of a problem, should translate into duties. This is so even if the underlying picture that is suggested here is a controversial one, namely that we can first get clarity about what human rights are, and which human rights there are, and then subsequently attribute the duties that relate to these rights to certain agents on the basis of their capacities or causal contributions to the genesis of a problem. Thirdly and lastly, duty-bearer-open accounts of human rights appear to have as a practical advantage that it looks like they have an easier time attributing human-rights duties to certain prominent global actors such as NGOs and TNCs (Transnational Corporations). These are agents that have great capacities and

sometimes cause great harm, and that for these very reasons seem to have human-rights duties; but duty-bearer-fixed theories frequently point to governments as the primary duty-bearers in relation to human rights, and they can get NGOs and TNCs into the picture only indirectly and secondarily, if at all. To the extent that there seems something amiss with this, and to the extent that duty-bearer-fixed theories cannot change their ways here, duty-bearer-open theories may have a comparative advantage.

A last advantage of duty-bearer-open theories may be that they are better equipped to deal with the empirical changes of the international political order and with different circumstances in different parts of the world. The historical development of human rights was internally connected to the building of the nation state and to a specific constellation of the possible tasks of individuals, nation states and the international order. However, the relationship between citizens and states as well as the relationship between states and supra-national institutions has increasingly been subject to change in the last decades. And it is very likely that changes will further increase in the near future. Theories of human rights will have to be evaluated by looking at the extent to which they are able to take these changes into account.

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4 ~ TO CONCLUDE

As observed at the beginning of this article, the philosophical and ethical research agendas in the field of human rights are very full indeed, in that the contents and justifications of ideas concerning human rights are as yet little understood. The same goes for the relationship between human rights and correlative duties as well as for questions concerning who specifically bears such duties. It is the last question that we have focused on in this essay. Of the two ways to kinds of accounts of human rights that we have distinguished – duty-bearer-fixed accounts and duty-bearer-open accounts - the former may presently hold the most promise. But we have argued that we cannot do entirely without the other kind of accounts either. It may be most important, however, that the complications that we have addressed deserve far more attention, not only to get them out of the way, but also to articulate them more fully in the first place. We take this to be a constructive endeavor, not meant to sidetrack and water down developments in the field of human rights, but to further and strengthen them. The future of human rights will to a large extent depend on the question whether or not theoretical reflection and political practice will be able to convincingly answer questions that concern the determination of duty-bearers.

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Under a government which imprisons any unjustly,
true place for a just man is also a prison.

HENRY DAVID THOREAU

THE FUTURE OF PRIVACY

BRUCE SCHNEIER

Originally from New York City, Schneier currently lives in Minneapolis, Minnesota, USA. Schneier has a Master's degree in computer science from American University and a Bachelor of Science degree in physics from the University of Rochester.

Mr Schneier is an internationally renowned security technologist, cryptographer, computer security specialist and writer and is the founder and chief technologist officer of BT Counterpane. Before Counterpane, he worked at the United States Department of Defense and then AT&T Bell Labs.

Regularly quoted in the media, he has testified on security before the United States Congress on several occasions. He is the author of several books on computer security and cryptography and has written articles for many major publications, including The New York Times, The Guardian, Forbes, Wired, Nature, The Bulletin of the Atomic Scientists, The Sydney Morning Herald, The Boston Globe, The San Francisco Chronicle, and The Washington Post. *Schneier's* Applied Cryptography *is a popular reference work for cryptography. In 2000, Schneier published* Secrets and Lies: Digital Security in a Networked World. *In 2003, Schneier published* Beyond Fear: Thinking Sensibly About Security in an Uncertain World.

→| THE EXPERT

"As soon as questions of will or decision or reason or choice of action arise, human science is at lost."

NOAM CHOMSKY

Over the past twenty years, there's been a sea change in the battle for personal privacy.

The pervasiveness of computers has resulted in the almost constant surveillance of everyone, with profound implications for our society and our freedoms. Corporations and the police are both using this new trove of surveillance data. We as a society need to understand the technological trends and discuss their implications. If we ignore the problem and leave it to the "market," we will all find that we have almost no privacy left.

Most people think of surveillance in terms of police procedure: Follow that car, watch that person, listen in on his phone conversations. This kind of surveillance still occurs. But today's surveillance is more like the NSA's model, recently turned against Americans: Eavesdrop on every phone call, listening for certain keywords. It's still surveillance, but it's wholesale surveillance.

