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**TEACHING GUIDE**  
**TO THE EUROPEAN CONVENTION**  
**ON HUMAN RIGHTS**

PREPARED BY  
THE WORLD ASSOCIATION FOR THE SCHOOL  
AS AN INSTRUMENT OF PEACE  
(EIP)

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“One of the great European traditions - which Europe seemed to increasingly forget during the first half of the 20th century - puts the free citizen first, as the source of all power. Learning the lesson of the horrors let loose by fanatic nationalism, the free part of Europe remembered this old European tradition after the Second World War, on which it founded its reconciliation and cooperation.(...)

It can be said the the task for Europe today its to recover its conscience and its responsibility.”

*Vaclav HAVEL*

Extracts from a speech given 15 May 1996 in Aix-la-Chapelle (Germany)

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# Part I - Introduction

## 1. How should this Guide be used ?

### 1.1. What are the objectives of this Guide ?

This Guide is meant for members of the teaching community of Bosnia Herzegovina. Its purpose is to provide help on how to address human rights at school, in particular the European Convention on Human Rights.

This Guide is not a manual, proposing ready-made lesson plans. It should rather be used like a travel guide in the ever-evolving area of human rights protection. In the information it provides and the reflections it proposes, teachers can find the necessary elements to create the pedagogical path on which they wish to take their students.

This Guide:

- shows what exists in the field of human rights protection,
- suggests directions for the introduction of human rights education in the school and in classes, and
- starts reflection on the conditions and consequences to be envisaged for this introduction.

It is completed by other documents, also prepared for this Council of Europe programme, on methodologies and pedagogical activities in civic education and democratic citizenship education.

### 1.2. Why give such importance to Europe ?

*Why put the emphasis on this Convention?* The Dayton Agreement, which directs Bosnia Herzegovina during this reconstruction period, inscribed the rights of the European Convention on Human Rights as constitutional rights. In case of contradiction with another right, it is the fundamental rights which reign and which must be applied. The European Convention on Human Rights carries, thus, a very specific importance.

*Why speak of European human rights law, which did little to stop the outbreak of conflict in the region and the atrocities which were committed there?* The European system of human rights protection, described in the following pages, was founded at the end of the Second World War by democratic States wishing to reinforce the protection which they guaranteed to their citizens. It was not foreseen as a system to prevent conflicts. Moreover, human rights protection concerns the relations between a citizen and his State, not relations between States. The conflict broke out in a country, the former Socialist Republic of Yugoslavia, not linked to the Convention; it did not apply. This is why, in addition to an unfavourable political climate, the European human rights system had no direct effect on the evolution of events.

Now, Bosnia wants to join the other European countries in stability and democracy. This was confirmed by the Dayton Agreement, when it included the rights of the European Convention on Human Rights in Bosnian law. If this Convention was not useful in the preceding period, it can, on the other hand, now offer reference points for reconstruction.

### 1.3. Is it really necessary to speak of rights in education ?

It is surprising to note, even in normal circumstances, the lack of knowledge of law in general and the fundamental rights in particular. For teachers, vis-à-vis students who bring up certain problems, this brings an ill-feeling, even incorrect answers. In a situation of reconstruction, where everything must be rebuilt or revalidated, to refer to the fundamental rights permits an opening beyond each person's values to an examination of principles which apply to the entire world. It also links into the wisdom which has managed to traverse the comings and goings of history and which has been passed on to us as codified law.

The European countries share a common system of human rights protection composed of Conventions and the institutions which apply them. Its force is to go beyond the simple proclamation of rights, knowing that it is in the application of these rights that one can evaluate the values which really direct a society.

This system, however, does not form an ideology. It indicates the rights which the societies and States of our continent, with their diverse histories, political systems and cultures, recognised as having in common. It treats the management of power, in order to protect the freedom and dignity of individuals, insisting on the processes and institutions which allow these rights to be defended. It has limited content, and does not pretend to be an all encompassing moral system for all aspect of life and society.

It is, therefore, important not to neglect the importance of the fundamental rights in the reconstruction of Bosnia, in which education plays a large role. It is obvious, however, that the current context in Bosnia is particular. Reference to European human rights protection is too recent to be familiar to teachers. It will be difficult for them to find examples of implementation within their environment, as is the case in other European countries. In addition, the war experience was more an illustration of the reign of force than that of law.

As all pedagogical choices are oriented by the context they address, the elements mentioned above determined the organisation of this Guide.

### 1.4. The three parts of this Guide

This Guide proposes to first examine the potential benefits for members of the teaching community in Bosnia Herzegovina of human rights education. Next, it describes what are human rights as defined by the European countries and how are they protected. Finally, it opens the discussion on how schools and teachers can introduce and develop human rights education.

- **Part I introduces the subject.** It is a reflection, thoughts which go deeper into the questions already mentioned. Human rights education is positioned at the crossroads of questions of law, of political sociology and of pedagogy. How can we define this field of education? What importance does it have for teaching? What is the interest in human rights education for Bosnia? This part tries to provide elements of answers for these and other fundamental questions.

**- Part II presents the contents.** This is a presentation of facts which explain the rights and the means of human rights protection, based on the European Convention. It is not obligatory to teach all of this material.

Depending on the point of view, these explanations can be seen as insufficient for the rigorous practitioner or too much for others, who prefer to limit themselves to the broad principles. The choice is always voluntary. The choice here was to show how this protection functions, with all the precisions required for understanding this functioning, and to underline those elements particularly concerning Bosnia Herzegovina.

Teachers can find in all of this information - we hope - answers to their own questions, to students' questions and to those of the surroundings. It is a subject requiring precise references, particularly in an uncertain context. From there, teachers can freely adapt their work in function of their circumstances and that of their classes.

This approach handles the protection system in a descriptive way. It has the inconvenience of being rather conventional, but has the advantage of avoiding imprecision and confusion. Bosnia Herzegovina is a candidate for entry into the Council of Europe and, hence, to the European protection system. In the admission process, it is starting to make its own path in the application of rights, as did and continue to do the other European countries. Teachers in Bosnia Herzegovina may find material for the renewal of their work. In the meantime, schools can already start on this path.

**- Part III proposes working methods and activities for the school and the teacher.** This is a series of suggestions of what can be done in schools and in the classroom. The different social contexts give different sense to the same concepts. What the teacher transmits to students can be reinforced or contradicted by what they live daily in and out of school. To be complete, human rights education requires discussion in the school with the participation of everyone, including the society in which it exists.

Even in a difficult situation, the teacher has the power to direct and democratisise the pedagogical relation he has with his students. This Guide ends on the importance of the role and actions of the teacher.

## **1.5. A support for teachers**

By insisting on the progress which has been realised over the past decades in the field of national and international protection of human rights, we remain conscious that it was realised in a general historic context where oppression and degradation were all too present for this period to be qualified as really "civilised".

Nevertheless, by emphasising the importance of law and institutions, we hope to show how human rights, even when legality is going poorly, are the expression of a legitimacy which transcends the hazards of history. Amongst other points, they have permitted an evaluation and qualification of the facts. They clearly say that there are limits as to what is acceptable. They are an instrument for establishing the truth. They reinforce the attitudes of humanity, by underlining their legitimacy. They provide a base for criticism and ask for accounting when required.

As for the institutions, to know of their existence and understand what each is responsible for, allows everyone to make sure they carry out their responsibilities, to know whom to address in the case of dissatisfaction with one or the other, and in all cases, to not be without appeal.

During the conflict, many teachers played a remarkable role, continuing their educational work in the worst situations. In the new context of reconstruction, their role has not lost any of its importance. They remain reference points in the changes happening in society. With this Guide, and the accompanying documents, we hope to give them a working instrument for the preparation of their courses and pedagogical activities with their students.

## **2. Why teach human rights in Bosnia Herzegovina ?**

The countries which emerged from the conflict which ravaged the Balkans following the break-up of the former Socialist Republic of Yugoslavia, are going through the difficult and uncertain period of reconstruction. They want to progressively find their place in the international community of States and, in particular, in Europe.

During this reconstruction process, while arms have not yet definitively been put aside, is there a risk of speaking too quickly, without waiting, of human rights, of democratic institutions, and of human rights education?

All wars are a denial of human rights. They impose the reign of force, of relations of force, only. Furthermore, in this conflict, the dramatic ending to the fall of an authoritarian regime, that which might remain of rights, such as war rights and humanitarian rights, were particularly poorly handled. Respect of human rights can be counted amongst the first victims of this conflict.

But precisely, to reconstruct is to move away from this reign of force to return to law, to justice, to non-violent conflict resolution. If human rights were prime targets in this war, it is because they are the foundation of respect of human dignity and of democracy. During the descent into the hell of war, it is, despite all, with human rights instruments that one can qualify, like other violations, all these acts which are otherwise unqualifiable. These same human rights can also serve as reference points on the road back to justice and democracy.

### **2.1. Human rights, a reference for reconstruction**

To reconstruct a society is to renew the links between people. It is to find the values on which society can build. To reconstruct a democratic society is to choose the values which will guarantee the respect and dignity of each person. Next, for these values to be applied, they must be expressed in rights which the society's institutions are obliged to see are respected.

In reality, the road is more winding than the brief summary above; but it is by checking that all stages have been met that one can measure the progress achieved in democratic reconstruction.

Europe, also, had to follow this winding road at the end of the Second World War for its own reconstruction. It had to create new institutions and make new law to build democratic societies. Each country found its own way, but all the States of Western Europe shared the same basic principles, on which they developed a common system of human rights protection.

It wasn't only for Europe that this period marked a new stage. As of 1945, the entire world was concerned by the elaboration of new international law, which was to be more solid than that which preceded it and which was not able to stop the catastrophe of global conflict. The international human rights protection of which we speak today found its sources in this global reorganisation by the victorious States trying to make it impossible for the horrors they had seen to happen again. The premises emerged during the trials of Nuremberg and Tokyo, with the concept of "crimes against humanity". This work marked an important first

stage, but its purpose was to close the war and punish those responsible in the defeated countries, not to create new law.

### **2.1.1. The Universal Declaration of Human Rights of 1948**

During the creation of a new world-wide organisation to guarantee peace and prosperity amongst nations, the question was clearly raised of how to guarantee rights and fundamental freedoms. At one point, it was even intended to include such principles in the founding charter of the United Nations. It's for this reason that human rights are mentioned seven times in the United Nations Charter. They formed the basis for the creation of the Universal Declaration of Human Rights (UDHR), a task quickly undertaken by the new organisation. The desire of those writing it, was to include in a charter document the fundamental rights of all human beings, which no power would be authorised to take away, as well as the obligations to them which these powers have. Different formats were looked at: declaration, convention, protection procedures. A declaration was chosen to start with since it provided the quickest and widest proclamation. The work to formulate these rights as international law in a convention or treaty, as well as the protection measures, would come later.

