

right Way

# FRAME

# FINAL CONFERENCES REPORT

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# Frame



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FRAME is a large-scale, collaborative research project funded under the EU's Seventh Framework Programme (FP7) coordinated by the Leuven Centre for Global Governance Studies and conducted by 19 research institutes from around the world. Our research focuses on the contribution of the EU's internal and external policies to the promotion of human rights worldwide.

[www.fp7-frame.eu](http://www.fp7-frame.eu)

[frame@kuleuven.be](mailto:frame@kuleuven.be)

## INTRODUCTION

# FRAME POLICY-ORIENTED CONFERENCE

**W**ith its over three-hundred registered participants, the final FRAME conference held in Brussels on April 26th 2017, provided the ideal setting to present key policy recommendations of the project, not only within academia, but also vis-à-vis EU and Member State officials, civil society and think tanks. By reaching out to a diverse set of stakeholders, it enabled a lively debate on how such recommendations may be implemented and, perhaps even more significantly, how potential hurdles may be overcome. The prominent speakers, while with diverse backgrounds, were brought together by their recognition of the essential role the European Union does and should play in the protection of human rights. The debate was far-reaching and did not hesitate to take on the most challenging and controversial issues, which were immediately addressed in Morten Kjaerum's impassioned Opening Keynote. The Director of the Raoul Wallenberg Institute for Human Rights sought to highlight how at the heart of the recent wave of populism lie the legitimate concerns of the most vulnerable in our societies, who are more likely to be adversely affected by future trends in climate change and technology. His speech was a warning against raising human rights concerns only with regard to the other, while forgetting the deep inequalities that remain across the EU, contributing to a rejection of the notion itself of human rights. He urged a human rights based approach in establishing the necessary institutions and legal frameworks to ensure that the EU is better equipped to face the "*unknowns*" the future holds.

This inspiring keynote set the stage for discussions that encouraged self-reflection and constructive criticism with regard to the constraints and limits to the Union's success in

fostering human rights. This clearly emerged in the four panel debates, the first of which tackled the complexities of reconciling a policy of deterrence with regard to illegal immigration, with the protection of asylum seekers. The second matter under debate was the protection of economic, social and cultural rights, in the context of the Eurocrisis as a result of the EU's economic and monetary policy. Looking beyond the confines of the Union, the third discussion panel questioned the EU's leverage, when it comes to the promotion of human rights in the world: while the Union appears to be the only global actor to give serious consideration to this dimension of its influence, however, the reliance on trade conditionalities to engender change clearly limits its influence where economic imperatives prevail. The final panel identified the current threat of terrorism as a potential justification for human rights backsliding, to which it is essential to be especially alert, ensuring the proportionality of counter-terrorism measures.

The debates were followed by a High Level Round Table, which aimed at weaving together the day's discussions highlighting ways forward, such as putting an end to the focus on economic policy or improving the coordination with the United Nations or further still calling for a stronger stance of the European Commission on these matters. This was followed by two speeches, which concluded the FRAME policy-oriented conference. The first one was given by Herman Van Rompuy, former President of the European Council, who focused on the interconnectedness and interdependence of human rights and democracy, calling for a moral revolution of the moderates, in which such linchpins of our civilisation are strengthened and upheld in the face of global challenges. The concluding keynote was given by Stavros Lambridinis, EU Special

Representative for Human Rights, who took the opportunity to emphasise the importance of an increased engagement of the EU also with countries that "are on the fence" with regard to human rights, noting the importance of this kind of dialogue, that should prevent the counterproductive consequences of relativism, while acknowledging that approaches that differ from the EU's, may be equally effective.

## WELCOME

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**Jan Wouters**  
Director of the  
Leuven Centre  
for Global  
Governance  
Studies and  
FRAME  
Coordinator

**J**an Wouters introduced the FRAME conference highlighting how Europe's commitment to human rights has emerged over time, with an increasing level of sophistication: the role of the European Court of Justice, as well as the framework provided by the European Convention on Human Rights were noted as germane to the more recent introduction of the Charter of Fundamental Rights of the European Union. Still, while this commitment has been targeted by increasing efforts, FRAME research showed that lack of knowledge, misalignments among institutions and competences, as well as competing policy interests, are significant hurdles to implementation. All of this is compounded by democratic backsliding and illiberal policies in the Member States: these are challenges that require a coordination of responses between internal and external policies.

Jan Wouters' introduction was followed by welcome video messages from Věra Jourová, Commissioner for Justice, Consumers and Gender Equality, and from Michael O'Flaherty, Director of the EU Agency for Fundamental Rights.



OPENING KEYNOTE

## Navigating Human Rights in an Unknown World: A Compass for the EU

MORTEN  
KJAERUM

What is the role for human rights in securing a future for our children and grandchildren? How do we navigate human rights in a world full of unknowns? The number of autonomous developments that are converging today leave us staggered and sometimes even paralysed. Developments that may be interconnected or they may not – but in many ways it does not matter, since they will affect the unknown world ahead of us regardless.

In order to answer these pressing questions it is useful to consider what Hasseris Street in the city of Aalborg in Denmark, has in common with the subway line in Stockholm going to Hässelby. They share the fact that it makes a tremendous difference whether you live at the one end of the street (or subway line) or at the other. Your life expectancy is on average 12 years longer if you live at the more affluent end. These are Nordic welfare states in 2017. “Leave no-one behind” is the overall call of the Sustainable Development Goals (SDGs) – Hasseris and Hässelby indicate that there is something we need to look into.

Who are the people who statistically will live 12 years less than their street or metro line neighbours? They are Danish or Swedish men, with low education, poor salary or un-employed, often single with weak social networks. They feel left behind. They are frustrated, with low self-esteem and via social media platforms they increasingly find channels for their anger. That is positive because now there is a chance that their issues are being heard. It may serve them well, but also the rest of society has much to gain. In the old days when the miners went into the coalmines they brought along cages with parakeets. If the parakeets started drowsing it was time to get out – it was a signal that oxygen was getting low. What we may have heard from the Brexit referendum and the presidential election in the US, 21% for Marine Le Pen and other similar scenarios throughout Europe today, may be early warnings from important segments of the population.

An early warning of something unknown. Jonathan Glover reminds us in his book *Humanity, A Moral History of the Twentieth Century* that the unthinkable today is real and thinkable tomorrow. He writes:

“At the start of the century there was an optimism, coming from the Enlightenment, that the spread of a humane and scientific outlook would lead to the fading away, not only of war, but also of other forms of cruelty and barbarism. They would fill the chamber of horrors in the museum of our primitive past. In the light of these expectations, the century of Hitler, Stalin, Pol Pot and Saddam Hussein was likely to be a surprise. Volcanoes thought to be extinct turned out not to be.” [J. Glover, *Humanity, A Moral History of the Twentieth Century* (Pimlico, 2001).]

What we have witnessed the last 10–15 years is

an increasing authoritarian trend globally, that is rapidly accelerating nurtured by populism from the right and the left. According to the Freedom House Freedom in the World Index, 2016 was the 11th consecutive year of a global decline in freedom. A key element are the attacks on democratic institutions, and in particular on the separation of powers and the judiciary.

**“We have to remind ourselves that fear in itself is real and so are the causes. But we may not need to fear all the causes – or fear them so much. We have to recall that fear erodes life quality and in the end, fear kills.”**



Morten Kjaerum, Director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law

In Europe, Hungary took the lead, weakening the Constitutional Court by dismissing its judges, replacing them with supporters of the regime. Poland has followed. In many more countries populist forces attack the courts for being non-democratic and not accountable to the people through regular elections. This is a message that is easily picked up in populist circles. The hostile language against courts is accentuated when the discussion is about regional or international courts. Most recently we have again seen harsh criticism of the European Court of Human Rights, followed by political attempts to weaken its impact on human rights protection of the most vulnerable groups in Europe. The same can be said about the International Criminal Court and, to a lesser extent, the European Court of Justice.

Most recently we even witnessed an unprecedented “no-show” of the United States of America in an examination in the Inter-American Commission on Human Rights. They are also considering to withdraw from the UN Human Rights Council. Serious financial undermining of the institutions may be the ultimate killer factor.

Apart from the courts and the international system it should be mentioned that media freedom has also declined. A fairly new trend is the attack on academic institutions, most recently the attempted closure of the Central European University in Budapest. As is well known the space for civil society is also shrinking. The authoritarian and populist forces work to erode the mechanisms stabilising the democratic state and the bodies protecting human rights. What was built after the Second World War is now seriously threatened. The attack on institutions is what makes this period particular concerning. The authoritarian backlash has not eased but rather gained momentum over the past decade.

It would be impossible to try to give a full picture of why the democratic world currently is moving in this direction. The financial crisis and inequality are certainly important drivers in the process and some may add and that the refugee crisis in 2014–15 has contributed. I will touch upon these elements but focus on other aspects and then offer some sparkles of hope. Fear and angst play into this in many different ways. Here we have to remind ourselves that fear in itself is real and so are the causes. But we may not need to fear all the causes – or fear them so much. We have to recall that fear erodes life quality and in the end, fear kills.

The obvious elements, when addressing fear, are what dominates the political discourse and media headlines: terrorism and crime – and at the top of the list is currently refugees and mass migration. These are all real issues. However, are they so substantial and profound to allow them to absorb the political and public discourse to the extent that they do? Crime is in most countries declining; so in this case the attention only serves to add to the fear level.



With regard to terrorism the very aim of these heinous crimes is to create fear, and it certainly works. Here there is a tremendous task for governments, media – all of us – to find solutions not to allow fear to take over our lives. I will not go deeper into this here but just mention that it is surprising how cases involving Muslims are capturing headlines across Europe whereas arson attacks on camps for refugees followed by swastika signs are called ‘kids affairs’ or ‘perpetrated by unstable persons’. It is clear where the fear is directed.

The same can be said on migration. Not that 1.2 million refugees arriving in Europe is not a considerable task. However, proportionally we talk about a ratio of 2:1000 Europeans. Thus, if handled in solidarity and with mechanisms in place, it could be dealt with in a manner that would not inject fear and animosity in important segments of the populations. No wonder that people feel threatened when they see thousands of foreigners walk up the highway with the police watching. It could have been managed, but the political will was absent. Again Hungary is the frontrunner with the Islamophobic statements by Prime Minister Orbán and the current asylum procedures that are far from any human rights standards.

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**“When human rights protect terrorists and constitute the last bulwark for extreme restrictions and actions in the field of migration, human rights will eventually become the target.”**

These issues are also the issues where the human rights world feels at home: addressing racism and Islamophobia, the protection of refugees and fighting for fair trials also for terrorists. As Professor Philip Alston said recently in a lecture: “Human rights are always on the wrong side”. It was not to indicate that human rights should not address these issues, but rather that the current attacks on the human rights regime can be explained from this perspective. When human rights protect terrorists and constitute the last bulwark for extreme restrictions and actions in the field of migration, human rights will eventually become the target. This is certainly true for the most recent attack on the ECtHR, that is closely related to its decision on family reunification and expulsion of foreigners. In many instances in Europe, the European Convention of Human Rights and the EU Charter on Fundamental Rights are the last instruments protecting refugees and migrants.

However, there is another dimension to this, namely that the human rights world, together with others, are absent from some of the more profound and difficult topics and fear drivers. In short when did the human rights world last address the issues of the people living at the wrong end of Hasseris street or the Håsselby line? If they had belonged to the one or the other minority group, the human rights community and other political groups, rather than the populists, would have addressed their issues. That is so despite the fact that Article 21 of the Charter of Fundamental Rights, mentions as one of the prohibited grounds of discrimination “social origin”.



So what are the fear elements relevant for this group? Well, looking at Maslow's pyramid of need the answer is obvious, namely security and in particular economic and job-security. Now consider how many upbeat articles you have read the past month about the driverless car or the fully automated shops, praising these new technological advances and how much we can save. It is only one in a hundred of these articles that address the effects of all this on the millions of truck and taxi drivers or the frontline personnel in the local supermarket.