Wholesale surveillance is a whole new world. It is not "follow that car," it is "follow every car." The National Security Agency can eavesdrop on every phone call, looking for patterns of communication or keywords that might indicate a conversation between terrorists. Many airports collect the license plates of every car in their parking lots, and can use that database to locate suspicious or abandoned cars. Several cities have stationary or car-mounted license-plate scanners that keep records of every car that passes, and save that data for later analysis.

More and more, we leave a trail of electronic footprints as we go through our daily lives. We used to walk into a bookstore, browse, and buy a book with cash. Now we visit Amazon, and all of our browsing and purchases are recorded. We used to throw a quarter in a toll booth; now EZ Pass records the date and time our car passed through the booth. Data about us are collected when we make a phone call, send an e-mail message, make a purchase with our credit card, or visit a website.

Much has been written about RFID chips and how they can be used to track people. People can also be tracked by their cell phones, their Bluetooth devices, and their WiFi-enabled computers. In some cities, video cameras capture our image hundreds of times a day.

The common thread here is computers. Computers are involved more and more in our transactions, and data are byproducts of these transactions. As computer memory becomes cheaper, more and more of these electronic footprints are being saved. And as processing becomes cheaper, more and more of it is being cross-indexed and correlated, and then used for secondary purposes.

Information about us has value. It has value to the police, but it also has value to corporations. The Justice Department wants details of Google searches, so they can look for patterns that might help find child pornographers. Google uses that same data so it can deliver context-sensitive advertising messages. The city of Baltimore uses aerial photography to surveil every house, looking for building permit violations. A national lawn-care company uses the same data to better market its services. The phone company keeps

detailed call records for billing purposes; the police use them to catch bad guys.

In the dot-com bust, the customer database was often the only salable asset a company had. Companies like Experian and Acxiom are in the business of buying and reselling this sort of data, and their customers are both corporate and government.

Computers are getting smaller and cheaper every year, and these trends will continue. Here's just one example of the digital footprints we leave:

It would take about 100 megabytes of storage to record everything the fastest typist input to his computer in a year.

That is a single flash memory chip today, and one could imagine computer manufacturers offering this as a reliability feature. Recording everything the average user does on the Internet requires more memory: 4 to 8 gigabytes a year. That's a lot, but «record everything» is GMail's model, and it's probably only a few years before ISPs offer this service.

The typical person uses 500 cell phone minutes a month; that translates to 5 gigabytes a year to save it all. My iPod can store 12 times that data. A "life recorder" you can wear on your lapel that constantly records is still a few generations off: 200 gigabytes/year for audio and 700 gigabytes/year for video. It will be sold as a security device, so that no one can attack you without being recorded. When that happens, will not wearing a life recorder be used as evidence that someone is up to no good, just as prosecutors today use the fact that someone left his cell phone at home as evidence that he didn't want to be tracked?

In a sense, we are living in a unique time in history. Identification checks are common, but they still require us to whip out our ID. Soon it will happen automatically, either through an RFID chip in our wallet or face-recognition from cameras. And those cameras, now visible, will shrink to the point where we won't even see them.

We are never going to stop the march of technology, but we can enact legislation to protect our privacy: comprehensive laws regulating what can be done with personal information about us, and more privacy protection from the police. Today, personal information about you is not yours; it's owned by the collector. There are laws protecting specific pieces of personal data – videotape rental records, health care information – but nothing like the broad privacy protection laws you find in European countries. That is really the only solution; leaving the market to sort this out will result in even more invasive wholesale surveillance.

Most of us are happy to give out personal information in exchange for specific services. What we object to is the surreptitious collection of personal information, and the secondary use of information once it's collected: the buying and selling of our information behind our back.