*See Chapter 6 on Declarations and Conventions*

The Universal Declaration of Human Rights was adopted late in the night on the 10th of December 1948 and it has had an impact far greater than ever imagined by its creators. This text became the foundation for all international human rights law (IHRL) which has since been developed.

Numerous other declarations and conventions have been adopted by the UN as well as other regional or specialised intergovernmental organisations, detailing the rights set out in the Universal Declaration. Several conventions detail, as well, the procedures for control of their application. In all cases, these rights form a whole; they are *indivisible*. No State can consider its work done, in terms of the protection of human rights, if one or the other of the rights is not guaranteed.

These rights are also *universal*. They concern all individuals, no matter where they are. There can be no discrimination in the application of these rights. This universality, often debated by certain governments, was confirmed by all States during the World Conference on Human Rights in Vienna in 1993.

These concepts of universality and indivisibility, fundamental to human rights coherence, are explicit in the Universal Declaration of 1948. This document does not make any distinctions between categories of rights, such as - the often cited - civil and political rights versus economic, social and cultural rights. Giving both a foundation and direction to an international system of human rights protection, the Universal Declaration has a greater weight than other declarations. All persons may refer to it, whether or not their State has ratified it. It is, therefore, an essential tool for teachers.

### **2.1.2. Innovation in Europe: individual actions against their own state**

Europe participated actively in the creation of the Universal Declaration. Furthermore, it wanted to go further than the simple proclamation of the fundamental rights of man. The European countries wanted to offer persons within their jurisdiction precise guarantees, along with means of appeal, in line with the belief that a right only fully exists when the conditions to apply it also exist. The Council of Europe therefore gave itself a different task than that of the United Nations. Their task was to bring together the fundamental rights on which there was consensus amongst its members that they were defensible in a court of justice. The reporter of the Council of Europe's Commission on Judicial Questions, Professor Teitgen, stated the following in his report of 5 September 1949:

“The Commission is of the opinion that the only rights which can be guaranteed right now are the basic rights and fundamental freedoms which today are defined and respected, based on long experience, by all democratic regimes.

These rights and freedoms are the common denominator of our political institutions, the first conquest of democracy, as well as the foundation of its functioning. This is why they must be the object of a collective guarantee.” (Proceedings of the Preparatory Work)

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was adopted in Rome on 4 November 1950. It was more restrictive than the Universal Declaration, referred to in its preamble, in the list of rights which it guaranteed, but it provided for an important protection mechanism with the creation of the European Human Rights Commission and the European Court of Human Rights.

Even though the text concentrates on one category of rights - civil and political rights - and covers only one region - Western Europe - rather than being universal, it nonetheless brought two very important innovations:

1) The Convention is a text with legal obligations for those States which ratify it. Thus the State willingly recognises the authority of the Court, as well as the right of its own nationals to file complaints against it. This is a form of “international law” for the States, going much further than a declaration.

2) Next, with the control mechanism for the application of the rights, it marked the entrance of individuals as participants in international law, composed until then of voluntary agreements between sovereign states. It was a major innovation to allow individual actions, including those against one's own State. This big step forward was only made possible for the partial limitation of the sovereignty of the State, a crucial issue in the international protection of human rights. This pragmatic action was characteristic of the Council of Europe.

The European Convention on Human Rights established the list of rights which States were prepared to guarantee in 1950. Nevertheless, the debate did not stop there. The Convention continued to be improved by extending the number of rights it contained through the adoption of additional protocols, which today number eleven. The ECHR has presently been ratified by thirty of the thirty-four Member States of the Council of Europe, which all recognise the legal status of the European Court of Human Rights and individual right to appeal.

*See Chapter 3 on the European Convention*

### **2.1.3. An example followed by other international bodies**

The innovation made by the Council of Europe in creating a court of appeals to judge human rights violations which were not correctly sanctioned by States, was followed by other regional intergovernmental organisations, with other filing mechanisms for individuals.

In 1969, the Organisation of American States (OAS) created a Commission and an Inter-american Court of Human Rights to apply the “Treaty of San José Costa Rica” American Convention on Human Rights. In 1986, the Organisation of African Unity (OAU) created an African Commission on Human and Peoples Rights, following the “African Charter on Human and Peoples Rights”. The creation of an African Court to complete the system is under discussion.

On the global level, the UN is also developing procedures to examine allegations of human rights violations in its Commission on Human Rights. However, this body is composed of representatives of States and remains a place for political debate. On the other hand, amongst the conventions which give legal value to the principles of the Universal Declaration, six have instituted a Committee of Experts, called “Conventional Committee”, responsible for verifying their application. Three of these Committees can, under certain conditions, receive complaints from victims of violations: that of the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All forms of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **2.1.4. An evolution towards more protection**

In summary, the historic movement at the origin of the international protection of human rights, which was reinforced at the end of World War II, represents the following evolution:

1) *The confirmation of fundamental rights and freedoms of human beings, inalienable rights tied to their humanity.* The rights must be stated, proclaimed in an instrument common to all States, to stop a return to barbaric actions. This was the principal reason for the Universal Declaration of Human Rights.

2) *The creation of the means for the international community of States to effectively guarantee that these rights are respected, if such means are not available at national levels.* This is the added value of the ECHR.

3) *The development of these rights and protection mechanisms, to reinforce them and to follow societal evolution.* For example, the ECHR is complemented by a number of protocols which add rights and simplify access to the court. This happens also at the universal level, where the principles of the UDHR are detailed in Conventions, starting with the two treaties of 1966: the International Covenant on Political and Civil Rights and the International Covenant on Economic, Social and Cultural Rights.

## **2.2. International human rights protection since 1948: an ambitious, yet modest, objective**

When looking at the process of human rights development which started with the Universal Declaration and the European Convention, we observe that this historic movement has more modest objectives than that, for example, of the American Declaration of 1776 and the French Declaration of 1789, both of which were aimed at completely changing society and even individuals.

Since 1948, international human rights law has had the mission of protecting individuals from abusive authorities and guaranteeing them normal conditions of existence. It does not overthrow societies, it puts limits on the exercise of power within the society and reminds it of its obligations towards individuals. It must be noted that the definition and translation into law and acts of the latter part of this goal - normal conditions of existence - are always the subject of lively discussion.

### **2.2.1. What are the advantages of an international protection system ?**

Human rights apply to daily life just the same as to large collective events. For this, the State has the responsibility to refrain from any intrusions into peoples' lives, to provide a certain number of benefits and to guarantee for everyone the respect of their fundamental rights by the other members of the society.

All individuals also have responsibilities in this area. Each benefits from rights respected by everyone. This reciprocity is one of the characteristics of human rights, ensuring people of their security, integrity and dignity.

It is necessary to avoid a small, negative perception of human rights. These rights are not only to be brought out when they are violated. They are principles which are to be permanently applied for authorities and for individuals.

#### 1) Completing National Protection

When a violation does occur, if the right or rights concerned are complete, they will indicate forms of sanction.

*See Chapter 6 on the elaboration of human rights*

The first level of sanctions is local or national, closest to the place and level of the violation. In European countries notably, human rights are protected by national law. They are applied by the appropriate instances: local, national, administrative, judicial, penal, civil, etc.

It is only if, at national level, a violation is not sanctioned that the international protection system tries to propose equitable solutions. International human rights protection exists to complete national means. There is one preliminary condition: that the country has ratified the judicial instruments and recognise the control bodies.

#### 2) Why Should a State Ratify the Texts?

This condition underlines the importance of the commitment that each State makes vis-à-vis the other States in the international community when ratifying human rights protection treaties. It offers those persons under its jurisdiction a legal reference and a supplementary guarantee. It also gives indications of the democratic character of that State.

All the same, the importance of ratification shows the greatest weakness of the international system of human rights protection. For it to operate fully, States must voluntarily submit to it and, above all, must exist in a *rule of law*. If not, these commitments are more formal than real. In case of conflict, the international human rights protection system is of little efficiency; it was not foreseen for that.

Experience has shown, however, that even in States with a long tradition of democracy, the supplementary international protection has proven very useful when its legislation has cracks, when institutions commit abuse or when new problems arise. For States where the practice is still far from international commitment, it allows the opening of discussion on the subject, to raise awareness of the weight of preoccupation by the international community and, often, to make great strides ahead.

In summary, the international system of human rights protection:

- formulates the principles and rights which guide or enter directly into national law;
- provides procedures to overcome the weaknesses of national protection of fundamental rights.

### **2.2.2. The source of human rights: the natural rights of the human being**

The responsibilities of all authorities regarding human rights protection come from the fact that the human being has inalienable rights, inherent in his person, which do not depend on the good will of any authority. To attack these rights has no legitimate basis. Authorities must justify themselves if they wish to restrict them.

Speaking of fundamental rights makes direct reference to the philosophy of natural rights, inspired by European Humanism, part of the cultural heritage of our continent and which continues today to be enriched by social, political, economic and scientific evolution.

The origin of these basic rights given human beings may be divine or “natural”, depending on the school of thought. Some of the concepts they contain may even come from divergent schools of thoughts. Declarations and conventions on human rights say nothing on the subject -- on purpose. They respect the diversity of concepts. What these texts wish to confirm is simply the existence of such rights. In doing this, they concentrate on the link between the individual and authorities, on the legitimacy of the latter’s actions and on the conditions of coexistence between equal individuals. They have no wish to go any further than that.

Beyond the equality of respect of each person, legally and in dignity, human rights do not create any closed philosophical, religious, political, social or cultural system. On the contrary, they open up the coexistence of a plurality of ideas, beliefs, cultures, practices, social organisations, etc.

## **2.3. The crucial role of the teacher**

### **2.3.1. Between values and rights**

From a pedagogical point of view, the fact that human rights in our era are, above all, the translation into statute law of natural rights is very important. The teacher, as transmitter of human rights education, is placed in the centre of this relationship between natural rights (debated and lived in a society) and statute law (confirmed and guaranteed by the institutions of that same society).

All pedagogues know the great sensitivity of students to anything dealing with the law; whether it concerns problems external to the school, problems within the school or simply their own rights. It is their form of participation in debates to define natural rights, which are carried out in all our societies.

The demands of natural rights call upon society's common sense. Discussion of this, however, shows that they are not the same for everyone. These natural rights also have philosophical roots. Through their origins, their family culture, etc., each student carries philosophical premises which direct their view of the world. Notions of respect, dignity, individuality, to cite only a few, produce vast philosophical debates concerning their definition. It is here that human rights education shows its particularity, vis-à-vis moral or philosophic education, for example.