They read the same articles and they reflect on their future and they look for visions and ideas to what they shall do just a few years from now. And for good reasons. A trip to Silicon Valley will convince even the greatest sceptic that the world is up for a major re-do. New technological platforms, new ways of transport, together with robotics, and millions of things that are unknown to us today, but will be utterly familiar in a few years, are now converging with a hitherto unprecedented speed.

This is not a gradual change; it is not a revolution; it is in the words of Ulrich Beck, a metamorphosis. (U. Beck, *The Metamorphosis of the World* (Polity Press, 2016).] So far it has been the blue-collar workers that have been touched, but just last week 40 investment advisers were laid off from a large asset management company and replaced with computers that can do the work better and faster. Very soon it will dig deep into the academic middle classes in Europe, and the first ones will be the economists, the legal profession and doctors. Robots with advanced algorithms will soon carry out the work.

Just to complete the picture, it must be mentioned that many of the most vulnerable people in Europe and elsewhere live in places that are the first to be hit by climate change. The droughts in Spain and Italy have caused severe hardship for many thousands of farmers and wine growers. What is their future? The same weather changes are also what lead to refugee movements today and, in all likelihood, even more dramatically in coming years. This is what ironically ties the frustrated voters to their fear objects. The convergence of technologies has to be linked to the acceleration of climate change, and in that light the picture of metamorphosis makes sense. These forces are getting out of our hands, since this is not driven by a master plan or with the outset in a particular ideology, it is driven by millions of daily actions and side effects of these actions. Thus, what will come is unpredictable; some of it may be good and other things may be bad. This is detected by all; and it injects fear. Due to its high complexity

the visions and discussions that could help us take charge of some of it or create new visions are high-jacked by the simple cry that resounds across Europe today: Look there - there is a Muslim. The fear is personalised in the other.

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**“We are all globalised one way or another. We cannot escape it but rather take up the challenge. That is what many cities are realising, creating global networks of human rights cities, on equality or sustainability, environment and climate change.”**

Let me go back in history for a moment: here Roosevelt provides a good bridge to the glimmers of hope that I promised and the role human rights can play. In 1941 he addressed the US Congress with his State of the Union speech presenting a new “moral order” based on four freedoms: freedom of expression, freedom of worship, freedom from want, freedom from fear. The “four freedoms speech” is famous due to its influence over history, forming the basis for the Universal Declaration of Human Rights, adopted in the UN General Assembly 1948. The sense of security is intimately tied to “freedom from fear” and “freedom from want”. Thus, Roosevelt saw what the West has since neglected: that civil and political rights are interrelated and interconnected with economic, social and cultural rights. This was underscored in the UDHR and reaffirmed at the World Conference on Human Rights in 1993 in Vienna.

The paradox that we are currently in is that the challenges that confront us, be it climate change or the technological developments, cannot be addressed by any single state alone. Only through cooperation and solidarity is there a chance that human kind can regain a minimum of control. This is a paradox, since nationalism has become a dominant feature of our times. So what is needed is that key politicians keep their focus on the issue and do not let themselves be drawn into the easy populist, nationalistic, hate discourses. People are receptive to visions and ideas about a future that looks different, but they still do not hear the visions. The drivers of globalisation and new technologies are hyper-modern in one sense and utterly old fashioned in another. The old fashioned part of these companies is

their constant drive for profit and reluctance to share. They have to embrace the modern world that they have a big share in creating and offer their creativity to all of us about what the chauffeur, the cashier and the lawyer shall do in the future. What is their take on this? And when will they fully contribute economically to the collective?

A lot of these companies have embraced in their modern self-perception, corporate social responsibility and human rights. But at the same time they contribute in a considerable way to undermine human rights protection through tax-avoidance. Tax evasion has moved up on the human rights agenda, alongside the fight against corruption. Where companies resist contributing or offer the minimum protection of workers, governance structures need strength and encouragement to challenge them. Human rights and labour rights have been hard won and shall not be thrown out over night by the introduction of a new app. That happened with Uber and partly with Airbnb. We have seen how the liberal Danish government has passed legislation that so far had the consequence that Uber closed their business in Denmark. This should not be a matter for a single Member State but for the European Union, since there is nothing modern in eroding the rights of people introducing zero-hour contracts and Uber-systems.

Where governments often are far away from the people on the Hasseris street in Ålborg, local authorities are close. Local authorities throughout Europe are now reacting to some of the nationalistic and populist political agendas. We have seen the city of Gdansk going up against the Polish central government on the issue of refugee protection. Numerous cities are now declaring themselves ‘human rights cities’. It is an interesting and promising movement. In the human rights world for some time one has looked to the private sector to be a moderating factor when governments became irresponsible. That is fine when it works. However, we cannot abandon democratic institutions altogether, and those we find at the local and regional level. In several EU Member States there is a trend that, while trust in central government is declining, the trust in local government is rising.

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**“By addressing the very legitimate concerns of those that are left behind, human rights may regain credibility in the eyes of those who feel that human rights are about the other. In this way human rights action may not always be on the wrong side.”**

In Sweden the Association of Local and Regional Authorities in March 2017 adopted a human rights policy platform for Swedish cities and regions. This is now to be implemented on a voluntary basis. The Raoul Wallenberg Institute is closely involved in this process.

Does the human rights approach make a difference in a modern Northern European welfare state? It is astonishing to witness the changes that a human rights based hospital or class room can bring about with small means, when taking into account from the outset the right to health or education. One of the reasons why the life expectancy is shorter for

That is what many cities are realising, creating global networks of human rights cities, on equality or sustainability, environment and in particular climate. Hitherto, it is best illustrated in the climate summit in Paris in 2015. Here cities, together with the corporate sector, managed to influence the outcome. Without the cities' authorities involvement, the outcome would hardly have been as positive. With more than half of the world population now living in urban areas, cities are gaining self-confidence in the light of states not being seen to tackle systemic issues.

sense of control and influence. We see a lot of highly interesting experiments on this across Europe that should be developed further. The slogan from the disability movement – “nothing about us without us” – should cut across all areas. Engagement should be added to the list of obligations for duty bearers: the duty to respect, protect, fulfill and engage. Human rights serve as a common framework for some of the global dialogues between cities. Here the Congress of the Regions in the Council of Europe as well as the Committee of the Regions in the EU play important roles.



the people on the Hässelby line is that there are tremendous barriers for many people, in particular men, in entering a hospital. In a human rights based hospital that I visited recently they defined their approach towards the people living in the district with a profound outreach to the most vulnerable. One of the findings was that 40% of the persons that they reached had the deadly lung disease Chronic Obstructive Pulmonary Disease (COPD).

In the words of Ulrich Beck, we are all globalised one way or another. We cannot escape it but rather take up the challenge.

Generally speaking, human rights offer a normative framework for addressing issues at the very local level. Human rights contribute to creating a coherent approach to issues that previously were dealt within silos and isolation. It helps officials to maintain a focus on the individual. The most obvious example is the work on marginalised groups and minorities.

Local communities have in their hands the tools to engage citizens in the decisions about their lives. In a time of fear and insecurity this is a very powerful instrument that should be used to reengage people and offer them a

Both institutions need to be strengthened and drawn into the political processes more seriously. At the UN level a city forum is needed and avenues to the treaty body system should be explored. In this way globalisation will be seen contributing to the advancements at the local level. It all comes together.

Finally, there is an urgent need to address the freedom from want and fear. The human rights environment needs to engage more effectively in the linkage between civil and political rights and economic, social and cultural rights. It was always a mistake that the EU Fundamental Rights Agency

did not get a mandate in its multi-annual framework, to address economic, social and cultural rights. When working on austerity measures the Eurogroup and Troika should have included knowledge and expertise on economic and social rights.

With a stronger focus on economic, social and cultural rights could have addressed some of the concerns regarding the people living at Hassleris street and Hässelby line and many other similar places in Europe. It could have addressed some of the consequences of globalisation and neo-liberalism that have led to the extreme inequalities in all societies. In this way, human rights action may not always be on the wrong side. By addressing the very legitimate concerns of this group human rights may regain credibility in the eyes of those who feel that human rights are about the other.

To sum up, authoritarian trends and populism are gaining momentum, targeting key institutions and legal frameworks governing human rights, rule of law and the separation of powers. Partly the momentum builds on the immense sense of insecurity created by globalisation, inequality, new technological advances and climate change that all converge in this period of time. The convergence has the potential of a major transformation of the world, if we continue along the current track. The unknown will hit us – unprepared. As illustrated, there are a number of avenues that can be chosen to at least address some of the concerns and to be better equipped to meet the unknowns with a strong legal framework and institutions in place. So let us listen carefully to those that are left behind and let it be an early warning call for all of us. Just like the parakeets in the coalmines.

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**“The unknown will hit us – unprepared. As illustrated there are a number of avenues to meet the unknowns with a strong legal framework and institutions in place. So let us listen carefully to those that are left behind and let it be an early warning call for all of us.”**

# PANEL SESSIONS SUMMARIES

## MIGRATION AND THE EU: BETWEEN HUMAN RIGHTS AND FLUX MANAGEMENT

The migration crisis has placed the Dublin System under significant stress: **Joanna Abrisketa** noted how a lack of solidarity among EU Member States led to human rights violations and the prioritization of push back operations. **Violeta Moreno-Lax** identified the key issues that have enhanced coercion, i.e. hotspots and the failure of the relocation mechanism: this, she argued, is the result of the doomed attempt to combine two contrasting approaches, i.e. the deterrence and protection of asylum seekers. **Alison Gatt** argued how, on the other hand, it was important to exert deterrence, when claims to refugee recognition were abused and to extend protection when the claims were legitimate. Of course, human rights are ensured to all, but access should be selective. **Kris Pollet** further highlighted how the policy of returns of migrants to a country that is deemed safe and where the asylum seeker has a significant link has also contributed to the erosion of human rights in the EU's approach to migration. **Valerija Vukman**, finally, showed how human rights monitoring in FRONTEX is systematic and, while complaints related to push back practices remain, these are the basis for improvements.

## HARD ECONOMIC TIMES AND ECONOMIC SOCIAL AND CULTURAL RIGHTS

At the same time as the European Commission was unveiling its proposal for the European Social Pillar, the FRAME final conference panel on economic, social and cultural (ESC) rights in times of austerity found only few reasons for optimism in this area, despite the overwhelming recognition that ESC rights are in a dire need of strengthening in the EU. A number of institutional constraints were identified as hampering the enforcement of ESC rights in countries subjected to austerity measures. According to **Paul Craig**, one of the chief obstacles in this regard, which emerged from the case law of the CJEU, is the circumscription of judicial review of Eurogroup decisions on the account of the alleged lack of legal personality of the Eurogroup. Access to justice is, furthermore, limited due to the difficulties of meeting the requirements of Article 263 TFEU on bringing direct legal action against EU measures, as it has been argued that the imposition of austerity measures leaves in most cases sufficient discretion to the Member States as to how to implement them. **Zdzisław Kędzia** and **Gabriel Toggenburg** argued that the problem of (judicial) enforcement of ESC rights was found indicative of the broader difference between having rights and exercising rights which is a particularly acute issue in the case of ESC rights. **Conny Reuter** added that, In the past decade more than ever before, the EU has done little to counterbalance deregulatory pressures with social policies and in so doing, it has abandoned the long-standing European model of parallelism between economic and social development. However, **Karl Pichelmann** argued that the economic crisis and the accompanying austerity measures have also occasioned a change in perspective: the discourse on wide-spread violations of ESC rights in Greece, for example, had been largely inexistent 15 years ago despite the fact that economic indicators were at the same level. Overall, the panellists agreed that the flawed institutional design of the Economic and Monetary Union is more than partially to blame for many of the present economic and social issues. In turn, this blame must be shouldered by the institutional designers – the Member States – who must start displaying more constitutional responsibility for the state of the EU.