In some ways, this tidal wave of data is the pollution problem of the information age. All information processes produce it. If we ignore the problem, it will stay around forever. And the only way to successfully deal with it is to pass laws regulating its generation, use and eventual disposal. ▣

RENÉ BRUIN ~ KEES WOUTERS

THE RIGHT TO SEEK AND ENJOY ASYLUM UNDER SIEGE

NATIONAL SECURITY AND THE PROHIBITION OF REFOULEMENT

In the context of state security policy post September 11, 2001, further challenges are raised for the maintenance of human rights that are in danger of being overridden by newly imposed security measures. The prohibition of refoulement is upheld within international human rights law for the purpose of protecting individuals from being returned to where they risk suffering severe human rights violations. Despite the absolute character of non-refoulement, states have utilised several measures to circumvent the restrictions it imposes on their security policy. Access to their territory is limited by tougher measures to secure the state's physical borders, individuals are rejected on the grounds of being identified as a threat to the state, and refoulement is politically legitimised through the use of diplomatic assurances to safeguard the rights of those returned. As a result of these measures this article asserts that offending states are breaking legally enforced safeguards that serve to protect human rights, and are unnecessarily placing people's safety at risk in the name of state security.

SIMONA SAPIENZA

NGOS AND HUMAN RIGHTS

Non-governmental organisations (NGOs), such as Amnesty International, are important partners of the United Nations for advocacy and protection of human rights. They have a formalized consultative status with the UN, and their rights and freedom of action are acknowledged in the UN *Declaration of Human Rights Defenders*.
Their role is to document human rights violations, set standards and lobby for effective enforcement. Furthermore, they urge local governments to sign and ratify treaties and help ensure governmental compliance with international human rights norms. NGOs also play an important role in educating the global community and fight ignorance in all its forms.
This article shows that NGOs are indispensable and that they have been crucial to attract attention to the use of torture, to the establishment of the High Commissioner for Human Rights, to the adoption of the UN Statute of the International Criminal Court and for the establishment of national Human Rights Institutions.

JUKKA KUMPUVUORI ~ HISAYO KATSUI

DISABILITY, HUMAN RIGHTS AND HUMAN SECURITY

The human rights-based approach has become increasingly important in tackling existing inequality, which is emphasised by the UN *Convention on the Rights of Persons with Disabilities* that became effective on 3rd of May 2008. One implication of this is that the approach requires rights-based action, instead of charity, which before has been predominant.
This article shows that human rights and disability are inseparable concepts today. It discusses two case studies on the advocacy works of organisations of people with disabilities in Uganda and Finland.
What can be learned from these studies is that all types of advocacy are needed for societal change and that making laws is only a part of the process. The most important conclusion is that achieving human security is not just protecting people, but also empowering them to fend for themselves.

ARLENE GOLDBARD

HUMAN RIGHTS AND CULTURE: FROM DATASTAN TO STORYLAND

Today, we experience cultural changes due to mass migration, cultural disequilibrium and an international economic crisis.
This article describes the clash between the old and new views on people, culture and security. Old views are that human behavour can be reduced to quantifiable data, that economic arguments are the only valid basis on which to invest money in cultural development, and that security can be created with conquest, punishment and the limitation of liberty. New ways of thinking are that people are infinitely complex, that creativity plays a critical role in personal and social development and the coping with crises, and that culture is the key to creating security rooted in caring and connection.
This article gives examples on how artists and other creative people can heal social trauma, empower people, create opportunities to enter into dialogue even about the most polarized of issues, and help us envision the social transformations we hope to bring about.

SIMONA SAPIENZA

FEAR & SECURITY

Looking at the role of fear and its association with security in the context of the post 9/11 environment, *Fear & Security* focuses upon how utilising fear and the demonization of entities unknown or unfamiliar to the populace, can lead to a subversion of the notion of security in respect to the fundamental freedoms it is meant to uphold. The article contends that contemporary security agendas and policies have lead to the balance between the security and freedom debate becoming disrupted, with a failure to maintain people's civil liberties as they are sacrificed for pervasive security measures. This process is made clear by an exploration of the conception of freedom held by people living under the protection of the state, and the responsibility of protecting their rights and fundamental freedoms. While contending that derogations from these civil liberties is justifiable within certain circumstances, it is emphasised that, as upheld in the UN *Declaration of Human Rights*, power resides and emanates from the people, and thus any measures undertaken must succeed in maintaining both their security from threats and their feeling of security and liberty. Therefore the formation of a security infrastructure that constrains people's lives in the name of security, fails to make them feel secure. Instead it is necessary for a refocusing of the security debate upon the protection of fundamental rights to help rationalise the formation of security policy.