Legal texts concerning the protection of human rights translate a certain number of these values regarding the relation between power and authority into statute law. The establishment of these laws is the result of a process, often long, of discussions, decided at a given moment by a legitimate authority. This, for example, could be a parliament for national laws or the Committee of Ministers for the Council of Europe.

What distinguishes these values, with regard to others which are not defined in law, is that upon becoming law they can become sanctionable. In this process of "stating the law" and elaborating the application procedures, theoretical questions become embedded in reality, even if imperfectly. Legal instruments evolve, but they provide reference points as to what is guaranteed and how it is guaranteed.

Teachers of human rights education must not limit themselves to debate on the moral values of society, but must help the student to know these laws, to understand how they work, the premises on which they are based, how they have developed, and the ways and means to ensure they are respected.

### **2.3.2. A meeting of influences**

During the reconstruction process following a conflict, teachers see the challenge of human rights education increased by the meeting of a number of influences, coming as much from law as from societal movement:

- *The fragility of values.* With a return to peace, some values resurface, but not all, and they remain fragile. Everyone knows that principles formulated in peace time can occur in time of war. Even in the midst of confrontation and difficulty, certain values survive. Even more, to reconstruct real peace, it is necessary that essential values are resurrected. In this context, discussion around values takes on a particular importance.

- *The definition of natural rights.* All societies know the debate on the definition of natural rights. In Europe, we have the advantage of a secular heritage as the foundation of our

views and which ensures a large consensus. All the same, the evolution of our societies brings up new problems which require looking again at previous definitions.

- *National law, not yet completely guaranteed.* National law and the instances necessary for its guarantee are being rebuilt. They cannot yet be counted on out of habit, and require more time to be fully operational. The rule of law is emerging and does not yet provide an obvious reference for everyone.

- *European and international influences.* The European system for human rights protection is a longer term goal to be achieved. The international system in its entirety provides reference points for reconstruction, but its credibility is weakened by its limitations in war time.

### **2.3.3. A help to education**

To stand up to these difficulties, human rights, as we have already suggested, provide some assets.

#### 1) The Right to Education

The first proven asset which appears is fundamental for education in general, because it is the right to education. All the education work carried out by the teacher is supported by human rights. The Universal Declaration clearly states in Article 26:

“Everyone has the right to education.”

It goes on to say:

“Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”

It is clear that everyone must benefit from an education, and that this education requires an equality of access and that neither the organisation nor the contents of the education can move away from the respect of human rights.

Note that equality of rights in education can be looked at from at least three angles:

- equality in access to education,
- equality in the educational paths to be followed,
- equality of treatment in pedagogical relations and places of learning.

#### 2) Obligatory Human Rights Education

A second asset is that human rights education is part of the right to education, as clearly stated in the universal texts. If the European Convention on Human Rights, concentrating on the defensible aspects of the right to education, retains rather limited scope for this right and does not explicitly touch on obligatory subject matter, one must not conclude that the Council of Europe does not feel it is important. On the contrary, education is a domain in which it invests a lot of effort, starting with the 1954 adoption of the European Cultural Convention, which created the Council for Cultural Co-operation (CDCC), bringing together all States which ratified the Convention.

#### **Recommendation on human rights education in the school**

While co-operation between States on education matters is an important part of this convention, it is not, in this European right, human rights, basic rights which an individual can bring before a court. This is why, in 1985, the Council of Europe's Committee of Ministers, recalling all the actions already undertaken, adopted the Recommendation on Education and Teaching of Human Rights in School - Recommendation R(85)7 - which is very detailed.

The necessity to widely spread and make known human rights seems obvious; however, it is an aspect which is too frequently forgotten. It is only recently that this theme returned to the forefront.

#### **2.3.4. Human Rights And Pedagogical Principles**

We have seen that human rights does not give a closed philosophical interpretation, but rather a frame of reference which allows a diversity of interpretations to co-exist. Similarly in pedagogy: rather than a single pedagogical formula, human rights gives a frame of reference for a respectful pedagogy.

The notion of equal dignity, coming from the long European tradition of humanism and natural rights, not only influenced the creation of modern statute law, but also pedagogical thought. Debates on respect of the individual and of the groups to which he may belong, have always included the educational principles which should lead to his fulfilment. It goes without saying that pedagogical practices which violate fundamental freedoms would have difficulty passing on the ideas of human rights.

As the right to education underlines, education must rest on a fundamental base: *the equality in dignity and in law* of all human beings. It is upon this equality that relationships are founded in society which respects human rights.

During reconstruction, a priority for schools must be to re-establish students and other members of the scholastic community to their positions as citizens, subject to equal rights in dignity and in law, at least in the scholastic environment.

To proceed in this direction, the teacher can act on three levels:

1) In the relations with students and other members of the scholastic community, by basing them on respect, as well as principles such as dignity, freedom, reciprocity or security.

2) In the management of his or her classes, by installing a climate of democratic working, with explanation of rules, with reference to human rights, with the existence of means of appeal.

3) In promoting, within the school and in external relations, participation, access to information, freedom of expression.

### 1) Developing Respectful Relations

The first field of action available to the teacher is that of the relations he establishes with his students and with the other members of the scholastic community. Whatever the situation or its constraints, it is possible to develop mutually respectful relations, which apply a number (even minimal) of values.

*Respect persons and respect their rights.*

It is by respect that the values which form the foundation of human rights can be lived. It is by respect that equality in law is expressed. This respect concerns all members of the scholastic community, with particular attention on students.

The student is the main reason for the existence of the scholastic institution. However, his position as a learner, his inferiority of knowledge, puts him in a position of inferiority concerning power in the institution. Human rights are aimed at regulating power relations. There is a lack of symmetry between teacher and student, but this must not be the pretext for an abuse of power. Students must always receive the message of respect for them during their education, respect which will be the democratic message of the school.

To establish mutually respectful relations, a number of points must be taken into consideration:

*Establish reciprocity.* Reciprocity is implicit in the concept of equality before the law. Everyone must also be able to participate in the definition of rights. In education, this concept is tremendously important. It directly touches the pedagogical relation which must consist of a reciprocal exchange between teacher and student. Contrary to a fear sometimes expressed, this allows the respect of human rights to be more than a simple reversal of power in the educational institution. There is an imbalance between teacher and student, but this should not be the pretext for an abuse of power. The student has the right to be heard and respected. The contrary is also true. Respect of the student, of his rights, implies the same of those of the teachers and of all members or partners in the scholastic community.

*Ensure a feeling of security.* It is one of the fundamental tools from human rights for pedagogy. Human rights proclaim the right of everyone to live in security. Too often, in educational activities, psychological security as much as personal (or their perception of security) is not taken into account, leading to defensive reactions such as rejection. Pedagogy must not violate the conscience of students; everyone has the right to protect themselves. Obviously, this is also the case for teachers and other members of the scholastic community. This security permits application of freedoms without menace for anyone.

*Give confidence.* This is one of the hoped-for results of respect for each other. If the school can be a place where relations are lived in confidence, it gains in the re-establishment of each one as a subject of law.

*Safeguard the dignity of everyone.* Dignity integrates many dimensions of the individual and is, therefore, very subjective. Dignity is a personal feeling, which also shows the recognition of one's entourage or of society. One part of its content comes from the individual, consciously or not, whereby the importance of listening carefully to members of a scholastic community since it is not possible to decree the dignity of others.

*Preserve free spaces.* Freedom brings us immediately to natural rights. In pedagogy, it is the opening towards creativity, expression, autonomy and much more. It is also a risk, because the freedom of the student is also that of a possible questioning of what is being taught. But it is indispensable, because without it, human rights education would lose its foundation.

All of these notions come directly from the foundations of human rights and are explicitly detailed in numerous articles. They can be developed in the pedagogical relations between teachers and students, but they also concern the class, the scholastic organisation and the relations between members of the teaching community.

## 2) Establishing a Democratic Climate in Class

Democracy is the system which allows the best respect of human rights. In class, to install a true *democratic climate* means that questions of authority and power can be discussed, in an atmosphere of respect as already mentioned. Considering the obligations of a school, it is not possible to reproduce all those institutions which guarantee human rights in society but the existence of discussion times or places, of *freedom of expression*, allow each one to exercise their rights and to live in a better climate for learning.

The particularity of human rights education is its reference to legal texts. This gives the means to show that the democratic rules which the class or the school elaborate are anchored in a greater whole and are not without links to the real world.

*Reference to human rights protection instruments and institutions must be made.* We have seen over and over again that within "human rights", there are "rights". Human rights education which merely makes allusion to the major moral principles, without presenting their translation into judicial norms and implementation institutions, cannot be considered as an education in human rights. Knowledge of the texts guaranteeing rights and their use is a basic element of human rights education.

At the same time, this shouldn't be limited to a cognitive undertaking. In educational practice, *it is also necessary that the rules are explicitly known and understood.* That is to say, all educational communities, whether it be class or school, should function with rules that are known to all. They must be transparent.

One of the guarantees of human rights, we have also seen, is *the right to appeal*, which allows an individual to be heard when he feels that his rights have been violated. In the classroom and school organisation, he should have the same possibility, so that the members of a scholastic community may air their grievances, if the need arises. Often, confusion over power in scholastic institutions inhibits this from taking place; and a disruption in the respect of human rights ensues.

## 3) Promote Participation, Access to Information, Freedom of Expression

Other elements which the teacher can promote are more influenced by the circumstances in which he finds himself and in the relations which his scholastic institutions creates with society.

An individual must be able to participate, in one form or another, in the running of public affairs and, thus, in governmental decisions. This is one of the guarantees of human rights.

*Participation* in the various components of scholastic community life may be quite vast. It can take many forms and cover a variety of elements, up to the pedagogical content. In order for the participation to be genuine and as widespread as possible, the existence of a democratic climate is essential.

*Freedom of access to information* is one of the conditions to be able to exercise one's rights. Thus, it is frequently mentioned in human rights texts, such as the Convention on the Rights of the Child. At school, this refers to official information internal to the school, as well as that which comes from outside the school.

## **2.4 Summary**

In human rights education, the teacher tries:

- to make known and understood contents, defined by texts which translate into law the principle of respect of equality of rights and dignity of all individuals,
- to show the advantages of these rights, so that the student may put them into context and apply them. This application might be shown by an attitude of respect of everyone's rights,
- to make known the national and international institutions which are responsible for the implementation of these rights and to impose sanctions in cases of non-respect, and to which everyone must have access.

Human rights education is not just additional material to be added to an already overloaded programme in order to give a good impression. It concerns all education. It can be formally introduced in numerous subjects, but it can above all influence all educational activities. Human rights education plays a fundamental role in providing society with reference points for its construction.