## A GLOBAL FORCE FOR HUMAN RIGHTS? THE EU'S LEVERAGE IN THE WORLD

Among the main challenges to the external promotion of human rights, the shrinking space for action in this area is significant and according to **Rosa Balfour** contributes to the decreasing budgets for development and human rights. **Sandra Gallina**, on the other hand, emphasised how the EU is the only global actor that does not interpret trade as neutral, but seeks to pragmatically employ it as an instrument for conditionality. Lack of engagement with relevant civil society stakeholders and corporate actors was highlighted as a key shortcoming by **Mercedes Garcia Perez**. **Sieglinde Gstöhl** also questioned the emergence of double standards in the EU, when dealing with counterparts of differing clout, which leads to inconsistencies in its approach. Finally, **Beáta Huszka** noted that also in the context of enlargement, the EU has ceased to be effective, with many prospective Member States backsliding in the path towards democratic governance and rule of law. It would appear, in conclusion, that the EU has not been effective in using membership as leverage for change.



## THE EU AND THE TERRORIST THREAT: ENSURING SECURITY AND HUMAN RIGHTS

Counter-terrorism and human rights have many connections. Terrorism itself can be seen as infringing human rights, while many of the measures taken to counter-terrorism are also affecting these same rights. **Berber Biala-Hettinga** pointed out that it is thus very important that every measure taken is proportionally just. This assessment is difficult to make. Are border controls justified when most terrorists are 'home grown'? When do criminal activities qualify as being terrorist? And when do counter-terrorist measures lead to discrimination? **Jeroen Blomsma** and **Annemieke Dokter** explained that terrorism has led to many new policies where the EU and Member States work together. This is consistent with one of the major effects of terrorism, i.e. the ridiculisation of state power. This has motivated institutions to implement measures ranging from the sharing of police information, to cooperation with terrorist export countries such as Pakistan and Lebanon. However, **Jonas Grimheden** and **Elina Pirjatanniemi** agreed that, to maintain a healthy balance in cooperation with civil society, it is imperative to correctly assess the human rights impact of legislation and to review the implementation of the policy measures taken.

## HIGH-LEVEL ROUND TABLE

# The EU's commitment to human rights: Ways forward



**Olivier de Schutter** stressed how the EU was not in a position to preach on the respect for human rights, when so many shortcomings remained in the area of economic social and cultural rights. **Manfred Nowak** agreed that since the 1970s the pledge to ensure freedom from fear and want in Europe had been undermined by how economic policy now dominates politics. Infringement procedures, when violations emerge in the Member States, should be systematic and agencies such as the European Fundamental Rights Agency (FRA) should be empowered in their competences. **Karen Smith** noted that if the EU did not take on the challenge of upholding human rights, few other global actors would: key to enhancing such a role would be the increased effectiveness and coherence in its efforts in the UN Human Rights Council. **Jan Wouters** concluded that the European Court of Justice had become somewhat more defensive with regard to the protection of human rights. However, the European Commission also had key responsibilities and he expressed the hope that in the future, Commissioner Věra Jourová would be more vocal and active in preventing backsliding in the EU.

STATEMENT

Herman Van Rompuy

Honorary president of the European Council

The US is built on values, and so is the EU. The Founding Fathers of the EU wanted to open a new chapter in European history by putting an end to war, to barbarism, to “non-values”. Peace and democracy were the key values. The European unification was an instrument to achieve the objective of creating a new society. Establishing economic interdependence was an instrument on the road to “Europe”. Values, Europe and the economy are an inseparable trio. But at the same time all leaders of the six founding states were setting up a “welfare state”. The Big Depression of the thirties was a root cause of the rise of nationalism and dictatorship. This should not happen again. Creating equal opportunities for all; providing support for all in case of bad luck in life; helping families with children and assuring a decent pension after working life: all these achievements were inspired by the idea that every human being deserves respect. There is no real freedom without justice. “*Opus justitiae pax*”: peace is a work of justice.



We are no longer sufficiently aware of the greatness of that endeavour. The “spirit of the time” was different compared to nowadays. After the tragedy of the war there was much more consensus in society on the basis of our living together, a more acute sense of the common good. People had drawn lessons from history. “*Historia magistra vitae*”. But mankind often makes the same mistakes. Though history might repeat itself, as the pessimists say, I add that it never does so in the same way. That is why institutions, laws and memory are so important, yesterday and today.

The EU is now considered as the fatherland of “values” such as democracy, the rule of law and gender equality. Let us not forget that for Germany and Italy, democracy was only a very small part of their history. There was no democratic tradition at all. Even gender equality was a new idea. In Belgium, women were only able to vote for the first time in the parliamentary elections of 1948. Before that date they were second-rate citizens. Without considering many other inequalities. The

principle of non-discrimination, for instance regarding gay people and lesbians, is even more recent. Let us thus be humble if we point to other nations and civilizations. The Enlightenment only started in 1789. In the meantime, history in Europe was not a straight line of human progress. Democracy, as a key value of our Western and European societies, has to be defended and promoted by every generation. There is no eternal “acquis”.

I am worried when I read that a growing number of citizens on both sides of the Atlantic have doubts about democracy. For them democracy is no longer a “value” in itself. It is the right of all, not the privilege of a few, to participate in public life and influence state affairs, as Pericles told us 2500 years ago. For many of our fellow citizens, however, democracy has to prove its “added value”. Democracy is only legitimate if it performs; if it produces results in terms of jobs, security, prosperity for all etc. If not, democracy can be replaced by another system, according to these people. This shift in the evaluation of political

democracy is dangerous. It is not entirely surprising though: authoritarian regimes are tolerated as long as they provide results in the domains of prosperity and security. If they fail, people fight for democracy – as happened in the Arab Spring. But as we saw in Egypt: when the “democracy” of the Muslim Brothers failed, people accepted authoritarian leaders again.

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**“I wonder if we do not need an “ethical revolution”: not in the obsessive puritanical sense, but simply as a restoration of good old civic values. A democracy cannot survive in a climate of hate and moral decay of public life.”**

Democracy has to be worthwhile in itself, independent of its functioning. That is why we should not consider democracy as a definite and everlasting acquis. The Union is a union of values, a union of real democracies. The EU Treaty stipulates in Article 6 that the “*Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the EU*” (7 December 2000), and foresees in its Article 7 a procedure and sanctions when “*there is a clear risk of a serious breach by a MS of the values referred to in Article 2*” (summing up the basic values of our Union). Article 7 is a “nuclear option”, but in the 60 years of the Union we never were as close as we are today in considering to put the procedure into motion. It is the “*ultima ratio*”, but still a ratio.



Democracy is much more than organizing elections every 4 or 5 years. If there is no real freedom of expression, no access to the media, no rule of law, no independence of the judiciary, elections are not “free and fair”. That is why the label of democracy cannot be used in some of our neighbouring countries and is under threat even closer to us.

Democracy is also about ethics. “*Amicus Plato, sed magis amica veritas*” is becoming essential in our democracies. We know that “everyone has their own truth” as Pirandello said, but this does not mean that everything is relative. Elections have often been won on false promises and lies, but we are coming closer to a situation where lies are systemic. If there are no legal means to fight them, civil society has to react in the name of ethics. Looking at recent referendums and presidential campaigns, I wonder if we do not need an “ethical revolution”: not in the obsessive puritanical sense, but simply as a restoration of good old civic values. I am fully aware that people are sometimes willing to believe lies as long as they are in line with their ideology, their anger and their fear. A democracy cannot survive in a climate of hate and moral decay of public life.

Human rights is an issue of internal and external politics. During my time in office as President of the European Council and in my capacity as external representative of the Union on foreign policy and security, I have had to deal with the delicate question: how to combine human rights with the defence of our interests?

A cynical view on the issue is that the impact the Union can have on the regard for human rights in non-democratic countries is marginal. So let us focus on our political and economic interests. This view is held regarding big countries. To some extent, it is true that global actors are not impressed by others. The topic can be raised, a reference can be made to the EU concerns on “Human rights dialogue” meetings. But EU leaders are aware that this will not bring about fundamental changes. My experience is even worse: in a lot of cases the Member States are mostly focusing on their own economic interests and leave it to the EU institutions to play the “bad cop” by bringing human rights issues on the table.

The idealistic view is to put human rights – an ethical theme – at the centre of our foreign policy, by making any other concern dependent on the adherence to human rights. This approach is often put into practice when dealing with small countries. We tend to be much more severe with them, because we can have leverage on them via our financial support. The “more for more” strategy is an example of this.

A so-called realistic behaviour is inspired by a double approach: firmness and dialogue. Each time serious violations of human rights are committed, the Union has to speak in private and in public, even when this is not appreciated at all by foreign leaders. But we have to look at the broader picture: even with regimes we do not like we have to keep the doors open. We can even cooperate because “higher” values or interests can be at stake. Peace can often only be guaranteed with the cooperation of states that have a different view on human rights. In the name of peace – a human right par excellence – we have to put less emphasis on some other of our values. It is a conflict of values. Sometimes we cooperate with big non-democratic countries on, for instance, climate change or free trade, in absence of a constructive cooperation of “like-minded” countries. An extreme case was our alliance with Stalin in order to defeat Hitler. In ethics we call it the “lesser evil”. Once the common goal is achieved, the “ethics as usual” can come to the surface again.

The “Ostpolitik” of Willy Brandt and the “Harmel” doctrine were based on this coupling of firmness and dialogue (“*défence et détente*”). The Helsinki agreements and the OSCE were also inspired by this approach. The EU-policy related to Ukraine is also an example of the famous “twin”. We defend the independence of a democratic Ukraine vis-à-vis Russia, which is not fully respecting those values, but we also negotiate with Russia on a cease-fire, on peace and on a lasting modus vivendi. Often the only alternative for dialogue is war. Innocent citizens will lose their lives. Sometimes we have to wage war, as was the case in the Second World War. There is also no dialogue possible with terrorists. The only option is to eliminate them. There is an ethical minimum that has to be respected. The use of chemical weapons is against the “laws of war”. Violations have to be sanctioned so that attacks will not happen again in the future.

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**“When human rights protect terrorists and constitute the last bulwark for extreme restrictions and actions in the field of migration, human rights will eventually become the target.”**

Each time we have to make a wise judgment. The EU was strongly involved in the Libyan war. We decided in the EU that civilians in Benghazi had to be protected in March 2011 against a merciless counter-attack of Khadafi. The EU feared a repetition of the Srebrenica massacre of 1995 where thousands were killed under our eyes. Libya is also a neighbouring country. The UNSC gave us backing to protect civilians. Our air force contributed to the liberation of Benghazi. The allies continued the fight against Khadafi. Should we have stopped after Benghazi – as President G. Bush did not go to Bagdad after the liberation of Kuwait? Did we have a UN mandate? Did we properly evaluate the consequences of the elimination of Khadafi, the civil war and the chaos afterwards? President Obama himself expressed strong doubts about the Libyan war in his well-known interview in “The Atlantic” (September 2016). In the EU we are confronted with massive immigration from the Libyan coasts and with thousands of people drowning in the Mediterranean Sea. A moral judgement has to take into account the effects in the short and in the long term.

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**“There is progress. I am still a believer. The EU was created on the ruins of two World Wars in less than thirty years. We have drawn lessons from these tragedies. The Union is not perfect. But imagine a Europe without the EU. I am convinced that war would not be far away then.”**



externally, and guarantee security to protect our freedoms and our political and social models. We have a unique civilization to defend and to promote, based on key public values (political democracy, rule of law, gender equality and others). Around this civilization many cultures, religions and beliefs can gravitate and dialogue with each other. We need a mobilization of the moderates.

There is progress. We have more democracy than the rest of the world, less wars, less extreme poverty, less deadly diseases. I am still a believer. The EU was created on the ruins of two World Wars in less than thirty years. We have drawn lessons from these tragedies. The Union is not perfect. It is a “work in progress”. But imagine a Europe without the EU. I am convinced that war would not be far away then. It can be an unwanted consequence of a lightly taken and irresponsible decision. The Union is still a guarantor of peace and thus of this human right “par excellence”!

The Libyan “debacle” made us extremely cautious after the outbreak of the Arab Spring in Syria. That country is even more complicated, ethnically and as far as religion is concerned. The EU and the US did not interfere in the civil war. The only implication is in the fight against ISIS, which is also a threat for the internal stability of Western countries. It was not only a matter of values, but also of interests. But we can ask ourselves: could we have prevented the killing of 300.000 people, mostly by the Assad regime? The Russian choice for “stability”, which means supporting the authoritarian leaders of the Middle East, brought no stability in Syria. Russia cannot even help Assad to win the war. It can only allow him to control 1/3 of what we still call Syria.