MARCUS DUWELL ~ JOS PHILIPS

HUMAN RIGHTS AND CORRELATIVE DUTIES

There is a huge amount of unclarity in the discussions about human rights. For instance, it is unclear how human rights are connected to corresponding duties, and who bears such duties. If there is no clarity about the duties and the bearers of these duties human rights claims are rather meaningless, and ask being reduced to mere ideals.
In this article examples of human rights theories are given and are divided into duty-bearer-fixed and duty-bearer open classifications. The advantages and disadvantages of both kinds of theories are discussed, as well as the complications that result from them. These complications are deserving far more attention than they have received up to now.
The future of human rights will to a large extent depend on the question whether or not theoretical reflection and political practice will be able to convincingly determine the duty-bearers of human rights.

BRUCE SCHNEIER

THE FUTURE OF PRIVACY

In the last twenty years there has been a tremendous change in the battle for personal privacy. This is due to the enormous increase in the use of computers to collect data. Computers register all kinds of data about us, varying from which websites we visit and what products we buy on the internet, to the whereabouts of our mobile phones and our cars.
Due to the fast increase in data storage capacity and the speed of computers it is now possible to collect such data for every person every single day of his/her life, which is something most people don't realize. This data is not only used for the purpose they were originally collected for, but they are also connected to each other, used by other parties and even sold to companies, who use them for direct marketing purposes.
It is impossible to stop the development of computer technology, thus the only solution to the problem is to pass laws that protect our privacy, similar to the ones that are already at work in Europe. ▣

NEWSROOM

UN

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: 1948-2008

On 10 December 2007, Human Rights Day, the Secretary-General launched a year-long campaign in which all parts of the United Nations family are taking part in the lead up to the 60th birthday of the Universal Declaration of Human Rights (UDHR) on Human Rights Day 2008.

With more than 360 language versions to help them, UN organisations around the globe were using the year to focus on helping people everywhere to learn about their human rights. The UDHR was the first international recognition that all human beings have fundamental rights and freedoms and it continues to be a living and relevant document today.

The theme of the campaign, "Dignity and justice for all of us," reinforced the vision of the Declaration as a commitment to universal dignity and justice and not something that should be viewed as a luxury or a wish-list.

«*The campaign reminds us that in a world still reeling from the horrors of the Second World War, the Declaration was the first global statement of what we now take for granted – the inherent dignity and equality of all human beings.*» Secretary-General Ban Ki-moon

«*Unprecedented efforts must be made to ensure that every person in the world can rely on just laws for his or her protection. In advancing all human rights for all, we will move towards the greatest fulfillment of human potential, a promise which is at the heart of the Universal Declaration.*» High Commissioner for Human Rights Louise Arbour.

UN VOLUNTARY FUND FOR VICTIMS OF TORTURE

The Fund was established by General Assembly resolution 36/151 of 16 December 1981 to receive voluntary contributions from Governments, non-governmental organizations and individuals for distribution to non-governmental organizations providing humanitarian assistance to victims of torture and members of their family.

The type of humanitarian assistance provided by organizations which receive grants from the Fund consists mainly of psychological, medical, social, legal and economic assistance.

The Fund is administrated by the Secretary General who is advised by a Board of Trustees composed of a chairman and four other members representing the five regional groups. They work in their independent capacity.

Governments, non-governmental organizations and other private or public entities as well as individuals can contribute to the Fund. For information on how to contribute, you are kindly requested to contact the secretariat of the Fund.

Office of the High Commissioner for Human Rights
UNOG – OHCHR
CH-1211 Geneva 10, Switzerland
✓ INFO: http://www.ohchr.org/EN/Issues/Pages/TortureFundMain.aspx

MEETINGS OF THE UN

04-08.05 *Human Rights Council*, working group on arbitrary detention, fifty-fourth session, Geneva.

22-26.06 *Committee against Torture*, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, eighth session, Geneva.

29.6-03.07 *Human Rights Council*, Working Group on Enforced and Involuntary Disappearances, eighty-eighth session, Geneva.

20.07-07.08 *Committee on the Elimination of Discrimination against Women*, forty-fourth session, New York.