## Part II - Protecting Human Rights

### 3. How are human rights protected in Europe ?

#### 3.1. Is there a European approach to human rights ?

Human rights are codified, in law, in what has become known as “international human rights law”. This label groups declarations, conventions and other legal texts which proclaim and define the fundamental rights of the human being, as well as the procedures and institutions which have been created to ensure their application. These rights are universal, that is to say they are applicable to all persons, no matter where they are and no matter what their origin or other qualities. Nevertheless, Europe, followed by other continental regions such as the Americas and Africa, also developed “regional” rights for the States in their zone. This regional law reinforces the universal rights on which it is based. There exists, therefore, a European approach to human rights, formed as much by a secular history as by consciousness of the enormous dramas provoked by totalitarianism in the twentieth century.

##### 3.1.1. Which international bodies protect human rights in Europe ?

###### 1) The Council of Europe

The **Council of Europe** developed what is known as the “European system of protection of human rights”, an ensemble of conventions and institutions created within this regional intergovernmental organisation in order to proclaim and apply the fundamental rights of individuals. The most important of these texts is the European Convention of Human Rights, which provides for the protection of civil and political rights. The aim of this protection system is to allow European institutions, such as the European Commission on Human Rights and the European Court of Human Rights, to take steps to ensure a collective guarantee of those rights which States have agreed to respect.

The European system of human rights protection is the oldest of all the human rights protection systems. It is also the one which goes the farthest in its recognition of the principle of “supranational” protection.

Therein lies its principal characteristic: so that respect of fundamental rights does not stop at the stage of simple proclamation of good intentions, the European system requires States to maintain national institutions which respect these rights and which provide individuals an ultimate point of appeal should these national institutions fail.

###### 2) Other Institutions

To be added to the Council of Europe are the texts and bodies put in place within other European intergovernmental organisations, such as:

- the **European Union** (EU) which groups 15 Western European States, primarily on the basis of economic co-operation, with an ever-increasing integration of the European economies. Since the Treaty of Maastricht, social and political considerations have also

been taken into account. Nevertheless, the Member states of the European Union maintain their own international political strategy. In this domain, the European Union only intervenes regarding humanitarian aid and development co-operation. Everything concerning European protection of human rights remains essentially with the Council of Europe.

- the **Organisation for Security and Co-operation in Europe** (OSCE), which groups 53 States: the European States plus the United States and Canada. The OSCE is the transformation of the Conference on Security and Co-operation in Europe which brought together the two blocs from the time of the cold war and which negotiated the final Helsinki Act of 1975. With the end of European division, the objectives of this Conference were modified and it became the OSCE, with three specialised secretariats: a centre for the prevention of conflicts in Vienna, an office of the High Commissioner for National Minorities and an office for democratic institutions and human rights in Warsaw.

These two organisations carry out specialised human rights activities, which are based on the Council of Europe's Convention and its protection system.

In addition, almost all European States are also members of the **United Nations**. Within the framework of this universal organisation, these States have contracted to respect human rights, preparing reports in accordance with control procedures. Nevertheless, apart from the creation of international tribunals for crimes committed in ex-Yugoslavia and Rwanda, the United Nations has no judicial body acting in the field of human rights.

### **3.1.2. What are the characteristics of the European System ?**

The European continent was particularly shaken by the two World Wars. The reconstitution of Europe following the Second World War was done through European movements which favoured a new society, based on concepts and ideologies emphasising the primacy of the individual. They gave inspiration to the founding principles of the Council of Europe.

#### 1) Central Role of The Council of Europe

The Congress of Europe, held in The Hague in 1948, paved the way for the creation of the Council of Europe, which was born in 1949 in London. Following directly on the creation of the Council, the European Convention on Human Rights was written and adopted in 1950. It is not possible today to speak of human rights in Europe without referring to the work carried out over the past fifty years by this regional intergovernmental organisation. To join the signatories of the Convention, one must be a member of the Council of Europe.

All European States practising parliamentary democracy, founded on plurality, have become or could become members of this organisation. In light of this, the States of Central and Eastern Europe which have abandoned the Marxist-Leninist system to become parliamentary democracies, have started being admitted to the Council of Europe since Autumn 1990.

#### 2) Foundation Text : The Universal Declaration of Human Rights

The European States of the era - almost all members of the United Nations - participated in writing the Universal Declaration of Human Rights, adopted in 1948, as well as in the first work on the future international treaties which would give legal value to these rights. At the time of the creation of the Council of Europe, the Universal Declaration was the only text in effect concerning human rights.

### 3) Justiciability

Many European States wanted to go further than simply proclaiming these rights; they wanted mechanisms to protect them. Even more, their desire was that any person whose fundamental rights had been violated had a means to ask for redress through appeal to a jurisdiction. This is what is known as justiciability. This was the motivating force pushing the Council of Europe to develop a regional convention with, as its base, a Commission and a European Court, which give individuals a place to appeal when they feel their rights have not been protected by national authorities.

### 4) Collective Guarantee

Originally a protection system which, for the first time, allowed individuals to act on an international level - until then reserved for States - this approach to human rights then inaugurated the idea of "collective guarantee". In other words, this means that this Convention does more than simply link States to one another. Any State may now lodge a complaint for human rights violations committed by another State, without having to prove itself victim. All States have the collective responsibility to ensure respect of those rights included in the Convention.

## **3.1.3. What are the fundamental principles of the Council of Europe ?**

Taking into account its pioneer role in human rights protection, the fundamental principles of the Council of Europe provide the orientation and conceptual framework within which human rights develop in Europe.

The fundamental principles of the Council of Europe are:

- the protection of basic rights and freedoms;
- the pre-eminence of law (state of law);
- pluralist democracy.

### 1) Basic Rights

Article 3 of the charter of the Council of Europe, signed 5 May 1949 in London, states:

“All members of the Council of Europe recognise the principle of the pre-eminence of law and the principle by which all persons placed under their jurisdiction must have human rights and basic freedoms...”

This article carries out one of the original reasons for creating the Council of Europe: the protection of basic rights.

The European human rights systems sits on a base of two conventions:

- The European Convention on Human Rights (ECHR), and
- The European Social Charter.

These two conventions form the pillars of the system. The first guarantees the most basic civil and political rights, whereas the second proclaims economic and social rights. Each of these instruments has its own procedures for monitoring its application. The system is further completed by other instruments (conventions, resolutions, etc.) concerning certain specific categories of rights.

As the Council of Europe opens up to new democracies and as they sign the European texts for protection of fundamental rights, these States tend to become part of a judicial patrimony common to Europe, thus creating a true common European legal framework for human rights.

## 2) Rule of Law

We have just seen the importance given by the Council of Europe to the application of basic rights. This may limit the definition of these rights, but at the same time it strengthens their attainment. When creating the European Court of Human Rights, it was the Council of Europe's desire that the question of the implementation of these rights would not depend on a political process. A legal process offered more stable guarantees, as is the case at the national level in all democratic states, as long as the judiciary is allowed to function correctly and independently. For this to happen, the *rule of law* must be solidly in place. For this reason, the Council of Europe insists on the primacy of law and devotes numerous activities to it.

The question of the pre-eminence of law is an important one for the Council of Europe, which can be found in the preamble of its charter and in the European Convention on Human Rights. Moreover, respect of the rule of law is amongst the conditions for admission of a State to the Council of Europe.

A number of elements characterise the rule of law: the primacy of the individual is at stake, the authorities guarantee individuals the basic rights inherent to the human being. However, this does not mean that individuals can do whatever they wish. Rules established by authorities are to be respected, because respect of an individual's basic rights within society comes through respect of State institutions. The guarantee which the State offers its citizens by these institutions and respect of the control mechanisms in the application of rights and fundamental freedoms go hand in hand. A State with a rule of law must ensure its citizens the right to exercise all their rights: civil and political, as well as economic, social and cultural.

The European Court of Human Rights, in a number of its judgements, has had the opportunity to detail its concept of the rule of law. For the Court, the entire Convention is based on the pre-eminence of law. This signifies that all interference by authorities in the rights of an individual may be subjected to strict verification. All individuals must be able to call upon adequate protection from arbitrary action. Judicial authority offers the best guarantee of independence, impartiality and proper procedures, to control interference by the executive authority.

To be able to function correctly, a State with a rule of law must be democratic and pluralist.

### 3) Pluralistic Democracy

The States which created the Council of Europe considered that democracy was the common point which brought them together into this regional intergovernmental organisation. When writing the ECHR, they put together the rights at the base of all “true democracies”. The Council of Europe is, therefore, very insistent that these rights are preserved by national democratic institutions. This remains one of the criteria for membership. This base is also one which allows the preservation of the diversity of democracies existing in Europe. Human rights do not provide a “single train of thought”; on the contrary, they guarantee plurality. It is essential that democracy is the expression of this plurality.

Admission of European states to the Council of Europe is conditional on the existence of a real democracy, that is one which is based on the respect of the freedom and legal equality of its citizens. A democracy in which the population exerts its sovereignty directly is a parliamentary democracy. It is characterised by the existence of numerous schools of thoughts and ideologies, which conform to democratic rules and respect the freedoms and basic rights of the person.

However, as the European Court of Human Rights has had the occasion to state, democracy does not boil down to only the supremacy of a majority. It calls for a balance which ensures minorities of correct treatment and which avoids any abuse of a dominant position. In consequence, openness, tolerance and pluralism characterise democracy. Freedom of expression, the principle of separation of power (executive, legislative and judicial), a good administration of justice, and the pre-eminence of law are all part of the fundamental principles of democratic society.

The three bases: fundamental rights, rule of law and pluralist democracy are, thus, tightly linked. Each requires the existence of the others.

#### **3.1.4. What are the European texts for protection of human rights ?**

As we have seen, the main text is the *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)*.

In addition to this convention, in 1961 the Council of Europe adopted the *European Social Charter*. The Social Charter is the counterpart of the ECHR in the social and economic domain. Its objective is to guarantee nineteen fundamental social rights, plus four others added by adoption of an additional protocol in 1988.

The *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT)* was adopted in 1987. The goal of this convention is to reinforce Article 3 of the ECHR which forbids torture and all inhuman or degrading sentences or treatment.

In addition to these instruments, a number of declarations, recommendations, directives and resolutions concerning human rights have been adopted by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to be implemented by its Member States.

### **3.1.5. How are human rights applied ?**

#### 1) By National Courts

All rights proclaimed in the European texts are first of all applied at national level by appropriate bodies. Often these rights are repeated in the national constitution and other fundamental texts. They are then detailed in the texts of laws, elaborated in parliaments. Governments (executives) have often prepared them and are obliged to respect them and see that they are applied. National judicial systems are there to penalise possible violations of these rights.

#### *In case of inadequacy at the national level*

In case of an inadequacy or lack of means of human rights protection at the national level, appeal can be made at the international level. Regional level (European for European countries) and universal level (bodies of the United Nations) constitute international appeal levels.