The massive influx of war refugees was also a strong appeal to our consciences. Many of our own people were generous and solidary in the summer of 2015, but when it became clear that millions were waiting to come to some European countries, we had to recognize that there were limits to our solidarity. We concluded an agreement with Turkey to preserve the political stability of Germany and the Union. Some EU countries showed no compassion at all. This was reflected in their policies and legislation. At the EU level a major issue is the lack of solidarity and respect for the rule of law. This became visible in the relocation decision. Populism is affecting the political agenda even if they are not in power.

The ethical and political choices we have to make are often extremely difficult. The most simple ones are the cynical and idealistic ones. Human rights are more than these kind of choices. The EU is a “soft power”: the biggest provider of development aid and humanitarian help in the world. It contributes to peace, often more than “hard power”. This implies budgetary

choices in the EU and national budgets. In some of our Member States development aid is drastically cut in the name of fiscal consolidation, but also under the motto “our people first”. It is short-sided and egoistic. Security is an issue that is comprehensive, covering a wide range of domains. We will have to increase our defence expenditures as well as our development programmes and improve the effectiveness of both.

Human rights and climate change are closely linked. Climate change can let island states disappear, create drought, hunger, migration and war. We are only at the beginning of the process. We have to make choices between the short term and the long term, between ecology and economy. But as time goes by, there are no alternatives anymore. And ecology is even becoming interesting from an economic perspective.

Human rights is not a theoretical challenge. We should not become populists of this cause and thus deal with this issue in terms of slogans and tweets. The guiding principle is, of course, the dignity of every human being, personalism, to summarize. Without this fundamental inspiration the door is wide open for opportunists and cynics – they are not hindered by principles.

Sometimes I hear that Western leaders are “weak”. It is true that they do not manipulate, bribe, kill, intimidate, lie, wage war as well as others do. In this sense, they are “weak”: precisely because we have values. In the long term, democracy brings more prosperity and fairness than any other regime. In the meantime we have to be intolerant vis-à-vis those who are violently intolerant against our own people, internally and if need be

CONCLUDING  
KEYNOTE

## Stavros Lambrinidis

EU Special Representative for Human Rights

I submit to you that in today's world it is not only civil society's space that is shrinking, but also, one might argue, the space for politicians who wish to keep human rights at the top of the agenda. That is also shrinking in Europe, and in other parts of the world, and is a result of many things. 2016 and 2017 are not like 2014 and 2015. Things have changed, even in those two years. 2016 was proof that the European Union's joint engagement in human rights can make a difference, even in a very challenging global context. The European Union and its Member States remain by far the most important humanitarian and development actors in the world, by far the strongest voices for human rights, by far the leading diplomatic actors in support of human rights defenders in civil society spaces. In doing so, the European Union also fortifies its own ability and credibility to pursue a whole range of foreign policy interests, including its central interest in promoting a rule-based international order with respect for international law and international human rights at its core.

We are not the gun-wielding continent. Other major powers in the world have guns, and they are very willing to use them. We have guns, but we are not that willing to use them, and we are not that organized to use them as a European Union. International law has to be protected, that is a strategic, existential European Union interest. It may not be for other countries around the world—which can and often do use guns to sustain international law. We do not. And so, when we focus on human rights, we not only focus on what is fundamentally a values agenda, not just of Europe. Although I fully subscribe to the notion that Europe has embodied those human rights values, perhaps as much as any other continent in the world, I certainly would not call them fundamentally European-inspired values or European values). It is a fundamental interest for us, an existential one, to promote human rights. And we do.

As we enter 2017, our focus on human rights is even more indispensable than before. And while we do face our own challenges internally, it is still hard to find another region in the world where human rights are so strongly at

the core of both domestic and foreign policy as they are in the discourse of the EU and the EU Member States. This is a crucial legacy to protect. It is a legacy that was reflected most recently in the United Nations 2030 agenda. And it is on us and the Member States now to prove that we can do so.

2016 was not an easy year for human rights. The international values consensus of the past few decades was that conflicts should be resolved on the basis of international law and respect for human rights, rather than through brute force; that democracy is always preferable to authoritarianism or to strongman rule; and that human rights protected by the rule of law are the fundamental building blocks of resilient, open, decent societies. All these values seem to be increasingly under pressure, making it hard to forge responses, and even to address violent conflicts around the world. In 2016, states that do not share the European Union's strong commitment to international law, democracy, and human rights became more organized and more strategic. If you look at the Human Rights Council, you will see that a number of countries—including China, Russia, and others—stopped playing defence and instead started to go on the offensive, in a way that is quite dangerous for human rights. They started trying to export their problematic laws, their problematic normative interpretations of international treaties, and their problematic human rights practices to others. Whereas up to now they were mostly and basically saying “I do not want to talk human rights, that is a sovereignty issue, it is my internal issue, you have no right to intervene or to have opinions,” it has now become an offense as opposed to a defense approach. Arguments that everyone, even the West, violates human rights, were increasingly used. And they were used, not in order to ensure that everyone becomes more human-rights compliant, that everyone tries to become better at applying their international commitments, but they were used in order to justify major human rights violations by a few around the world. Finally, the necessity to counter-terrorism, to keep citizens safe, was often invoked in different parts of the world to justify laws and practices that explicitly



targeted persons belonging to minorities, journalists, human rights defenders, and others.

In this context, the European Union has to become, and is becoming, even more

**“It is still hard to find another region in the world where human rights are so strongly at the core of both domestic and foreign policy as they are in the discourse of the EU and EU Member States.”**

strategic than before in its human rights work. We must seek to build smart alliances with countries which may face serious human rights issues internally, but which are not necessarily committed, either politically or ideologically, to violating rights. It is extremely important that we are able to keep a number of countries that are on the fence on human rights firmly in the camp of those promoting human rights around the world. It is extremely important that we manage to identify, in different countries, elements of human rights that are actually being protected effectively—not just those that are being violated or or ineffectively guaranteed. And that we manage to build alliances that encourage and support the good elements that give ownership of human rights progress and values to those countries. At the same time that we do this, we must be extremely vigilant, as we have been already, and will continue to be, both privately and publicly, against those countries that continue to violate human rights. Being more strategic implies that, in a world environment where, in fact, some countries are trying to pick a fight about the universality of human rights values with us, a presumed ideological fight, a fake cultural fight, on human rights. The whole argument that human rights are a Western concept that somehow does not fit, or should not be expected to fit, different cultural environments. Those countries that try to get us in that fight should know that there are many countries out there that do not simply see human rights as a might-is-right business, that don't see it as a luxury, but that actually—in practice, in many cases—apply it. Those alliances are the ones that we are building as we speak.

In 2016 and 2017, I have also placed a lot of emphasis on addressing the false-equivalency argument on human rights, which is important to do in the context of this values battle that some people, some countries, are trying to engage us in. The “who are you to talk” argument that we get when we talk human rights around the world, the effort to portray all countries as equally flawed, and consequently to cultivate a widespread sense of relativism and futility when one is promoting human rights is one of the greatest dangers to the promotion of human rights in today's environment. The

effort of some to convince us that, ultimately, all is relative, everyone is flawed, violations happen everywhere and all the time, nothing can change, let history take its course, stop meddling and intervening. That is precisely the threat we have to address. With regard to this notion of false equivalency, it is important to underline that no one has a perfect human rights record—including the European Union and our Member States— but there is a fundamental difference between states that have the minimum safeguards in place to ensure that their human rights violations cannot be shoved under the carpet, and those that don't. In other words, the litmus test is not perfection, the litmus test is, do you have an independent judiciary in your country that can judge freely from political influence and hold those accountable who violate human rights? Do you have a parliament that is free, with different political parties, to raise human rights concerns the same way that I did as a member of the European Parliament? Do you have a free and independent press in place that can raise concerns? Do you have a civil society which you may not like and which you may not agree with—and that is entirely a prerogative of a government—but which is free to function? Do you discuss with your civil society, and are you allowing your own feet to be placed on the coals by that civil society so that you do not shove your violations under the carpet? And do you have independent human rights institutions?

**“No one is perfect in human rights, but perfection is not the litmus test.”**

This is important. This is a big deal. I am getting sick and tired of getting into discussions with a bunch of major human rights violators around the world as to whether or not the EU is dealing correctly with the migration issue, or the Roma, or violence against women. I'm not getting sick and tired because they are not issues (they are issues!), but the reason that many in the EU are dealing with them effectively is because there is a Fundamental Rights Agency that is coming out with legitimate independent reports highlighting the issues, and because, in some instances, Member States do care, and do take them into account. It is because the External Actions Service has a whole human rights department that talks to NGOs

every day—mostly to hear about how it is doing its job poorly! It is rare that someone will come and ask for an appointment in order to thank me. This usually doesn't happen. I wish it happened more often, but it doesn't! That is okay. So, enough with the false-equivalency business. No one is perfect in human rights, but perfection is not the litmus test. And I will not get into discussing every single topic and judge who is doing better or worse. There is a legitimate place for these discussions to happen, but at the political level, the discussion has to be about: do you have the institutions in place that keep your feet to the fire? If you do not, let us help you, if you want to, put them together. If you do not want that kind of cooperation with the European Union, that is fine too, but your double standards and your hypocrisy is being exposed, not mine. And I am happy to talk about my double standards, but right now, for better or for worse, it has nothing to do internally with EU human rights in EU Member States. Member States have made it very clear they wanted me to have nothing to do with this. Of course, the fact is that I do, because in every visit I make, someone will come back and say “what about this? What about that?” So, of course, I address those issues. And I always try to take from well-meaning interlocutors around the world that I meet, good ideas or practices which I then communicate back to the Member States.

Let us go back to the security argument and how we address terrorism. Some have argued in this regard that ‘in order to fight terrorism, to protect our people, human rights are not that important’. Some even claim that ‘when civil society criticizes the authoritarian way in which some governments are addressing terrorism, they are in fact supporting the terrorists. If you criticize the government, in this fight, you are supporting them. I have the right to throw you in jail. Once we are done with fighting terrorists, maybe we will consider bringing back democracy.’ I submit to you that, again, there needs to be a political approach to this (and not simply a technocratic one—whether we have the instruments in place, or the indicators). I think that President Van Rompuy said something that was very





important. He made the connection between the environment and human rights. And he made the connection between development and human rights. He talked about the EU's development aid around the world. Go back to 2004 or 2005, and that word was not really in the vocabulary. What happened is that the international debate on development matured to the point that virtually everyone understood that you could certainly develop by violating massively labor rights, by making people work 20 hours a day, and by paying them nothing. You could develop in the short term, and you could certainly produce cheaper goods. You could certainly develop by polluting all your rivers and allowing industry to ruin your environment. But, in the medium term and in the long term, that kind of development would make your social, environmental, and economic existence collapse. And so people say, "wait a second, it has to be sustainable development, it cannot be simply development." It is time for the international community to add 'sustainable' next to the word security in the exact same

way that it did to the word development. Is it possible to have security if you throw thousands of people in jail because of the religion they believe in, even if they are not terrorists? Because of the views they express, even if they are not terrorists? Or, by doing so, are you potentially radicalizing and alienating thousands of people who could eventually become angry and disoriented? In what way are you really promoting security by torturing—a widespread practice in so many countries, creating so much resentment and hatred? In what way are you promoting security by violating human rights?