2009
International Year of Reconciliation
International Year of Human Rights Learning
(beginning on 10 December 2008).

Special days (selection)

03.05 World Press Freedom Day
29.05 International Day of UN Peacekeepers
04.06 International Day of Innocent Children Victims of Aggression
20.06 World Refugee Day
26.06 United Nations International Day in Support of Victims of Torture
23.08 International Day for the Remembrance of the Slave Trade and Its Abolition
21.09 International Day of Peace
02.10 International Day of Non-Violence
16.11 International Day for Tolerance
25.11 International Day for the Elimination of Violence against Women
02.12 International Day for the Abolition of Slavery
10.12 Human Rights Day
20.12 International Human Solidarity Day

EU

FIFTH EUROPEAN DAY FOR THR VICTIMS OF TERRORISM

The European Commission expresses its continued and deeply felt solidarity with all victims of terrorist attacks

On the occasion of the fifth European Day for the Victims of Terrorism, the European Commission remembers and honours those who have lost their lives in terrorist events in Europe and elsewhere in the world and those who still bear the mental and physical scars of these tragic events. The European Commission stands united with victims, their families and their friends.

Vice President Barrot stresses:»It is extremely important that we have dedicated this day to the victims of terrorism to show that our solidarity with all victims of terrorist attacks will never come to an end.»

Five years ago the most terrible terrorist attacks on European ground took place in Madrid. Since then March 11 is the European Day for the victims of terrorism. In a video message for the European Network of Victims of Terrorism, Vice-President Jacques Barrot emphasises that this day is an occasion to once again express sympathy with the victims and with their families and friends. It is obvious that there can never be adequate compensation for the victims or for the families and loved ones of the victims of terrorism. However, the Commission tries to support them, amongst others by assisting to finance projects aiming at improving victims' lives and by actively promoting solidarity with them. The Commission hopes that this small contribution can offer them some assistance in the difficult task of having to cope with such an experience. In addition, the Commission will continue its efforts to combat terrorism without, however, giving up the respect of fundamental rights. «This day also gives us an opportunity to demonstrate clearly that no terrorist will ever be able to diminish or even destroy our strong faith in the core values which we share, such as the fundamental rights», Vice president Barrot says. Today's day for the victims of terrorism shows that terrorist acts will never pay off. There will never be a justification for them.

PROMOTING DEMOCRACY AND HUMAN RIGHTS

The European Instrument for Democracy and Human Rights (EIDHR) is a European Union programme that aims to promote and support human rights and democracy worldwide.

Support is mainly provided through the co-financing of projects selected through calls for proposals published on EuropeAid's website.

60TH ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

- To mark the 60th anniversary of the *Universal Declaration of Human Rights* on 10th December 2008, internationally recognised filmmakers, artists and writers contributed to short films to tell «Stories on Human Rights».
- 7-8 October 2008: Conference «Sixty years of the Universal Declaration of Human Rights – The Defenders take the floor»
- In order to recall deep attachment to the common values and to celebrate this event, the European Commission, the European Parliament and the United Nations organised an anniversary conference at the European Parliament, with High level experts.

TORTURE IS UNACCEPTABLE

Torture is being widely practised in many countries around the world. According to Amnesty International, torture is still present in close to 100 countries. The European Union is supporting actions aimed at eradicating torture and assisting victim rehabilitation. In 2006 the EU funded 39 new torture prevention projects and 56 new victim rehabilitation projects throughout the world.

DATA PROTECTION CONFERENCE

The European Commission organises personal data protection conference to look at new challenges for privacy.

How should personal data be protected in the wake of modern technologies and new policies? How well are current rules on international transfers of personal data working in a time of "cloud computing"? What are the expectations of individuals, businesses and society as a whole? These and other topical questions will be addressed by a conference on personal data protection in the EU, organised by the European Commission, which will take place in Brussels on 19 and 20 May 2009. Interested individuals, business leaders, consumer associations, academics, data protection supervisors and public authorities from both the EU and third countries are invited to take part.

Among the speakers will be the vice-president of the European Commission in charge of Justice, Freedom and Security, Jacques Barrot. The conference will give the opportunity to various stakeholders to express their views and questions on the new challenges for data protection. The Conference is part of the Commission's open consultation on how the fundamental right to protection of personal data can be further developed and effectively respected

✓ INFO: http://ec.europa.eu/justice_home/news/events/news_events_en.htm

6TH GLOBAL CONFERENCE: WAR, VIRTUAL WAR AND HUMAN SECURITY

Is war an extension of politics by other means? The locomotive of technology? Is it humankind in its most natural state; or is human society – despite perceptions and ongoing conflict around the world today – actually moving toward an aversion to war and a state of peace? This inter-disciplinary and multi-disciplinary conference will take palce in Budapest, Hungary, 1-3 may 2009 and will seeks to provide a challenging forum for the examination and evaluation of the nature, purpose and experience of war, and its impacts on all aspects of security, human security and to communities across the world. Viewing war as a multi-layered, multi-factorial phenomenon, the conference series seeks to explore the historical, legal, social, human, religious, economic, and political contexts of conflicts, and assess the place of art, journalism, literature, music, the media and the internet in representation and interpretation of the experience of warfare.