For example, there might be a case of rights insufficiently defined in a national text. The national judicial body, depending on what the national judicial system allows, might use international law directly. When elaborating a new national law, the executive authority or parliament uses the internationally-defined law to write its text. This type of recourse to international human rights law is frequent and happens at regional and universal level.

Another form of recourse exists when national courts do not seem to fulfil their obligations regarding international human rights law; there is individual right to appeal available to all persons, who can address themselves directly to a regional or universal body recognised by their State in order to lodge a complaint against that State.

#### 2) By The European Commission and Court of Human Rights

This is the protection system created by the ECHR. The Convention defines a procedure in which a person who has no further right of appeal at national level to exercise their rights, has the possibility to turn to the European Commission on Human Rights. The latter verifies if the complaint is well founded and if it can be examined. It tries to find an accord between the plaintiff and the State concerned. If this cannot be arranged, it turns to the European Court of Human Rights which hears the parties and renders a judgement, obligatory for the State concerned.

#### 3) By The European Committee for the Prevention of Torture

The European Convention for the Prevention of Torture (ECPT) has the objective of reinforcing Article 3 of the ECHR, which forbids torture and all degrading or inhuman sentences or treatment. This new convention creates a non-judicial prevention system. A European Committee of Independent Experts makes periodic field visits to detention facilities

in all countries which have ratified the ECHR. They can make “ad hoc” visits, comparable to “surprise visits”. Recommendations by the Committee to the governments concerned are

confidential, but the Committee may make public the desire of a State to not co-operate in improving detention conditions.

#### 4) By The Committee of Ministers of The Council of Europe

In a number of fields, it is the Committee of Ministers of the Council of Europe which examines the way in which States carry out their obligations. The Committee of Ministers, which brings together permanent representatives of Member States, is the body of the Council of Europe which organises the activities of the organisations in conformance with its principles. States are required to adhere to its decisions and resolutions.

The Social Charter has a control system which rests on analysis of periodic reports from the States which ratified it and which, after examination by specialised committees, results in resolutions by the Committee of Ministers of the Council of Europe. The Charter does not have a control mechanism with the force that the Commission and the European Court of Human Rights have for the Convention. However, a project for class action suits concerning violations of the Social Charter is under study.

### **3.2. Which rights are protected at the European level ?**

#### **3.2.1. Civil and Political Rights: The European Convention on Human Rights**

The European Convention for the Protection of Human Rights and Fundamental Freedoms was signed in Rome, 4 November 1950. It came into effect 3 September 1953. On that date, ten European states had ratified it, the minimum number required to be considered a law.

The European Convention on Human Rights was preceded by the Universal Declaration of Human Rights in 1948. The Convention was the first international human rights instrument aimed at protecting a large spectrum of civil and political rights, which, on one hand, took the form of a treaty judicially restrictive for the signing parties and, on the other hand, established a system to monitor the application of rights at an internal level.

European human rights law remains law in constant evolution, both in content development as well as in the adaptation and improvement of its monitoring procedures. In this way, eleven protocols were added to the Convention, which count as much as the articles of the Convention itself.

The preamble sets out the notion of political democracy, which doesn't appear in the statutes of the Council of Europe. All the same, it rests on the collective guarantee of human rights.

The rights guaranteed by the Convention can be regrouped into seven larger categories:

1 - *Freedom of the physical person*: the right to life, prevention of torture and inhuman or degrading treatment, prevention of slavery, servitude and forced or obligatory labour, right to liberty and security, liberty of movement;

2 - *Respect for private life* and family, home and correspondence;

3 - *Right to effective appeal* and a fair trial;

4 - *Freedom of thought*:: freedom of expression and information, freedom of thought, conscience and religion, right to education and respect of the religious and philosophic beliefs of parents;

5 - *Protection of social and political activity*: freedom of assembly and association, right to free political elections;

6 - *Respect for possessions*;

7 - *Non-discrimination* in the enjoyment of the rights and freedoms recognised in the Convention.

As well as being guaranteed by the Convention, a number of these rights and freedoms are further recognised by the Additional Protocols 1, 4, 6 and 7.

Even though regrouped into seven larger categories, it is useful to look at each basic right individually to see to which type of article it refers regarding the Convention and to which protocol if it is recognised in one of the additional protocols. It is equally useful to look at to the scope and limits of these rights. The definition of rights, in reality, is done progressively through judgements of the European Court of Human Rights. As each decision of the Court is highly motivated, the interpretation of rights continues to progress by means of jurisprudence.

#### 1) Freedom of the physical person

-*Prohibition of torture, inhuman or degrading treatment*: The rights protected by Article 3 of the Convention directly touch the personal integrity and human dignity of the individual. There is also the prohibition to be subjected to torture or to punishments or treatment which is inhuman or degrading.

- *Prohibition of slavery, servitude and forced labour*: Article 4 of the Convention separately treats slavery and servitude in one part, and forced or obligatory labour in another. The first two terms cover extreme forms of appropriation of an individual and characterise oppressive conditions which the individual cannot change nor escape. The other two expressions place the accent on non-voluntary character of labour or the services in question, which must be carried out on a temporary basis or which are added to other obligations or civil circumstances.

- *Right to life*: Article 2 and Protocol 6. The right to life is one of the most obvious basic rights. Having said that, it should be noted that neither Article 2 nor Protocol 6 call for the abolition of the death penalty, nor are they aimed at unconditionally protecting life or at guaranteeing a certain quality of life. These provisions are aimed at protecting the individual against loss of life arbitrarily imposed by a State.

- *Right to liberty and security*: Article 5 and Article 1 of Protocol 4. Article 5.1 of the Convention guarantees everyone the right to liberty and security, but there are, however, six exceptions. Article 5 is aimed at the liberty of the physical person, notably the prohibition of arbitrary arrest or detention. The article does not protect persons against less severe forms of limitation of individual freedom, for example: the application of traffic rules,

obligatory registration of foreigners or citizens, surveillance of paroled prisoners, the application of curfews or other types of rules which do not severely restrict the freedom of the individual to move within the community. Nevertheless, some guarantees must be observed in cases of loss of freedom, i.e.:

- *Right to be informed of the charges*: All individuals deprived of freedom must be informed, in the shortest delay and in a language they understand, of the reasons for their arrest and all charges brought against them. This principle holds for both criminal law and civil law.

- *Limitation of preventive detention*: Article 5.3 requires that all persons held under the conditions foreseen in Article 5.1.c are quickly brought before a judge or other magistrate, and must benefit from protection in form and in substance. Article 5.3 also guarantees that persons who have not been freed have the right to be judged within a reasonable time. The goal is to avoid indefinite detention during which the State prepares its case.

- *Habeas corpus*: Article 5.4 guarantees all persons deprived of freedom by arrest or detention, the rights to protest the justice of the action before a court. The basis of Article 5.4 is the existence of a control of the legality of the detention.

## 2) Respect for private life

- *Right to respect of private life and family life, correspondence and home*: Article 8.

- *Right to marry and equality of rights between spouses*: Article 12 and Protocol 7 (Article 5).

Protection of private life is an area where it is clear that the role of State is abstinence. This is why the Convention specifies (Article 8, para. 2) under which circumstances a State may justify interference: either because of a menace to the State or in public interest. When the Court has cases of this type to deal with, they scrupulously examine them. The right to marry

(Article 12) is linked to Article 8. These rights concerning the family are also treated by several points in the Social Charter (Articles 7, 16, 17, 19), but in a different manner.

## 3) Right to appeal

- *Right to appeal and a fair trial*: Article 6, Protocol 7 (Articles 2 to 4) and Article 13.

The right to a fair trial (Article 6) is a key article of the Convention. It assures two types of rights: rights which are the foundations of freedom, and protection rights. The latter do not give freedom, but rather ensure its safekeeping. The right to a fair trial, that is to say, to justice, is the best example. Judicial authority should be independent and impartial. Law suits must be defended in public and within a reasonable timeframe. This last point is the subject of numerous appeals to the Court. All persons are presumed innocent until they are proved guilty. The accused must be allowed to defend himself, or by a lawyer, and must be allowed appropriate time to prepare his defence, to call witnesses and be assisted by an interpreter if required. In addition, anyone who considers that rights guaranteed by the Convention have been violated, must be allowed to appeal this at national level.

## 4) Freedom of thought, conscience and expression

- *Freedom of thought, conscience and religion*: Article 9.

The freedom to practise one's religion is also guaranteed. Manifestations may be limited for reasons of public order, but freedom of conscience and conviction is an absolute right. This right is amongst the essential elements of the identity of all believers, the same as all atheists, agnostics or undecided. This pluralism, won with difficulty over the centuries, is part of the base of our democratic societies.

- *Freedom of expression and information*: Article 10.

Freedom of expression is part of the foundation of democracy. It concerns not only the right to express ideas, but also the right of the public to receive them. Freedom of political debate is the heart of the concept of democratic society which dominates the entire Convention, underlines the Court. Of course, for it to function well, the State might be obliged to impose some restrictions; however, these are limited for the State itself might intervene to assure the public of its rights to be informed.

- *Right to education*: Protocol 1 (Article 2).

In the Convention, the right to education is a basic right, in the sense that no one can be refused this right. On the other hand, it is not specified what means the State is required to deploy; this is left to them. However, everyone must have equal access, without discrimination, to education and instruction.

#### 5) *Social and political activities*

- *Freedom of assembly and association*: Article 11.

Freedom of assembly refers to short-term gatherings, while freedom of association refers to lasting groupings (at least for a certain time) with legal characteristics. These freedoms are sometimes subject to authorisation by the State, which must ensure the good functioning of society. The State may also be called upon to protect the freedom of assembly and association, if these have been hampered for reasons independent of its will. The freedom of association also implies the freedom to *not* associate, to *not* belong to an organisation or union.

- *Obligation of States to organise free elections*: Protocol 1 (Article 3).

This article, even though formulated to obligate States, includes the right of all persons to vote (universal suffrage) and to participate in elections, as stated in the jurisprudence of the Commission and the Court. It does not specify how the voting must take place, but a number of conditions must be fulfilled. Elections must take place by secret ballot, at reasonable and regular intervals, and must ensure the free expression of the people.

#### 6) *Right to respect for possessions*

- *Respect for possessions*: Protocol 1 (Article 1).

This is the only economic right in the Convention. It protects the right of ownership. Given the long debates between States during its elaboration, this right concentrates on the

protection of possessions already owned and not on access to ownership. In addition, this article is the only one which leaves such a large latitude to States to regulate its usage. International control of this provision is, thus, weaker than for other rights.

### 7) Non-discrimination

- *Non-discrimination* in the application of the rights of the Convention: Article 14.