We discussed, two years ago, the notion of security and human rights. At the time, I asked the question "who is afraid of smart girls?" And I used that to go back to Boko Haram, and to wonder then, why did Boko Haram abduct 300 girls from school, instead of bombing army barracks? What is so scary about smart girls to a terrorist? And the answer to that question, for me at least, was that smart girls become educated girls,

educated girls become empowered women, and empowered women change the balance of power in any society. And the last thing terrorists want are empowered societies. They want societies with power black holes that they can fill with their violence. If you want to fight terrorists, look at what they hate the most. And they hate educated girls. Educate the girls. And educate the boys. And support human rights defenders around the world who are educating boys and girls boys and girls while risking their lives. And if you want to fight terrorists, look at what they did in Paris, including with Charlie Hebdo, and understand that they hate freedom of religion and belief, and they hate freedom of expression, if you want to fight terrorists, support freedom of religion and belief and freedom of expression. If you want to fight terrorists, support human rights, sustainable security, and the resilience of societies the exact way that Federica Mogherini's new Global Strategy on Foreign Security Policy mentions and emphasizes.

I am very concerned about the narrative of failures in human rights. I have discussed this a lot with civil society, with governments, and others. I am concerned because, of course, human rights are really tough. It is a tough job for anyone engaging in it, deeply frustrating, and politically very difficult. No one wants to talk to you. I am certainly the last person anyone wants to see around the world: the European Union human rights guy. It is a tough job for anyone. And so many of us in the European Union are dealing with human rights. One thing that the FRAME final report acknowledges is that, in fact, the effectiveness of our policy is there. It can be improved, certainly, but after the particular focus put in 2012, it is difficult but it is not hopeless work. It is not hopeless work for the millions of people that are lifted out of poverty every year around the world, many of them because of the huge amount of development aid that the EU gives around the world. The EU is 10% of the world's population. It's only 20% of the world's economy. And it is, as Van Rompuy said, 55% of the world's development aid. Only 10% of the world population, and 20% of the world economy, is giving 55% of development aid. And what is that aid if not human rights aid extraordinaire: building schools to educate girls and boys, building hospitals, bringing wells and water in places where none exists. For millions of people getting out of poverty every year, this is not hopeless work. Yes, human rights defenders are arrested often,

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**"It is the time for the international community to add 'sustainable' next to the word security in the exact same way that it did to the word development."**

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**“If you want to fight terrorists, support human rights, sustainable security, and the resilience of societies.”**

the European Union and the United Nations? Human rights is not a hopeless undertaking. It is difficult, but it is not hopeless.

Beware of the feeling that everything is terrible. Beware of the feeling that no one is doing a good job. The former UN Special Rapporteur for food is here, someone through whose work so many of those economic,

development agenda. Just like last year’s UN Compact for Migration. Look at just those four agreements alone, although there are more, they all contain comprehensive human rights provisions agreed to by everyone. And you have a very comprehensive, not a full, but a very comprehensive compass of human rights commitments of every country around the world, even those who are going around



every day in different parts of the world. But do you know how many hundreds of them have been released in the past year because of European Union presence? They hire representatives—my own, of course, and so many people at the EEAS today and in delegations on the ground. Do you know how many thousands of trials are being observed meticulously by the EU and its Member States every day around the world, of civil society and others that are being persecuted for peaceful activities, and supported in their defense by the European Union? Do you know how much our efforts—and not just our efforts, but the efforts of governments in different countries in Africa and Asia and elsewhere as well—have contributed to reducing female genital mutilation, which, while it is a real issue still today, compared to ten or twenty years ago, it is an issue that is certainly under greater control? Do you know how many children are not in the army anymore, recruited officially by governments or by others, because of concerted efforts by

social, and cultural rights topics that the EU is often accused of not taking into account, or not caring about, were placed in the center of the world agenda and were promoted. Human rights is difficult but not hopeless. Those who tell you it is hopeless are simply killing your souls. Do not let them do it. I am not giving you a pep talk, look at the facts.

Finally, let me just tell you, very concretely in the past few years, what progress the international community has made in consolidating an international consensus on human rights. Progress which we often tend to forget when we focus on problems of cultural relativism or other arguments used to justify systematic human rights violations in different parts of the world. In 2011, guidelines on business and human rights were adopted following extremely difficult negotiations. In 2015, there was the Paris agreement on Climate Change and the UN SDGs, which put human and women’s rights in particular at the centre of a new global

pretending human rights are not universal. And yet, what is the international community doing about those four commitments? It is treating them as if they were entirely separate animals. A different segment of civil society focuses on migrants, a different segment of civil society focuses on the environment, an entirely different segment on business and human rights. Some diplomats are in Bonn, others are in New York, and others are in Geneva dealing with their different agreements. And no one, to the best of my knowledge, has sat down to take those agreements and say, these are not separate, broken apart and away instruments, they are all woven together by fundamental human rights undertakings that everyone has agreed to. And here is what they are. Not only are human rights not a desperate undertaking, they are also among the guiding principles of international law and policy. Let us just join hands with a number of countries around the world who are not ideologically or politically committed to violating rights, and

let us build the alliances around those joint principles that will allow us to have even more successes, even in this difficult world environment, than we did before. And let us answer to those who are trying to dispirit us on the human rights debate, and to those who promote gloom and doom narratives that are intended to have us all sit in our chair and not act, let us prove them wrong. We can do it. We'll try. The European Union may today find itself more isolated than last year in doing so around the world. But the fact of the matter is, it is not just in our DNA, it is in our fundamental existential interest to do so and we will continue doing so.

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**“Human rights is not a hopeless undertaking. It is difficult, but it is not hopeless.”**



## INTRODUCTION

# FRAME-AHRI RESEARCH-ORIENTED CONFERENCE

**O**n the 27th and 28th of April, FRAME organised an academic conference in Leuven, aimed at tackling the broader challenges related to the role of international organisations, such as the EU but not only, in protecting and enforcing human rights. This was achieved with the support of the Association of Human Rights Institutes (AHRI)\*, which ensured the impactful nature of the event and provided an essential opportunity for dissemination of FRAME's findings, by comparing them with the latest research conducted in this area with regard to other international organisations. The conference brought together over two-hundred participants, sparking informed and forward-looking discussions across 21 panels (*summarised in this report*) and with 75 original papers selected through an international call.

The opening keynote by Jan Wouters identified a key theme, that would define much of the ensuing discussions. While on the one hand, much progress had been achieved, on the other, Prof. Wouters indicated how human rights protection and enforcement remained plagued by fragmentation as well as a lack of engagement with civil society and receding resources. This was followed by the first high-level roundtable, which highlighted both achievements and shortcomings in regional and global action on human rights protection, with a particular focus on Belgium's role in promoting cooperation between the UN and other international organisations on these issues; the challenges faced by the African Union in this domain; the lack of effectiveness of the Inter-American Court; and the achievements and constraints of ASEAN in upholding human rights. The final keynote by Johan Rautenbach (Director of Legal Affairs and Legal Counsel, International Organization for Migration) identified the foremost challenges

related to the human rights of migrants, which was followed by a in-depth discussion in the concluding roundtable, which brought together leading experts in the field.

In the following, the goals and aims of the Conference are outlined, with particular reference to the three Research Tracks:

1. The Global Human Rights Protection
2. Regional Organizations and Human Rights
3. International Courts and Human Rights

This is followed by summaries of panels and keynotes.

\* AHRI is a worldwide network of 59 prestigious human rights institutes dedicated to promoting research, education and discussion in the field of human rights.

Further information at: <http://ahri-network.org/>

# THE PROMOTION AND ENFORCEMENT OF HUMAN RIGHTS BY INTERNATIONAL AND REGIONAL ORGANIZATIONS

## Conference Outlook and Aims

**H**uman rights are among the most prominent items on the world's agenda, alongside climate change, peace and security and the fight against terrorism, or migration. Unlike in many other fields, legal standards are well-established and are the object of a broad, sometimes even universal consensus. Yet, not a single day passes without more or less grave violations of such standards in one or the other part of the world. Therefore, standards, even if they express humanity's most basic values, do not suffice and need to be administered, that is, promoted and enforced in order to be effective. This is even more true if one considers the cross-cutting character of human rights, which not only constitute the bedrock of people's freedoms or liberties, but also place limits on the actions of governments, policy-makers and other constituencies.

States have, naturally, been placed in the front line when it comes to respecting and protecting human rights. However, they have entrusted international and regional organizations with ever more tasks to manage issues of international or regional relevance. One of the purposes of such organizations may precisely be to better protect and promote human rights on a broad scale. Examples are well-known, from the United Nations (UN) and the UN system at a global level to regional organizations such as the Council of Europe with its European Convention/Court of Human Rights, the Organization of American States and the Inter-American System, the African Union and its African Convention and Court, and the ASEAN Intergovernmental Commission on Human Rights (AICHR). Also the European Union (EU) has made a

firm commitment in its founding Treaties to promote and protect human rights throughout its actions, both internally and externally.

While other international organizations may have a different mandate, universal respect for human rights would command that their actions and policies in fields like trade, development, financial stability, maintaining peace and security, etc., should be in line with human rights standards.

There is much potential in international and regional organizations for the purpose of protecting and promoting human rights. Many of these organizations cover wide territories in which human rights standards can be disseminated. They have institutional frameworks which can be put to use for promoting and enforcing human rights. Moreover, regional organizations may implement human rights standards in ways which are adapted to the region considered, while respecting their universal character. Finally, specialized organizations may help evidence the impacts of subject-specific and sometimes very technical policies on human rights.

This being said, many global and regional organizations currently face daunting challenges in terms of their effectiveness, capacity and finances, and sometimes face threats of exits or constitutional challenges in their Member States. The 2017 AHRI Conference aimed to take a broad and comparative view of the achievements and potential, but also of the challenges of international and regional organizations in promoting and enforcing human rights, by focusing on three broad research tracks (*see boxes*).



### 1 | Global Human Rights Protection

The UN is the cradle of global human rights policy and protection. It relies on a number of dedicated organs and procedures, such as the Human Rights Council (HRC) and its Universal Periodic Review (UPR), human rights treaties and treaty bodies, Special Rapporteurs, independent experts and special representatives. Apart from this, human rights are to be mainstreamed throughout the UN (e.g., Security Council; peace operations; SDGs) and UN specialized agencies, which foster specific human rights (e.g. the right to health in the WHO, the right to food in the FAO). However, the challenges are countless, from issues such as accountability and adequacy to capacity, consistency, effectiveness, implementation, legitimacy and politicization.

### 2 | Regional organizations and human rights

A number of regional organizations have been put in place with a mandate to, e.g., pursue and promote human rights, such as the Council of Europe, the Organization of American States, the African Union. The EU, although originally an organization with a purely economic mandate, has made an increasingly strong commitment to human rights. The instruments, mechanisms, procedures, resources and standards available to these organizations in support of human rights vary widely.

### 3 | International courts and human rights

Human rights standards create binding obligations for States and other subjects of international law. This raises the question of monitoring and enforcement: how to ensure that these standards are complied with, and that violations are exposed and sanctioned? In the last half century, international courts and tribunals have proliferated. Some of them, such as the European Court of Human Rights, the African Court of Human and Peoples' Rights and the Inter-American Court of Human Rights, are expressly tasked with the adjudication of human rights standards. Other courts have a different mandate, but are regularly confronted with incidental human rights questions.

# PLENARY SESSIONS

## SUMMARIES

### 1 | Current Challenges in Human Rights Protection by International and Regional Organizations (Chair: Jan Wouters)

#### Welcome by Jonas Christoffersen and keynote lecture by Jan Wouters

**Jonas Christoffersen**, Chair of AHRI, welcomed the participants to the AHRI Conference, highlighting the importance of the theme of this year's event and how it contributes to the further expansion of the AHRI network and activities. **Jan Wouters** opened the AHRI conference by providing a broad picture of the global achievements in the protection human rights, over the past seventy years, since the introduction of the UN Charter and the Universal Declaration of Human Rights. Although there is no world Court on these matters, regional organisations have led the way in recognising human rights, particularly the EU and its Charter of Fundamental Rights. However, this has given rise to a multilayered and fragmented system, that has been effective in its attention to issues of substance, but has also resulted in a lack of horizontal (between regions) and vertical (among channels of judicial redress) coherence. He, thus, called for greater harmonisation between regional and universal protection, in order to ensure that they are complementary in their goals and practices. A potential solution highlighted was the enhancement of the *amicus curiae* mechanism. Finally, a number of challenges to an adequate judicial redress for human rights were also identified, such as the clear lack of funding and the often limited engagement with civil society.