✓ INFO: http://www.inter-disciplinary.net/ptb/wvw/ww6/cfp.html

WAR, HUMAN DIGNITY AND NATION BUILDING: THEOLOGICAL PERSPECTIVES ON CANADA'S ROLE IN AFGHANISTAN

This inaugural conference of the Centre for Public Theology, organized by the Centre for Public Theology, Huron University College, is due to take place on 8-9 May 2009 at London, Ontario, Canada.

The conference will offers opportunity to engage in reflection explicitly on the moral, religious and theological questions that emerge from the combatant role of Canada and Canadians in Afghanistan.

✓ INFO: http://www.publictheology.org/Afghanistan.html

HMF 2009 INTERNATIONAL FILM/MEDIA FESTIVAL & CONFERENCE

17-21 June 2009, Reykjavik, Iceland. HMF2009 will seek to explore the Media's role in Humanitarian issues, histories, and crises. This includes, without limitation: refugee crises, medical relief, human rights, war, genocide, debt relief, cross-cultural and political conflict, other war crimes and international criminal tribunals, indigenous populations and conflicts within and without their communities, and humanitarian needs during natural disasters.

✓ INFO: http://www.humanitarianmedia.org

THEINTERNATIONAL CONFERENCE ON ANTI-CORRUPTION, GOOD GOVERNANCE AND HUMAN RIGHTS

24-26 June 2009, Paris, France. The aim of this conference is to bring together researchers, scientists, engineers, and scholar students to exchange and share their experiences, new ideas, and research results about all aspects of Anti-Corruption, Good Governance and Human Rights, and discuss the practical challenges encountered and the solutions adopted.

✓ INFO: http://www.waset.org/wcset09/paris/acgghr/

THE 5TH LATIN CONFERENCE OF HARM REDUCTION (CLAT 5)

1-5 July 2009, Oporto, Portugal. Our aims for this event are to rethink – in a transnational way – the future of harm reduction and to question the actual consensus about its policies and practices of intervention. For this we will stimulate a critical discussion based on the concepts and practices linked with harm reduction and also bring to the debate issues of human rights, South-North and East-West inequalities and social dialogue among key actors. The trans-territorial dimension of these issues calls for a global dialogue among nations.

✓ INFO: http://www.clat5.org

DISPUTE RESOLUTION AND RESTORATIVE JUSTICE

10-12 July 2009, Port of Spain Trinidad and Tobago. Paper topics/proposals dealing with dispute resolution and restorative justice, including but not limited to: mediation, arbitration, intercultural communication, human rights and restorative justice, community conferencing.

✓ INFO: http://legalscholarshipblog.com/2008/12/14/dispute-resolution-and-restorative-justice-port-of-spain-trinidad-and-tobago/ and http://www.fcsl.edu/acli/

MEDIA, DEMOCRACY AND GOVERNANCE: EMERGING PARADIGMS IN A DIGITAL AGE

13-16 July 2009, New Delhi, India .The media can play a significant role in spreading awareness and empowering people while monitoring governments and corporations and holding them accountable. New technologies offer vast new opportunities for public participation and engagement and have the potential to expand the public sphere, deepen political participation and enhance good governance and democracy. However, the media and new digital technologies can also present new challenges and be exploited to extend control and surveillance thus policy makers need to put in place the necessary mechanisms that can mitigate the harmful use of the media by extremists and special interest groups. This conference will provide a critical space for both media professionals and academics to exchange knowledge and share their experiences on the role of the media in bringing about development and the new paradigms that are emerging in the digital age, e.g. Media Democracy and Governance; Media, Conflict and Crises; Media, Democracy and Human Rights; Media and Ethics.