This Article does not exist on its own, since it refers to the other articles. The questions of discrimination (arbitrary distinctions) which it treats are thus with regard to the way the other rights are respected. Each right applies to all persons, without discrimination.

In its Preamble, the Convention specifies that its purpose is not to establish an exhaustive list of basic rights, but rather to define those which States undertake to effectively guarantee.

The most revolutionary contribution of the ECHR is in the provisions of Article 25, according to which an individual has the right to individual appeal. The ECHR established a control system exclusive to itself, wherein the rights it declared cannot become items of negotiation between States.

## **3.2.2. Economic, Social and Cultural Rights: The European Social Charter**

The European Social Charter was created within the Council of Europe to protect economic and social rights. The Charter was adopted in Turin on 18 October 1961 and came into effect on 26 February 1965. The objective of the Charter is to guarantee the practice of nineteen basic social rights, which can be grouped into three categories.

### Protection of work

- right to work,
- right to equitable working conditions,
- right to security and hygiene at work,
- right to equitable remuneration,
- right to belong to a trade union,
- right to collective bargaining (including the right to strike),
- right of workers to protection,
- right to professional orientation,
- right to professional training,
- right of physically or mentally handicapped persons to professional training and professional and social rehabilitation,

- right to exercise a lucrative activity on the territory of other contracting parties,
- right to equality of opportunity and treatment regarding employment, without sexual discrimination,
- right of workers to take part in the determination and improvement of working conditions and the working environment,
- right of all workers to protection in case of dismissal,
- right of all workers to protection from the debts of their employer,
- right of all workers to dignity in their work,
- all persons having family responsibilities and working or wishing to work have the rights to do so without discrimination and, as much as possible, without conflict between their work and their family responsibilities,
- representatives of workers in the company have the right to protection against actions which could be held against them, and must have the necessary facilities to carry out their functional,
- all workers have the right to be informed and consulted in cases of collective dismissal,

*Social protection for the entire population*

- right to health protection,
- right to social security,
- right to social and medical assistance,
- right to benefit from social services,
- everyone has the right to protection against poverty and social exclusion,
- all persons have the right to lodging.

*Specific protection for families and vulnerable populations*

- right of the family to social, legal and economic protection,
- right of the mother and child to social and economic protection,
- right of children and adolescents to protection,
- right of the elderly to social protection,

- right of migrant workers and their families to protection and assistance,

Following the adoption of additional protocol to the Charter on 5 May 1988, four new rights were added:

- the right to equal opportunity and treatment concerning employment and profession, without discrimination based on sex,
- the right of workers to information and consultation within the company,
- the right for workers to take part in the determination and improvement of working conditions and working environment, and
- the right of the elderly to social protection.

### **3.2.3. Rights of minorities**

Since several years, we have seen a resurgence of armed conflicts and ethnic and racial tensions threatening the overall stability of Europe. The protection of persons belonging to national minorities is one of the most serious and urgent problems facing Europe today. The Council of Europe needs to find solutions to this type of conflict which respect human rights and the principles of pluralistic democracy. The base of the protection of national minorities has political stakes and implies the implementation and maintenance of a climate of confidence between the diverse elements of a community, as well as realisation of the law at both international and national levels.

#### 1) The Convention Framework

Following recommendations from the Vienna Conference (8-9 October 1993), the declaration of the Heads of State and the governments of the Member States of the Council of Europe gave a decisive momentum to the work of the Council of Europe concerning the protection of national minorities. The Committee of Ministers adopted on 10 November 1994 the framework of a convention on the protection of minorities. It was opened for signature on 1 February 1995. However, this text has not yet gathered the minimum number of ratifications required for it to be put into effect.

The rights which the Convention framework intends to guarantee are mainly goals yet to be achieved, without having a specific calendar for action. These rights cannot be petitioned in a court. This path has been deliberately chosen by States which were concerned that taking too strict a stand would lead to no concrete results. Therefore, they have chosen a much more vague approach. It is the responsibility of the Committee of Ministers of the Council of Europe to monitor the application of this Convention framework.

It provides, notably, for the recognition of first names and family names in minority languages, the inscription of street names and other topographical indications in minority languages, the possibility to teach and to learn minority languages, and encouragement of community life within minority groups.

#### 2) The European Charter of Regional and Minority Languages

This Charter was adopted by the Council of Ministers on 5 November 1992 and opened for signature. Its goal is to safeguard regional and minority European languages which risk to disappear over time. Its motivation, thus, goes further than only the protection of minorities, at the same time as it contributes to it. While it encourages States to take measures to protect “vulnerable” languages, it does not give rights to persons speaking them. A committee of experts, designated by the Committee of Ministers, oversees the implementation of the Charter. The Charter is suffering at the moment from the same problem as the Convention framework, as it has not yet gathered enough ratifications to go into effect.

### 3) Rights for Members of Minorities

It should be noted that the rights foreseen in these instruments do not only apply to minorities as entities, but to people, to individuals belonging to minority groups. The Convention framework specifies that “people belonging to national minorities may individually as well as collectively with others exercise the rights and freedoms resulting from the principles named in this Convention framework (Article 3, No. 2).

#### **3.2.4. Rights of the Child**

The Council of Europe touched on some of the rights of the child in its principal texts: The European Convention on Human Rights and the Social Charter. These two contain provisions concerning the family, education and instruction. In addition, all dispositions of fundamental rights also apply to children. As well, numerous resolutions and recommendations adopted by the Committee of Ministers and the Parliamentary Assembly over the years concern children in areas such as social protection, family policies, legal affairs, education, media, health, immigration.

The European countries participated in the construction of the Convention on the Rights of the Child. Following its adoption, the Council of Europe developed a project on children’s issues. In 1996, the Parliamentary Assembly adopted a recommendation (1286) on a European strategy for children, asking Member States of the Council of Europe to make the rights of the child a political priority.

The Council of Europe has, as well, several judicial instruments on specific rights of the child:

- the European Convention Concerning the Adoption of Children (1967),
- the European Convention on the Legal Status of Children Born Out of Wedlock (1975),
- the European Convention on the Acknowledgement and Execution of Decisions Concerning the Custody of Children and the Re-establishment of the Custody Of Children (1980),
- the European Convention on Implementation of the Rights of the Child (1996).

### **3.3. How are these rights applied ?**

#### **3.3.1 The Rights of the European Convention on Human Rights**

The rights guaranteed by the Convention should be respected by national courts.

1) In about half of the Member States, the Convention's provisions are considered as part of the internal legislation. In other words, in these countries, the clauses of the Convention directly create laws in favour of individuals, so well that the laws can be invoked in national jurisdictions without any other formalities.

2) In the other States, special legislation is necessary to introduce the Convention's provisions into national law. Nevertheless, any difficulties which might arise in doing this are limited, since, in principle, national legislation had to have been made to conform with the Convention to ensure the respect of the rights given in it. This is what has happened particularly in the United Kingdom and Sweden. However, even in these cases, internal judges often use the European Convention to interpret their own national law concerning the protection of human rights.

In order to ensure the respect of commitments by States as a result of the European Convention on Human Rights, the European Commission on Human Rights and the European Court of Human Rights were created (Article 19). In addition, the Committee of Ministers, the principle body of the Council of Europe, was given control over the implementation of the provisions which protect the rights guaranteed by the European Convention (Articles 32 and 54). It goes without saying that other bodies of the Council of Europe which were involved with the creation and adoption of the Convention are also involved to facilitate and assure the implementation of the Convention: the Parliamentary Assembly, the Directorate of Human Rights within the Secretariat.

#### **3.3.2. The European Commission on Human Rights**

The European Commission on Human Rights is composed of a number of members equal to that of States which are part to the European Convention on Human Rights. The members of the Commission are elected for a six-year term by the Committee of Ministers. The members sit on the Commission as individuals and are eligible for re-election (Articles 21, 22, 23). All Commission members carry out their function in their personal capacity. In order to be elected, they must "be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence" (Article 39, no. 3). The Commission is located in Strasbourg, at the headquarters of the Council of Europe.

##### 1) Petitions requested by States

All States which have ratified the European Convention on Human Rights accept by that act the competency of the Commission to receive complaints from another State alleging breaches of the provisions of the Conventions (Article 24). State-initiated petitions are not subject to the same conditions of admission foreseen for individual petitions, with the exception of the obligations to have previously tried all internal possibilities of appeal within the State in question. (Example: the case of Ireland versus the United Kingdom.)

## 2) Individual Petitions

Individuals may file petitions with the Commission for violations of the Convention by a Member State only if that State has officially recognised the competency of the Commission. Petitions may be filed by “any person, non-governmental organisation or group of individuals claiming to be the victim of a violation of the rights set forth in this Convention” by a State which accepted the competency of the Commission to receive such individual petitions (Article 25, no. 1).

### *Examination for Admission of Petitions*

The Commission can only be approached after all possible internal remedies have been exhausted, as is custom in accepted international law and within a delay of six months from the date of the final internal decision. The first action of the Commission is to examine the petition to verify its right to be admitted.

According to Article 27, number 2, a petition may be declared as inadmissible if it is incompatible with the provisions of the Convention, clearly ill-founded or abusive. For example, the Commission would consider a petition inadmissible if it were directed against a State which had not accepted individual petitions. It is the same as if the petition alleged the violation of a right not guaranteed by the Convention. The charge of being manifestly ill-founded is one of the major reasons used for inadmissibility by the Convention. Petitions are rejected in this manner when the author has not provided any evidence to support his claim. Allegations do not constitute a violation of the Convention. Abuse of the right of petition is another cause of inadmissibility, wherein the allegations are consciously false or ill-founded, or the language used is defamatory or rude toward the government being charged.

The decision on admissibility of the petition is an important hurdle; referring a case to the Commission does not follow any formal conditions, a simple signed letter may be considered as a petition, no matter what the contents.

### *Procedures after admission*

Once the Commission has ruled a petition admissible, it has a triple task to carry out:

- establish all the evidence of the case,
- try to come to friendly settlement, or if that is not possible,
- to transmit a report to the Committee of Ministers, stating the existence or not of a violation of the Convention.

### **3.3.3. The Committee of Ministers**

The Committee of Ministers is a political body. Twice per year it brings together the Ministers of Foreign Affairs of the Member States of the Council of Europe, as well as sitting all year at the level of Permanent Representatives of these same States.

The Committee of Ministers makes the final decisions following introduction of a petition. If the Court is not seized of the case within three months from the date the Commission's

report is sent to the Committee of Ministers, the Committee must decide whether or not there has been a violation of the Convention (Article 32, no. 1). This decision is taken a two-thirds majority of the Committee, and the States involved in the case may participate in the vote.

The Committee of Ministers supervises the implementation of decisions taken by the European Court of Human Rights.