#### Roundtable on Human Rights Protection and Regional Organizations

**Karl Dhaene** addressed the challenges currently facing the United Nations in the protection of human rights, and presented the current Belgian initiative at the United Nations to ensure better cooperation between the United Nations and regional organizations. **Ajay Kumar Bramdeo** argued that the African Union had made much progress in terms of political intent to enhance the protection of human rights as this is often said to be a priority. However, there are many African-specific challenges, which coalesce around the tensions between the sovereignty of these recently independent states and the universality of human rights. Basic human rights will be ensured in this region only through a concerted effort in the context of global governance and sustainable development. **Elizabeth Salmon** remarked on the lack of effectiveness of the Inter-American Court, which is a result of the reliance on donations from Member States, the lack of permanent judges and the necessary staff and issue of procedural delay. Limited compliance with the Court's rulings is, furthermore, related to the long term measures required and the difficulties typical of post-authoritarian countries. **Sriprapha Petcharamesree** outlined the many achievements ASEAN has contributed to, such as peace prosperity and political, economic and cultural security, but presented also a number of challenges in the area of human rights protection. The great diversity in membership implies that levels of tutelage vary significantly, complicating a coordinated approach. However, lack of engagement with civil society and state-specific constraints also contribute to this. The main challenge is that ASEAN has been consistent in avoiding controversy, often being silent on systematic human rights violations.

**Keynote lecture by Johan Rautenbach (Director of Legal Affairs and Legal Counsel, International Organization for Migration)**

Preceding high-level panel discussions, Mr. Johan Rautenbach, Director of Legal Affairs and Legal Counsel at the International Organization for Migration (IOM), presented his closing keynote speech on the protection of migrants' rights. Focusing primarily, though not exclusively, on the EU-context, Mr. Rautenbach presented a critical but constructive account of recent migration trends, drivers and responses. While stressing that migration is as old as mankind and is essentially a poverty-reduction strategy, it has become somewhat of a mega-trend over the course of the 21st Century so far, with over 1 billion people currently on the move –both internally (760 million) and internationally (250 million)- this is more than at any other time in recorded history. The IOM identifies no less than eight drivers behind this recent surge in migration numbers: i) demographic differences between an ageing North and a youthful South; ii) demand for labour vs. regions with a labour surplus; iii) increasing disparity creating economic and social imbalances; iv) the degradation of the environment; v) relatively cheap and rapid means of transport which have contributed to a sense of distance-shrinking; vi) as has the digital revolution by facilitating instant communication and information sharing; vii) desperation, causing 'survival' migration; and viii) natural and man-made disasters.

For Europe in particular, some 1.047.162 arrivals were counted in 2015, in 2016 that number declined to 387.739 people. These are relatively modest numbers in view of the global picture, especially given the EU's considerable absorption capacity. Much more worrying, it was argued, is the number of people drowning or missing at sea in desperate attempts to cross the Mediterranean - exceeding over 400 casualties in the first quarter of 2017. Looking into EU-bound migration patterns, it was found that most came from conflict-ridden countries of origin such as Syria, Afghanistan, Nigeria, Iraq and Eritrea, and embark on their journeys to Italy or Greece through ports in Turkey, Libya and Tunisia.

**Roundtable on Challenges to the Rights of Migrants**

The points raised in the lecture were then discussed by a panel of five high level experts in the field of migration and human rights. **Paul Lemmens** (Judge at the European Court of Human Rights) discussed the recent case-law of the European Court of Human Rights with regard to the human rights of migrants. **Thomas Gammeltoft-Hansen** (Research Director at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law) outlined three scenarios for the future of the migration issue in Europe. **Elina Pirjatanniemi** (Director of the Institute for Human Rights, Åbo Akademi University) presented the research conducted in the context of the FRAME project with regard to EU migration policies and how they impact human rights. **Cecilia Bailliet** (Professor of Public International Law, University of Oslo) focused on issues of racism and discrimination facing refugees, returnees, and internally displaced persons. **Manfred Nowak** (Professor of International Law and Human Rights at University of Vienna and Secretary General of EIUC) concluded with ten ways to address the current migration crisis.

# PANEL SESSIONS SUMMARIES

Research track 1 | The Global Human Rights Protection System

## STATES' ADOPTION, IMPLEMENTATION AND ENFORCEMENT OF INTERNATIONAL HUMAN RIGHTS LAW

Chair: Thomas Gammeltoft-Hansen

Jozef Janovský, Katarína Šipulová and Hubert Smekal	Understanding adoption of international human rights treaties: political regimes and commitment patterns
Alice Donald	Tracing states' responses to human rights judgments
Simon Hoffman and Antonietta Elia	The implementation of international human rights obligations and the changing structure of the unitary state: decentralisation, localisation and 'tailor-made' impact assessment
Victor Lando	The impact of the EACJ's decisions on national human rights practices

**Janovský, Šipulová and Smekal** examined what motivates states to ratify international human rights treaties, which remains an unanswered question in political science, through a comparison across time and geographical space (looking especially at the practice of different European states and its development over time). This allowed to assess whether democratic and non-democratic states have been similar in their commitment patterns or not. They paid special attention to the category of transitional regimes. **Donald** explained the origins, context and methodology of the Human Rights Law Implementation Project (HRLIP), as well as preliminary findings. **Hoffman** examined the potential of human rights impact assessments to help those engaged in public administration to take account of human rights in the development of proposals for policy, legislation or programmes for action. He concluded that much depends on the resources made available to support operationalization and application of HRIA by officials participating in the development of public policy. **Lando** evaluated the national impact of the EAC's human rights measures, using the EACJ decisions as case studies, concluding that the EACJ had championed the promotion and protection of human rights, notwithstanding its lack of express jurisdiction to hear and determine claims of violation of human rights. Its decisions have influenced both state and non-state actors within the sub-region which has resulted in enhanced traction of human rights in the sub-region.



## THE GLOBAL ECONOMY AND HUMAN RIGHTS

Chair: Nicolas Hachez

Axel Marx

The enforcement of trade and sustainable development chapters in EU free trade agreements

Viljam Engström

'Social issues' as rights: the case of the IMF human rights obligations

Julia Samwer

Do ILO conventions have an effect on labour standards? The structural change of the ILO and its consequences for labour practices

**Engström** argued that, although the policies of the IMF have an impact on human rights, the organization is not subject to human rights obligations under international law. Compared to the World Bank, the IMF has not engaged as much with the potential impact of its policies on human rights. There are claims that IMF policies weaken socio-economic rights. Nonetheless, the consideration of social issues are not absent from IMF policy-making. Mainstreaming human rights considerations might not bring about the expected policy changes. If the IMF were to explicitly engage with human rights, it would have to choose between competing rights, with the result that anything it did could be presented as human rights violation. According to **Samwer**, ILO standards do not positively impact domestic labor standards, as the latter do not improve following the ratification of ILO conventions. While states may have many reasons for ratifying the conventions, e.g. to obtain trade preferences, they are insincere about implementation. We are in fact seeing a race to the bottom, as states have incentives to lower their labor standards in order to attract investment. There is no consensus on the optimal level of protection that should be afforded by labor standards. Divergences exist even among developed countries, e.g. US and EU. One participant cited research that had found that the ratification of ILO conventions had positive effect in transitioning countries. **Marx** argued that the provisions of Trade and Sustainable Development (TSD) chapters in the EU's trade agreements are not adequately implemented and are not subject to dispute settlement. Although the agreements feature monitoring mechanisms, there is no remedy for non-compliance. There is no indication that the TSD provisions have any significant effects. There are three possible dispute settlement mechanisms that could be considered for inclusion in future agreements: (1) state – state dispute resolution (including the potential participation of international organizations); (2) third party – state (drawing on ISDS); (3) third party – third party (drawing on the OECD guidelines for multinational enterprises).



## THE MONITORING AND ENFORCEMENT OF INTERNATIONAL HUMAN RIGHTS LAW BY UN BODIES

Chair: Manfred Nowak

Julie Fraser

Rights implementation and the role of Islam as a local normative system

Faith Kabata

Impact of UN human rights monitoring mechanisms in Kenya

Gjovalin Macaj

The logic of UN monitoring of human rights

Rhona Smith

The right to petition in the UN system

**Fraser** opened by stating that Indonesia has a very successful family planning for reducing fertility rates. The socio-cultural influences of Islam was one of the many challenges faced by the Indonesian program. The socio-cultural dimensions of a health problem also need to be addressed. Islamic organizations play an important role in the acceptance or rejection of human rights. After having adopted more liberal interpretations of Islamic texts, such organizations now promote family planning. Absent their support, the Indonesian program would have failed. **Kabata's** study looked at the influence of the conclusions and recommendations of UN bodies on the actions of domestic actors (e.g. judicial decisions; public policies; legislation). It found that the impact was minimal and that the level of implementation of HR obligations was low – either partial implementation or no implementation whatsoever. For **Macaj**, the monitoring system is seen as the expression of a conflict between morality and politics. States take on obligations they cannot comply with for reasons related to the need to maintain consistency. The apparent chaos, e.g. the double standards, can be explained. There are competing demands on politicians who cannot deliver on everything that is asked of them. As concerns the EU and HR, there is an unwarranted obsession with coherence. Coherence is neither possible between 28 Member States, nor is it problematic. **Smith** concluded by explaining that the right to petition, recognized by UN GA Resolution 217B(iii) and is also enshrined in Article 8 of the Universal Declaration, as well as in a number of other UN instruments. However, the take up level of commitments on communication processes under the various UN instruments is low among states. The ICCPR is the instrument with the highest number of petitions. The UN is resource-strained with respect to receiving and processing petitions.

## INTERNATIONAL ORGANIZATIONS AND MIGRATION

Chair: Joana Abrisketa

Joyce De Coninck

International Organisations and politicized pragmatism in transboundary crises –the unravelling of effective human rights responsibility?

Elena Katselli

The extra-territorial reach of human rights in the context of migration

Camilo Perez-Bustillo

Peoples in Movement: A comparative analysis of current trends regarding migrant and refugee rights in the jurisprudence of the Inter-American and European regional human rights courts

This panel dealt with the role of international organizations in managing migration. **De Coninck**, the first speaker, looked at the rules regarding the accountability of the EU as an international organisation and its agencies for HR violations in migration management. She perceived a structural accountability gap, and suggested that a substantively tailored accession of the EU to the ECHR could be part of the solution. The second speaker, **Katselli**, suggested several criteria for determining whether a state or IO is extraterritorially responsible for protecting and promoting HR, with particular regard for migrants in the Mediterranean Sea. **Perez-Bustillo** focused on a comparison of the European and Inter-American systems for the protection of migrants.

## ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION

Chair: Dominik Steiger

Klaus D. Beiter

The Right to Academic Freedom – A Human Right Neglected by Global and Regional International Human Rights Systems

Thomas Gammeltoft Hansen

Human Rights Research in a Post-Liberal World

Sejal Parmar

Interactions of global and regional intergovernmental human rights bodies: A case-study of the Joint Declarations on freedom of expression

**Beiter** argued that the right to academic freedom was being neglected by global and regional international human rights systems. In doing so he expanded on the typology of violations of the right to academic freedom. The second presentation was given by **Parmar** and set out a case-study of the Joint Declarations on freedom of expression as an example of successful interactions of global and regional intergovernmental human rights bodies. **Gammeltoft-Hansen** gave the third and last presentation of this panel, exploring human rights research in a post-liberal world. He explained the various criticisms that this field of research has dealt with throughout its history. Interesting questions and lively interactions between the panel and the public concluded this panel session.