✓ INFO: http://www.amic.org.sg/new/news_n_updates/conf2009cfp.htm

DEXUSCHANGE 2009: SHAPING DISCOURSE TO COME!

17-22 August 2009, Summer school, Aalborg Denmark .The theme of this summer school is prompted by the recent emergence of a set of interlocking global crises – including climate, energy, food, water, finance – which demands a renewed interdisciplinary effort to understand how to mediate the future, the past and the present in ways that attend to equity, justice and rights. The aim is to bring together people investigating and promoting social change and transformation with an explicit focus on the role of discourse in shaping a just future (and the past). Discourse is understood as encompassing an interdisciplinary perspective on text, talk, discourse, genre, narrative, archive, document, image and rhetoric in all their modal, social and cultural forms, not only in terms of representation but also action and practice.

✓ INFO: http:diskurs.hum.aau.dk/dxc2009

THE WORLD SOCIETY OF VICTIMOLOGY'S 13TH INTERNATIONAL SYMPOSIUM ON VICTIMOLOGY

23-28 August 2009, Mito Japan. The World Society of Victimology's 13th International Symposium on Victimology is a weeklong gathering of Victimology scholars, researchers, practitioners, teachers, and students from around the world to examine and discuss current and emerging issues in the field.

4TH ANNUAL INTERNATIONAL CONFERENCE ON ENGAGING THE OTHER: THE POWER OF COMPASSION

13-15 November 2009, San Mateo, California, USA. An extraordinary international conference to address the roots of fear based belief systems and negative stereotypes, prejudice, polarization, enemy images, and artificial barriers of misunderstanding and distrust that divide us. Engage in three days of focused, facilitated dialogue, bridging the divide and cultivating our capacity for reconciliation, appreciation of diversity, and peace.

✓ INFO: http://www.cbiworld.org/Pages/Conferences_ETO.htm

16TH INTERNATIONAL CONFERENCE ON CONFLICT RESOLUTION

2009 (date and place to be determined). Main purpose: To create an open learning community, for deeply exploring core issues and for sharing effective skills in conflict resolution that participants can leave with and immediately implement in their personal and professional lives.

✓ INFO: http://www.cbiworld.org/Pages/Conferences_ICR.htm

ASSESSING DAMAGE, URGING ACTION

An initiative of the International Commission of Jurists (ICJ). *Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights.*

This report of the Eminent Jurists Panel, based on one of the most comprehensive surveys on counter-terrorism and human rights to date, illustrates the extent to which the responses to the events of 11 September 2001 have changed the legal landscape in countries around the world.

Terrorism sows terror, and many States have fallen into a trap set by the terrorists. Ignoring lessons from the past, they have allowed themselves to be rushed into hasty responses, introducing an array of measures which undermine cherished values as well as the international legal framework carefully developed since the Second World War. These measures have resulted in human rights violations, including torture, enforced disappearances, secret and arbitrary detentions, and unfair trials. There has been little accountability for these abuses or justice for their victims.

The Panel addresses the consequences of pursuing counter-terrorism within a war paradigm, the increasing importance of intelligence, the use of preventive mechanisms and the role of the criminal justice system in counter-terrorism. Seven years after 9/11, and sixty years after the adoption of the Universal Declaration of Human Rights, it is time for the international community to regroup, take remedial action, and reassert core values and principles of international law. Those values and principles were intended to withstand crises, and they provide a robust and effective framework from within which to tackle terrorism. It is clear that the threat from terrorism is likely to be a long-term one, and solid long-term responses are now needed.

The Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, composed of eight distinguished jurists from different parts of the world, is an independent panel commissioned by the ICJ to report on the global impact of terrorism on human rights. The present report is based on a process of sixteen Hearings around the world covering more than forty countries in different parts of the world.

✓ INFO: www.icj.org

THE DURBAN REVIEW CONFERENCE

20-24 April 2009. Geneva, Switzerland. This conference will evaluate progress towards the goals set by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa, in 2001.

The Review Conference will serve as a catalyst to fulfilling the promises of the Durban Declaration and Programme of Action agreed at the 2001 World Conference through reinvigorated actions, initiatives and practical solutions, illuminating the way toward equality for every individual and group in all regions and countries of the world.

✓ INFO: http://www.un.org/durbanreview2009/index.shtml

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COLOPHON

YEAR III, NO. 1 JANUARY/MAY 2009
ISSN 1824-7180

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