According to Article 32, no. 4, Party States to the Convention undertake to regard as binding decisions taken by the Committee. The sanction possibilities available to the Committee of Ministers, however, are limited. At the most, they can apply Article 8 of the Statutes of the Council of Europe and suspend the right of representation of the accused State, asking it to withdraw from the Council of Europe. If the State does not comply, the Committee may decide itself that the State no longer belongs to the Council.

### **3.3.4. The European Court of Human Rights**

The European Court of Human Rights has a dual jurisdiction: on one hand, litigious and on the other consultative. It is composed of a number of judges equal to the number of Member States of the Council of Europe.

#### 1) Litigious jurisdiction

Because of its recognised jurisdiction in matters of litigation, the Court receives petitions from the European Commission on Human Rights or from States which are party to the Convention.

To examine a case, the Court constitutes a tribunal of nine judges who examine the Commission's report and the plaintiff's documents as well as those of the accused State. The process is first handled in writing, then the Court holds audiences, in principle in public, during which it hears all parties. Following closed deliberations, it renders its decision which confirms or invalidates the existence of a violation of the Convention and which may require a settlement to be made to the injured party.

The decisions of the Court are final. The Committee of Ministers ensures that they are carried out.

Article 48 of the Convention foresees that the Court may be seized:

1. by the Commission;
2. by a State which has ratified the Convention whose national is alleged to be a victim;
3. by a State which has ratified the Convention which referred the case to the Commission;
4. by a State which has ratified the Convention against which the complaint has been lodged.

Individuals do not have the right to petition the Court unless their State has ratified Protocol 9 to the Convention, adopted on 6 November 1990, which considerably enlarged the range of admissibility by allowing individuals, non-governmental organisations and groups of individuals having filed a petition with the Commission to bring a case to the Court.

The Court may only be seized of a case when the Commission fails to obtain friendly settlement and three months have passed since the Commission transmitted its report to the Committee of Ministers (Article 47). Thus, for a case to be brought before the Court, the matter has to have been deemed admissible by the Commission and have completed all procedures following the decision of admissibility.

Ratification of the Convention does not automatically accord recognition of the litigious jurisdiction of the Court; each Party State must make a special declaration for this (Article 46). Nevertheless, recognition of the jurisdiction of the Court and of individual seizure are now in practice in practically all Member States of the Council of Europe. These declarations of agreement are for a specified period, varying between three and five years. In practice, declarations are regularly renewed.

## 2) Consultative jurisdiction

The consultative jurisdiction of the Court was recognised in 1970 with the starting date of the second protocol of the European Convention of Human Rights. This text authorises the Council of Europe's Committee of Ministers, and only this body, to request consultative advice from the Court on "judicial questions concerning interpretation of the Convention and its Protocols" (Article 1, no. 1 of Protocol 1). However, this advice does not hold on judicial questions concerning the contents or applicability of rights and freedoms guaranteed by the Convention or its Protocols, nor on other matters which the Commission, the Court or the Committee of Ministers might need to know following an appeal foreseen by the Convention. The domain is, thus, quite limited.

## 3) Examples of cases handled by the Court

*Observer and Guardian versus the United Kingdom* (1991). The two English newspapers published extracts of a book "Spycatcher" which gave information about the British intelligence service. The two papers were served notice to withhold publication, against which they filed an appeal. The Court judged against the publication prohibition, recalling the role of the press in the right of the public to information, required by democratic life. "If it were otherwise, the press could not play its indispensable role of 'watchdog'."

*Tomasi versus France* (1992). Mr. Tomasi was suspected by French police of having participated in a terrorist attack in Corsica. During his preliminary detention he was mistreated, for which he made an appeal to the Court. The Court considered that "the requirements of the interrogation and the undeniable difficulties in the fight against criminality, in particular, terrorism, must not lead to a limitation of the right to protection of the physical person." In its judgement, the Court recognised that France had violated the Convention.

*Casells versus Spain* (1992). A politician from the Basque Province, which has a terrorist separatist movement, wrote that the murders of Basque citizens, in retaliation for terrorist activities, were carried out by groups acting on orders of the government. The Spanish government sentenced this man for defamation, against which he filed an appeal. Without questioning the necessity for limitation of excess, the Court ruled against Spain, being concerned that free political or public interest discussion may be discouraged by this type of all-too-easily pronounced rulings. Above all, the Court did not accept that the author was prohibited from showing proof of his accusations during his trial.

### **3.3.5. European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

This convention has its roots in Article 3 of the European Convention on Human Rights which states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”. The Convention was opened for signature on 26 November 1987 and came into effect on 1 February 1989.

The European Convention on the Prevention of Torture puts in place non-judicial preventive measures, based on visits, which functions in parallel with judicial repressive measures of the Commission and the European Court on Human Rights.

This Convention establishes a European Committee for the Prevention of Torture (ECPT), made up of independent, impartial experts (one per State having ratified this Convention). The role of the ECPT is to prevent potential abusive treatment, physical or mental, to persons deprived of their freedom.

To do this, the experts visit detention sites (prisons, police stations, military barracks, psychiatric hospitals, etc.). Following each visit, the ECPT prepares a report addressed to the concerned State with improvement recommendations for the protection of detained persons against abusive treatment.

The goal of the Convention is to help States protect persons deprived of their freedom, not to condemn States. The ECPT always works in conjunction with local authorities and makes periodic visits to all contracting parties. They may arrange additional ad hoc visits if they feel the conditions warrant it. In all cases, the Committee must warn the concerned State of their intention to visit. Once they have been notified, the ECPT may visit at any moment all locations where there are persons who have been deprived of their freedom by a public authority. the contracting parties agree to give the Committee access to get to these locations, as well as free movement within them. In addition, the Committee has the right to interview detained persons without witnesses, and, in general, has the right to free contact with anyone it feels can give useful information.

### **3.3.6. Verification methods of the Social Charter**

To ensure the application of the various provisions of the Charter by the Contracting States, an international verification system was put in place (Articles 21 to 29). The system was modified by the protocol amending the European Social Charter, opened to signature in Turin on 21 October 1991. Since 1992, the verification procedures rely on the analysis of national reports presented at regular intervals by the States as follows:

The reports are examined by different bodies of the Council of Europe, starting with an independent committee of experts made up of nine experts elected by the Committee of Ministers for six years, along with an observer from the International Labour Office (ILO). His role is to ascertain from a legal standpoint conformance of national legislation, rules and practices with those obligations stated in the Charter.

Next, a governmental committee composed of representatives of the contracting parties and observers from European social partners prepares decisions for the Committee of Ministers regarding the reports from the committee of independent experts and the contracting

parties. Based on political, social and economic considerations, they select those situations for which recommendations should be addressed to each concerned contracting party.

Finally, based on the report of the governmental committee, the Committee of Ministers adopts a resolution on all the individual recommendations given to the contracting parties. Until 1992, the verification procedures took place every two years for each contracting State. In order to rationalise the work of the appropriate bodies, the contracting States were divided into two groups being examined with a year's interval.

### **3.4. Reforms of the protection system**

#### **3.4.1. Simplification of the procedures of the European Court of Human Rights**

It should be noted that the functioning of the Convention's control procedures are currently being revised. The objective of Protocol No. 11 is to reform the process to improve the rapidity with which cases are handled. The Commission should disappear whereas the Court should become permanent. Individuals will address themselves directly to it and it will be its role to examine the admissibility of petitions. Concerning the Committee of Ministers, it will no longer determine the existence or not of violations, but will maintain the responsibility for overseeing the execution of the Court's decisions. All of these changes can take effect once all States which have ratified or adhered to the Convention have equally ratified Protocol No. 11.

#### **3.4.2. Collective complaint procedure for the Social Charter**

In November 1990, the Council of Europe decided to improve the efficiency of the control mechanisms, to extend the rights which are guaranteed, and to complete their content.

A first protocol of amendments (1991) changed the existing operating methods, reinforcing consultations with representatives of non-governmental organisations as well as worker and owner trade unions, easing the adoption of recommendations, and improving the work of the committees of experts.

A proposal for an additional protocol implementing a collective complaint procedure was created during a series of ministerial meetings in Rome in 1990 and Turin in 1991, and is currently before the Committee of Ministers. Its goal is to implement a system of collective complaints which will allow national social partners and some non-governmental organisations to file collective complaints with verification bodies of the Charter.

Finally, the Social Charter was revised. This revision was adopted 3 May 1996 by the Committee of Ministers and opened for signature. A number of rights have been reinforced (right to decent housing, protection against poverty and social exclusion, protection in case of dismissal, etc.).

The objective of all of these initiatives is to give the Charter a role equivalent to that of the Convention .

### **3.5 Summary**

To summarise the range of influence of European law for the protection of human rights, they:

3.5.1. become national law for the States which have ratified them. They also influence the other domains of national law. In this way, international law is present in the daily life of everyone.

3.5.2. influence the application of these rights in all the States which have ratified them. The jurisprudence of the Commission and the European Court of Human Rights serve as interpretative bodies for national courts.

3.5.3. provide an ultimate place of appeal, if the highest national instances do not respect the fundamental human rights.

## **4. Protection of human rights in Bosnia Herzegovina**

### **4.1. The Constitution of Bosnia Herzegovina**

The protection of human rights in Bosnia Herzegovina was defined by the Dayton Agreement. Prior to that, human rights in the Socialist Republic of Yugoslavia were protected by Yugoslav law and the international treaties which the country had ratified. The transformation of the state structure created a new situation. It was necessary to wait until the arms were silenced, by the Dayton Peace Agreement, for human rights protection to be redefined, at the same time as the Constitution.

### **4.2. The rights guaranteed by the Constitution**

The Constitution of Bosnia Herzegovina is the fourth document annexed to the Dayton Agreement. It defines the basis for the creation of the State, the bodies of which it is composed, and its forms of citizenship. It refers to international human rights law, enumerates the principle fundamental rights of all persons on State territory and cites which international treaties have legal force in Bosnia Herzegovina. The creation of a Human Rights Commission to monitor the implementation of these rights was defined in Annex 6 of the Dayton Agreement.

#### **4.2.1. The Constitution and international protection**

The preamble to the Constitution refers to the Universal Declaration of Human Rights and to Covenants on civil and political rights and on economic, social and cultural rights.

In Article II, Para. 2 of the Constitution, the European Convention on Human Rights is declared to be completely applicable in Bosnia Herzegovina.

Additionally, there is a list of 15 international treaties and conventions on human rights to which Bosnia Herzegovina belongs:

- Convention for the Prevention and Repression of Genocide
- Geneva Conventions I-IV on the Protection of Victims of War and Additional Protocols I-II
- Convention on the Status of Refugees
- Convention on the Nationality of Married Women
- International Convention on the Elimination of All Forms of Racial Discrimination
- Covenant on Civil and Political Rights and its Additional Protocols
- Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination Regarding Women
- Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment
- European Convention for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment
- Convention on the Rights of the Child

- International Convention on the Rights of All Migrant Workers and Their Families
- European Charter on Regional and Minority Languages
- Convention Framework for the Protection of Minorities.