## HUMAN RIGHTS AND CONFLICT

Chair: Tom Hadden

Thomas Bundschuh

Durable peace through human rights in Colombia? The role of the UN and its challenges

Steven Hill

The Protection and enforcement of human rights: a NATO perspective

Jose Manuel Salamanca

Challenges for Human Rights and the Implementation of a Peace Accord: Institutions and Regions in Colombia

The panel on human rights and conflict took off with two presentations on the Colombian peace process that is taking place between the Government and FARC-EP. **Bundschuh** first dealt with durable peace through human right in Colombia. Particular attention was given to the role of the United Nations in the Colombian peace process. An outline was provided of the various sections in the peace accord that stipulate the role of the UN in the implementation process. Moreover, various accompanying human rights challenges were highlighted. **Salamanca** then addressed the challenges for human rights when implementing the peace accord. The findings of field research on this particular issue were presented. **Hill** then gave a presentation on NATO's Civilian Protection Policy, particularly on how NATO is involved in the promotion and enforcement of human rights. A general introduction was given to the Policy on Civilian Protection and a more in-depth analysis was made of the legal, moral and political imperatives that formed the basis for the Policy. The panel concluded with various questions and comments made by the audience.

## REGIONAL APPROACHES TO THE RIGHT TO HEALTH

Chair: Klaus Beiter

Clara Burbano-Herrera	Evaluating the impact of provisional measures from a comparative perspective: could they guarantee safe pregnancy in Kenya?
Cristiano d’Orsi	The right to health for refugees in the Southern Africa Development Community (SADC): concrete reality or wishful thinking?
Venkatachala Hegde	The tension between the right to health and intellectual property provisions in the EU-India FTA negotiations



The panel dealing with the regional approaches to the right to health, as chaired by K. Beiter included three separate presentations dealing with various (regional) organizations’ approaches to the human right to health. The first presentation, given by **d’Orsi** expanded on the right to health for refugees within the Southern Africa Development Community (SADC). Mr. d’Orsi’s presentation explained the approaches taken in three different SADC countries: the Democratic Republic of Congo, Tanzania and South Africa, explaining their specific approach to the right to health for refugees. The second presentation, given by **Burbano-Herrera**, evaluated the impact of provisional measures from a comparative perspective, applying these measures to the specific case of pregnancy deaths in Kenya. The last presentation of this panel was given by **Hegde**, who explored the tension between the right to health and intellectual property rights and how this influenced the negotiations of the EU-India Free Trade Agreement.

## THE EU AS A HUMAN RIGHTS ACTOR

Chair: Véronique Arnault

Lisa Ginsborg	The impact of structural incoherencies in EU human rights policy: a snapshot from the experience of policy makers
Seda Gürkan	Explaining the limits of EU’s promotion of human rights in times of crises: insights from EU-Turkey relations
Jakub Jaraczewski	Even the best laid plans ... The EU Strategic Framework and Action Plan on Human Rights and Democracy in challenging times
Maria Elena Gennusa and Lorenza Violini	The EU protection of rights beyond judicial actors: the role of the European Commission’s ‘Better Regulation Agenda’. Towards a more effective EU fundamental rights policy?

This panel tackled the topic of the EU as a human rights actor. The chair, **Arnault**, opened the panel by sketching a picture of the world of human rights as getting increasingly bleaker, with the EU struggling due to some issues in fulfilling its role as a human rights promoter. The first possible problem was laid bare by the first speaker, **Ginsborg**, who argued that the complexity of the EU human rights system had led to incoherence of a structural nature, which in turn led to policy framework and interest incoherence. The second speaker, **Gürkan**, focused on the securitization of the migration crisis, and its impact on migrants’ rights. **Jaraczewski**, the third speaker, looked at the EU Global Strategy and its possible impact (and limited focus) on the EU as a human rights actor, with specific attention to the concepts of “resilience” and “principled pragmatism”. The last two speakers, **Gennusa** and **Violini**, studied the Commission’s “Better Regulation Agenda”, and argued that human rights featured only as a subsidiary consideration of the impact assessment required by the Commission.

## HUMAN RIGHTS PERSPECTIVES ON EU ASYLUM AND MIGRATION LAW

Chair: Elina Pirjatanniemi

Joana Abrisketa	The “safe third countries” according to the European Union
Paolo Biondi	The Dublin Regulation: towards an obligation of responsibility-sharing?
Tamas Molnar	The place and role of international human rights law in the Return Directive and in the related case-law of the CJEU: approaches worlds apart?

**Abrisketa** explained that EU asylum procedures allow Member States to designate certain third countries as ‘safe’. Now the Commission proposes one common list instead of national lists to increase the efficiency of the asylum system, as an applicant will have the same answer in all Member States. There are, however, many problems with the notion of safe third-country. **Biondi** then explained that, under the Dublin regulation, all EU Member States are considered safe – even though certain decisions of the ECJ have put this into question. Moreover, human rights impose to share the responsibility for asylum requests, contrary to the common view that the Dublin regulation is bad for responsibility sharing. **Molnar** then compared the Return Directive with the approach taken by the EU judiciary. During the last 25 years, the EU has become more open to international law and it has engaged with international law in various forms. It is therefore in the EU’s interest to rely on existing standards and use them as source of inspiration for EU standard-setting. The CJEU has however been reluctant to refer to international human rights law when dealing with the Directive. There are however three promising cases pending.

## COMPLIANCE, IMPLEMENTATION AND IMPACT OF THE AFRICAN HUMAN RIGHTS SYSTEM

Chair: Wolfgang Benedek

Japhet Biegon	Public Criticism and the power of shame: the impact of the country-specific resolutions of the African Commission
Alejandro Fuentes and Patricia Iacob	Compliance with (quasi-) judicial decisions within the Regional African System of Human Rights. Challenges and opportunities.
Henrietta Ekefre	Circumventing obstacles to the implementation of decisions and recommendations of the African Commission

**Biegon** opened by stating that the African Commission is a treaty body and adopts country-specific resolutions containing naming and shaming and condemning specific violations. This raises the question of its effectiveness, which poses methodological challenges. Most countries react with ‘deafening silence’ to AC resolutions, the responses often deny violations, though some (Sudan) admit to violations. **Fuentes** and **Iacob** explained that the ACHPR suffers from a lack of compliance with its recommendations leading to a ‘culture of impunity’, which erodes its credibility. They identify two challenges: the lack of an adequate follow-up mechanism, and political shortcomings. The African Court of Human and People’s Rights did not improve much this situation and still needs greater political support, knowledge and capacity, education about access to justice, engagement with CSOs. **Ekefre** then followed this presentation by examining ways to surmount obstacles to the implementation.

## HUMAN RIGHTS IN EU EXTERNAL POLICIES

Chair: Nicolas Hachez

Jeff Kenner and Katrina Peake	Protecting and promoting labour rights through EU Trade: searching for the silver thread?
Eva Kassoti and Lisa Louwerse	Debunking the myth of ‘normative power Europe’: the right to self-determination and the EU’s practice regarding Trade Agreements covering Occupied Territories
Łukasz Szoszkiewicz	Europeanization without EU membership – is it possible? The EU’s democratization policies towards Ukraine

**Kenner** and **Peake** examined various instances in which a linkage is applied between trade and human rights, such as trade agreements and the GSP, trying to evidence if human rights were indeed a ‘silver thread’ in trade policies, but conclude that the link is soft and the silver thread is weak. **Szoszkiewicz** then examined EU conditionality policies and how they were applied with regard to the association agreement with Ukraine, to conclude that democracy in this regard was abandoned as a condition for the conclusion of the agreement, in favor of geopolitical interests. **Kassoti** and **Louwerse** then examined a particular aspect of EU trade agreements: namely their application to occupied territories, and identified double standards applied to goods originating from occupied Palestinian territories and from Western Sahara.



## COMPARATIVE PERSPECTIVES ON REGIONAL HUMAN RIGHTS PROTECTION OF VULNERABLE GROUPS AND PERSONS

Chair: Felipe Gomez Isa

Alexandra Budabin	Framing sexual violence: How advocacy campaigns for Darfur responded
Rosa Celorio	Discrimination and the regional human rights protections systems: the enigma of effectiveness
Maria Angels Porxas Roig	The human rights schism on the rights of persons with mental disabilities

**Celorio's** presentation was mainly concerned within regional systems, and how effective they are. Europe and the Americas have strong systems to start with, both have pronounced on discrimination extensively. Yet, we still see widespread discrimination in both systems. Four tendencies are noteworthy in the area of discrimination law. **Porxas Roig** examines a shift of paradigm in the UN Convention on rights of persons with disabilities from a medical approach to a social model. **Budabin** explained that, during field research, a relatively high level of visibility of sexual violence, and its specific meaning as a weapon of war was evidenced. She then examined how UNSC Resolution 1325 on women and armed conflict was used in resolutions on Darfur, and concluded that the situation in Darfur is a failure of the international community to address sexual violence in armed conflict.

## STATELESSNESS: A SPECIFIC HUMAN RIGHTS CHALLENGE EXAMINED IN THE CONTEXT OF DIFFERENT INTERNATIONAL AND REGIONAL ORGANISATIONS

Chair: Zahra Albarazi

Sangita Jaghai	Promoting Children's Right to a Nationality through the Committee on the Rights of the Child
Jason Tucker	The Statelessness of Refugees: UNHCR's 'Protection Hierarchy' and the Creation of Protection Gaps
Caia Vlieks	No (Right to) Nationality: Can the European Court of Human Rights Make a Difference in Addressing Statelessness?

This panel explored the role that (a) treaty bodies, (b) regional courts and (c) the UNHCR could play in the implementation of the right to nationality. The first presentation by **Jaghai** approached the topic by analyzing the role that the Committee on the Rights of the Child plays in tackling the problem of children being born stateless. She argued that the Committee could promote state compliance with children's right to nationality and could provide guidance for states trying to implement this right. However, she also discovered that the Committee has to overcome a few challenges: first, the committee is an expert committee, but cannot exert political pressure; second, there are a few problems with the monitoring system; and third, there is little awareness of the monitoring body. She did, however, end the presentation on a more hopeful note: in working with other bodies, the Committee is able to pursue its goals more effectively. The second presentation by **Tucker** focused on the UNHCR: the presenter criticized the problematic protection hierarchy/imperative in the UNHCR. To be more precise, statelessness is often seen as secondary (i.e. as inconsequential in terms of protection) to the refugee status. This hierarchy, he claimed, is perpetuated in policy, practice and procedures (Statelessness Handbook, RSD Handbook ...). Hence, while some of the protection gaps for the stateless are external, some are definitively a result of UNHCR's protection hierarchy/imperative. Tucker's own solution attempted to deconstruct the hierarchy: e.g. by mainstreaming statelessness as a vulnerability amongst refugees, and hoping that it spills over into state practices. The final presentation by **Vlieks** asked whether the European Court of Human Rights could make a difference in addressing statelessness. The problem is that stateless persons have no nationality and are often unable to access various human rights and that the right to nationality is not included in the ECHR. However, as a few landmark cases such as *Andrejeva v. Latvia* (2009) and *Genovese v. Malta* (2011) have shown, there are (indirect) resources in the ECHR that can help protect the right to nationality and the prevention of childhood statelessness.

## ESC RIGHTS IN EUROPE

Chair: Margot Solomon

Antonia Baraggia and Giada Ragone

The impact of economic conditionality on human rights protection within the EU legal framework: challenges and perspectives

Karin Lukas

The European Social Charter of the Council of Europe and its interaction with the EU legal framework – reinforcement or contestation of economic, social and cultural rights

Hanna Wiczanowska

Can employers legally exert pressure on workers? The institution of lockout in the Strasbourg system in comparison with universal system of human rights protection

According to **Baraggia** and **Ragone**, despite having become a common tool, the potential of economic conditionality is still underestimated. However, its use remains controversial. Although conditionalities in trade agreements may be a very good choice for fostering human rights (given the enforcement possibilities) there are also claims that the inclusion of human rights clauses in trade agreements is inappropriate. Nonetheless, conditionalities have also revealed a dark side in the context of Eurozone bailouts. **Lukas** argued that there are both convergences and tensions between the European Social Charter and the EU legal framework. The Laval case illustrates the potential for tension. In that case the Committee of Social Rights found a violation of the Social Charter following a complaint from a Swedish trade union which had alleged that legislation enacted pursuant to the ECJ's judgment weakened social rights. Other complaints have been made in relation to the austerity measures imposed on the Greek government. **Wiczanowska** explained that lockout is a means used by the employers in order to exert pressure on labor, and may take two possible forms: (1) the temporary closure of a working place; or (2) the deterioration of working conditions. Should the right to lockout be recognized as a social right to be protected, similarly to the right to strike? The power imbalance between capital and labor is acknowledged and it is not submitted that the right to lockout should enjoy the same protection as the right to strike. However, if there is no protection of lockout, employers are deprived of a legal measure for protecting their interests.



## HUMAN RIGHTS AND THE INTERNATIONAL CRIMINAL COURT

Chair: Magnus Killander

Nathalia Contreras Pardo Applying the procedural justice model to the ICC

Sergii Masol The Concept of an International Human Rights Crime: A Myth or Reality?

Brianne McGonigle-Leyh and Luke Moffett The promotion and enforcement of human rights, achievements, challenges and opportunities: a case for a permanent international claims commission

**Contreras Pardo** discussed the issue of the right to reparation and the unique mandate of the ICC with regard to victims, who have an active role in the proceedings. Even though the Court has made an effort to apply its mandate, challenges remain. According to the procedural justice model, if the ICC works on procedural fairness, the victim participation will be more effective. Two main elements should be considered: quality of decision-making of the court (neutrality + consistence in rule application) and quality of interpersonal treatment (victims have to be respected, their rights should be acknowledged).

**Masol** then explained that the concept of an international human rights crime has been suggested for all three crimes under the ICC statute, but its meaning has not been defined. Despite the infiltration of HR standards in ICL, there are serious flaws. First, there is a threat of legal uncertainty as HR are open-ended. Some argued the ICC has no need to look at HR as the crimes are sufficiently precise. The conflation undermines the distinction between criminal and non-criminal law commitments.

**McGonigle-Leyh** and **Moffett** explained that reparations are trying to undo the harm caused. So far there have only been two reparations decisions before the ICC. Nevertheless, there are many discussions on how the system should work, with different opinions by the ICC, victims and defendants. The Court in Cambodia was also very restrictive and only granted symbolic reparations, causing contestation among victims. Perhaps a mass claim commission could help. Turning to the ICC, what can we learn? How can a permanent massive claims process take place?



## DIALOGUE BETWEEN EUROPEAN REGIONAL COURTS AND OTHER COURTS AND BODIES

Chair: Martin Scheinin

Jonas Christoffersen Judicial Dialogue under the European Convention on Human Rights

Władysław Józwicki Opinion 2/13. Can the ECtHR now take a stand?

Quinten Lataire The role of UNAIDS' secretariat as amicus curiae: the case of Kurmaneyevskiy et al. vs. the Russian Federation before the European Court of Human Rights

This panel discussed the dialogue between European regional courts and other courts and bodies. It was opened by **Józwicki**, who described the current delicate status quo between the EU and the ECtHR and asked whether it would be possible and/or useful for the ECtHR to revisit its case law on the EU as a system of equivalent protection, as famously declared in the Bosphorus case. The second speaker, **Lataire**, discussed the Kurmaneyevskiy case, and the role of UNAIDS therein as an amicus curiae. He explained the importance of the case, the conditions under which the UNAIDS could decide to act as an amicus curiae, and why UNAIDS decided to act as such in this specific case. **Christoffersen**, the last speaker of the panel, discussed the judicial dialogue occurring under the ECHR. When reviewing cases, the ECtHR will have a look at national decisions and it ensures that there is some leeway when complying with the provisions/requirements of the ECHR. The ECtHR did in some cases even take a step back when deciding, in line with the practice of Member States. The Court acts realistically as it cannot rely on other enforcement measures than to trust the Member States themselves. The Court "goes with the flow" as it needs to think of its own legitimacy.



## CHALLENGES AND OPPORTUNITIES IN INTERNATIONAL COURTS AND TRIBUNALS OUTSIDE EUROPE

Chair: Elizabeth Salmon

Natalia Torres Zuniga	Legitimacy of the Inter American Court of Human Rights (IACtHR): a concept that might be applied to the Inter American System of Human Rights (IASHR)?
Kasey McCall-Smith	The pitfalls and potential of the Statute of the Arab Court of Human Rights
Julia Kapelanska-Pregowska	In search of “fundamental” human rights in the jurisprudence of international courts
Joe Mlenga	The Dilemma of regional human rights organisations in promoting and protecting rights: the case of the Malawi and the African Court on Human and Peoples Rights

**Zuniga** discussed the legitimacy of the Inter American Court of Human Rights through the case *Gelman vs. Uruguay* in which the Court determined the amnesty laws from Uruguay were unconventional because they did not allow the prosecution of the perpetrators of gross violations of human rights. In Zuniga's opinion, to promote strong authority of an international court, there needs to be a process of social change and she supports the idea of an activist Court. **McCall-Smith** explained that the Arab League was not interested in human rights at the beginning, but integrated them progressively. She examined four hurdles for the human rights committee: (i) Subject-matter jurisdiction; (ii) Inadmissibility of claims; (iii) access to the Court (iv) overlap between regional systems. **Kapelanska-Pregowska** argued that there is a core and peripheral content for every human right and examined how they were interpreted in context, identifying enigmatic ICJ decisions, balancing ECHR decisions and creative IACtHR decisions. **Mlenga** examined current human rights issues in Malawi. He then argued that in interpreting the Charter, the Court may be in a problematic situation considering that Malawi is conservative, religious and relativistic in its views on human rights. The way forward might be to establish a special legal commission to review the African Charter. The Commission should hold continent-wide consultations. This will clarify problematic areas and ultimately help strengthen the protection and promotion of human rights in Africa.



## UNIVERSAL HUMAN RIGHTS STANDARDS IN THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Chair: Roman Wieruszewski | Discussant: Antoine Buyse

Grażyna Baranowska	Invoking universal standards in adjudication practice of the ECtHR: enforced disappearance cases
Aleksandra Gliszczyńska-Grabias	ECtHR and UN treaty bodies in conversation: chances taken and lost
Anna Hernandez-Pończyńska	UN special procedures in the jurisprudence of the ECtHR
Katarzyna Sękowska-Kozłowska	Reception of the universal human rights standards by the ECtHR: required, desired, failed?

The Poznań Human Rights Centre presented the preliminary outcomes of its research project dealing with the extent to which universal human rights standards are included in the jurisprudence of the European Court of Human Rights. The project particularly focuses on the inclusion of human rights standards set by the various UN treaties and accompanying UN bodies. A related question that will be analysed is whether relying on such universal human rights standards increases the protection delivered by the Court. The researchers involved in the project gave in this regard presentations on particular UN treaties and bodies. First, a presentation was given on the incorporation of human rights standards included in the International Convention on the Elimination of All Forms of Racial Discrimination. The preliminary results showed that the standards are being invoked less than initially expected. The following presentation focused on the inclusion of standards relating to enforced disappearances and the related practice of the Human Rights Committee. The findings showed that there is an interaction between the Human Rights Committee and the European Court of Human Rights, but that there are as well a number of characteristic features in the Court's jurisprudence on enforced disappearances. Yet, the UN Convention on Enforced Disappearances does not influence the Court's jurisprudence in a noticeable manner. The final presentation was delivered on the various interactions between the Court and the UN Special Procedures mechanisms. It was argued that these interactions can take different forms and can also be beneficial for both entities. However, such interactions also have particular limits. Specific recommendations were made. Mr. Antoine Buyse took up the role of discussant on the panel. He made various comments and recommendations. Moreover, the audience gave valuable feedback.

## FOXES IN THE HENHOUSE: INTERNATIONAL LAW, STATE PRACTICE, AND THE SELECTION OF REGIONAL HUMAN RIGHTS JUDGES

Chair: Kersty McCourt

Christian M. De Vos	Reflections and Recommendations for Reform
Tessa Antonia Schrempf	Legal Framework and State Practice I: Findings from Europe and the Americas
Tarisai Mutangi	Legal Framework and State Practice II: Findings from Africa
Sara Kendall	Controlling from Within? Critical Perspectives on Judicial Appointments

What are the legal frameworks throughout the world when it comes to selecting judges, how does this affect the availability of information and what State practice do we end up with? State practice varies significantly in Europe, Africa and the Americas. The set requirements exist and are complied with, however, formalities (e.g. open calls for candidates, composition of selection panels, ...) are interpreted differently by States. The recommendations to ensure conformity are nothing new: more yet qualified people should be involved, there should be more female judges, civil society should be involved, more transparency at the national level. A call for candidates should be open. Pre-existing institutions could influence this process to a certain extent, interviews should be required during the process, questions of ethics and issues of conflicts should be properly addressed. When implementing the recommendations, one should take into account the implications of constraining the State. There are two poles on the spectrum of selection processes: formalisation v. discretion. When trying to create transparency regarding the formalities, one will have to take into account the ways in which States will exercise their discretion, which, in turn, could undermine the required formalities.

## CURRENT ISSUES AT THE EUROPEAN COURT OF HUMAN RIGHTS

Chair: Titia Loenen

Stephanie E. Berry	The securitization of Islam in the European Court of Human Rights: speech acts, brute threats and power dynamics
Monika Boniecka	Council of Europe and the European Union - two main organizations in protection of human rights in Europe - critical analysis of dualism and searching for solution
Aleydis Nissen	A right to access to emergency health care: the European Court of Human Rights pushes the envelope

**Berry** addressed securitization from the point of view of the Copenhagen school, and argued that Islam is more a perceived rather than real threat. Other issues than fear are also at play, such as historical factors and the rise of Islamic fundamentalism. **Boniecka** discussed the issue of autonomy as an obstacle for the EU to join the ECHR, as well as the matter of whether the Member States are responsible (and competent) when it comes to acts of the EU: should they be targeted by the European Convention for potential violations by the EU? **Nissen** concluded by discussing the right of access to emergency healthcare, which came before the ECtHR in 2013 for the first time, in several cases on the access to healthcare with regard to childbirth in Turkey. The Court introduced a new right to emergency care, based on the need for the necessary provisions to be in place, as a condition for compliance to the Convention. Excessive pressure should however not be placed on the staff, if the budgets necessary are not available.

## BETWEEN LAW AND JUSTICE: A CRITICAL PERSPECTIVE ON THE ROLE OF COURTS IN REALISING RIGHTS

Chair: Kersty McCourt

This Q&A panel brought together professionals and academics from the 3,000 strong alumni community of the Global Campus for Human Rights spanning twenty generations and six continents. The panellists brought experience from the international and regional justice systems and drawing on recent cases reflected on the gap between the role of courts and justice for individuals and communities.

Aarif Abraham	Laura Van den Eynde
Seun Bakare	Elaine Webster
Isabelle Tschan	

Access to justice is a human right. However, courts still would need to be seized and that is difficult in some cases. In Turkey and in the African HR system, for example, there is indeed a wide gap between law and practice by courts and institutions. The rights are clearly spelled out but in practice they are not applied properly. How to bridge this gap? Many obstacles stand in the way of accessing justice in practice throughout the world: (perceived) corruption; lack of knowledge of their rights and lack of legal awareness; insufficient capacity to assert, demand and claim the respect and protection of their rights; lack of affordable, accessible and quality justice services offered by both formal and informal justice institutions; geographical distance; police capacity; lack of fair procedures; lack of enforceability of decisions; safety concerns; ... What could be the solution? Maybe civil society should have a role in ensuring justice.



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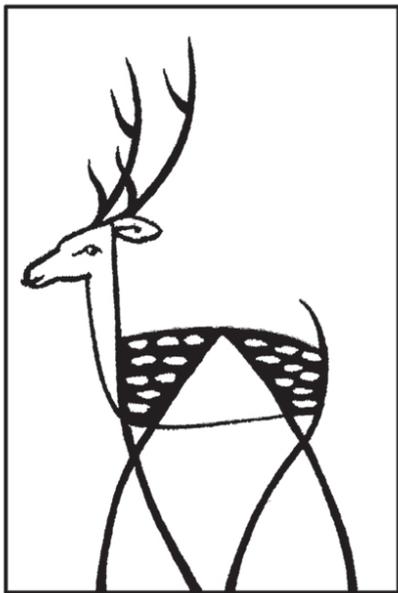


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