#### **4.2.2. The fundamental rights enumerated in the Constitution**

In addition to the rights contained in the international treaties which have the value of constitutional rights, the Constitution lists 13 fundamental rights:

- 1) the right to life,
- 2) the right to not be subject to torture or to inhuman or degrading punishment or treatment,
- 3) the right to not be held in slavery or servitude or to be subject to forced or obligatory labour,
- 4) the right to freedom and personal security,
- 5) the right to a fair trial for civil and penal matters and to other rights regarding penal processes,
- 6) the right to respect of private and family life, of home and of correspondence,
- 7) freedom of thought, conscience and religion,
- 8) freedom of expression,
- 9) freedom to peaceful gatherings and association,
- 10) the right to marry and found a family,
- 11) the right to property,
- 12) the right to education,
- 13) the right to freedom of movement and residence.

All of these rights are guaranteed without discrimination.

The Constitution further indicates the right of refugees to return to their home, to obtain restitution of their belongings and the cancellation of any discriminatory decisions which may have been taken against them during the period of conflict. For refugees, it refers to an annex devoted completely to this subject (Annex 7 of the Dayton Agreement).

### **4.3 Human rights protection in Bosnia Herzegovina**

Bosnia Herzegovina is not yet a member of the Council of Europe and has not yet been able to recognise the jurisdiction of the European Court of Human Rights. Nevertheless, it has been inspired by the Court's functioning to create a control system for the application of these rights under the name of *the Human Rights Commission*.

Under this heading of Human Rights Commission, there are two bodies:

- the Ombudsman
- the Chamber of Human Rights.

#### **4.3.1. The Ombudsman**

The term ombudsman comes from the Scandinavian countries where this institution is responsible for defending the interests of people with the administration, with an important investigative power, as well as decision-making power in the cases it handles. The originality of this approach has spread widely, with the proliferation of the role with

varying functionality. The Scandinavian name has also spread. In some countries, it is also called “mediator for the republic” or “citizens defender”.

Complaints by individuals, organisations or authorities of violations of the rights set out in the Constitution, the European Convention on Human Rights or the other treaties mentioned are sent to the Ombudsman, unless a specific request is made to address them to the Chamber of Human Rights. The Ombudsman is charged with investigating to establish the facts and to quickly make known his conclusions. The authority which has been charged has a delay to respond in writing as to how they will implement these conclusions. If the Ombudsman deems it necessary, at any time during the proceedings, he can transfer the case to the Chamber of Human Rights. He can also, at any time, present reports to the different Bosnian authorities, who must reply. If the conclusions and recommendations are not effectively implemented, the Ombudsman can alert the High Representative for Civil Affairs.

The Ombudsman is based in Sarajevo, with representatives throughout the country. the first Ombudsman was nominated by the President of the OSCE and holds the position for five years. After that, it will be up to the President of the Republic of Bosnia Herzegovina to nominate the holder. The first person to hold this post is Mrs. Gret Haller, former Ambassador of Switzerland to Strasbourg and former member of the national parliament, well known for her commitment to the defence of human rights.

#### **4.3.2. The Chamber of Human Rights**

The Chamber of Human Rights is made up of 14 members, 4 from the Federation of Bosnia Herzegovina, 2 from the Serbian Republic, and the others nominated by the Committee of Ministers of the Council of Europe, including the President and who must not be nationals of Bosnia Herzegovina or its neighbouring countries. They are nominated for five years and the nomination may be renewed. The following nominations will be made by the President of Bosnia Herzegovina.

The Chamber receives allegations of human rights violations from the Ombudsman or directly from plaintiffs, who can be authorities, non-governmental organisations, individuals or groups of individuals, victims of violations or representatives of dead or missing victims.

The Chamber firstly examines if the case can be accepted, following criteria similar to those of the European Commission on Human Rights. In principle, it gives priority to allegations of systematic or particularly grave violations. It checks to see if other appeals exist or were used. It can refuse or suspend an examination if the same is underway before other human rights protection bodies.

The Chamber encourages the parties to find, if possible, an amicable solution. It sits by group of 7 persons (2 from the Federation of Bosnia Herzegovina, 1 from the Serbian Republic, 4 from the outside), can request further expertise, hear witnesses, take suspending measures. The plaintiffs and the accused can be represented by lawyers or other persons of their choice, but they must also take part in the audiences, which normally are public.

At the end of the process, the Chamber proclaims its decision which establishes whether or not a violation took place and what measures must be taken to remedy the situation. This

may include modifications to the laws and organisation of the administration, restitution, financial compensation, etc. depending on the case. Decisions are made public and are communicated to plaintiffs and accused, to the High Representative for Civil Affairs, to the Secretary General of the Council of Europe and to the OSCE.

#### **4.4. International monitoring of human rights in Bosnia Herzegovina**

The annex on human rights also invites intergovernmental organisations and their sub-groups, such as the Commission on Human Rights, the High Commissioner for Human Rights or the OSCE to monitor the application of human rights in Bosnia Herzegovina. All authorities are required to co-operate with these bodies, as well as with non-governmental organisations, and must encourage activities of human rights promotion and protection and not hinder them.

##### **4.4.1. OSCE observers**

The mission of the OSCE in Bosnia Herzegovina has observers over the entire territory who have the task of working with authorities to help in the implementation of human rights, to give support to the delegates of the Ombudsman, and to support the activities of local non-governmental organisations.

##### **4.4.2. Special Rapporteurs of the UN Commission on Human Rights**

When revelations of executions carried out during the conflict and of ethnic cleansing created an immense indignation in international public opinion, the Member States of the UN Commission on Human Rights decided during a special session devoted to the conflict in ex-Yugoslavia, to nominate a Special Rapporteur (investigator) charged by the international community to establish the true facts. The Commission designated the former Prime Minister of Poland, Mr. Tadeus Mazowieski. He carried out numerous visits on-site and gathered statements of victims and local organisations, as well as information from international enquiry missions, intergovernmental and non-governmental. He regrouped the information and, in a series of reports, tried to present the most real and verifiable picture of the situation. Looking at the contradictions between States and their indecision to follow the various practical recommendations he made, and in the face of their refusal to draw the conclusions of horrors he described, Mr. Mazowieski resigned. This did not go unnoticed by public opinion and pressure increased on States. Not to abandon the work already undertaken, the Commission named Mrs. Elisabeth Renn, of Finland, to succeed Mr. Mazowieski. Mrs. Renn carries on the collection and verification of information through regular visits to Bosnia and keeps the Member States of the Commission regularly informed on the human rights situation in Bosnia Herzegovina.

The Commission on Human Rights has also named another Rapporteur, specialised in issues of persons missing as a result of ethnic cleansing, as the result of the discovery of several mass graves. This Rapporteur, the Austrian professor Mr. Manfred Nowak, also resigned to protest against the lack of financial means given to him to carry out the technical part of his identification work.

##### **4.4.3. The High Commissioner for Human Rights**

The position of High Commissioner for Human Rights was created in 1993, during a World Conference on Human Rights, to encourage co-operation amongst States in this field. The Commissioner sits in Geneva and supervises the work of the UN Centre for Human Rights, which belongs to the General Secretariat of the United Nations.

During the various negotiations leading to the end of the conflict in ex-Yugoslavia, the High Commissioner addressed himself to the different parties to remind them of their obligations concerning human rights and offered assistance. A training programme was developed for international staff on-site.

The first High Commissioner, Mr. José Ayala-Lasso of Ecuador, has left his post and will be replaced at the end of 1997 by Mrs. Mary Robinson, who will be leaving her position of President of the Republic of Ireland.

#### **4.4.4. International humanitarian law and human rights**

The Bosnian Constitution and its Annex on human rights oblige authorities to collaborate with those bodies which work for the protection of humanitarian rights. Often, in daily language, human rights are included in the general term of “humanitarian”. In international law, on the other hand, these are distinct, precise domains, even if they overlap on occasion. International humanitarian law is defined by the Geneva Conventions which protect unarmed soldiers and civilians in time of war. Humanitarian law is not in effect in times of peace. With the evolution of conflicts, where civilians increasingly become military targets, and with the increase in civil wars, the difference between time of war and time of peace is less evident than before. Nevertheless, the mandates of those bodies which protect international humanitarian law and those of the bodies concerned with human rights remain quite different.

The international organisation responsible for the protection of international humanitarian law is the International Committee of the Red Cross (ICRC). In periods of armed conflict, its field delegates try to protect and assist civilian populations which must be spared by those who are fighting. They visit detention camps and try to pass news of detainees to their families. The ICRC must be completely impartial with all parties in the conflict. At the end of hostilities, the ICRC continues its mandate by trying to account for detained persons and victims. It's at this moment that the work of the ICRC joins that of human rights protection organisations which try to establish the facts and responsibilities regarding violations which may have been committed.

During times of peace, another body continues the activity started during the time of war. The United Nations High Commissioner for Refugees (HCR) has the mandate of protecting the rights of a particularly vulnerable group: refugees. The HCR handles as much their legal protection as material issues, in function of the means which the international community of States gives it, along with the authorisation given to them by local authorities. The Dayton Agreement gives the HCR the determining role to help other entities apply the right of refugees to return home.

#### **4.4.5. The international tribunal**

The authorities of Bosnia Herzegovina are obligated, in the Constitution and in the Annex on human rights, to co-operate with the International Penal Tribunal for ex-Yugoslavia. This body does not monitor the application of human rights. It was not created by a body

responsible for the respect of human rights, but rather by the United Nations Security Council, which oversees the maintenance or re-establishment of peace on the planet. The work of this Tribunal is considered as a pre-requisite to the return of peace.

Having determined that the amplitude of the crimes committed during the hostilities required special measures for the return of peace, the Security Council created the first International Penal Tribunal (to be followed by a second one on Rwanda). Its lifespan is temporary and is linked to the execution of its mandate. It sits in The Hague, in The Netherlands, and files suits against individuals, no matter where they are from, for war crimes or crimes against humanity, according to international law on the subject. All States on all continents are obliged to work with the Tribunal.

The origin and nature of this Tribunal are different from those judicial bodies which exist to handle the protection of human rights, such as the European Court of Human Rights.

#### **4.5. Action by citizens and their organisations**

As emphasised in the annexes to the Dayton Agreements, non-governmental organisations must be able to operate normally in Bosnia Herzegovina and be able to carry out investigations and activities for the defence and promotion of human rights. Parallel to the press, their role is often primordial in the collection of information about human rights violations during conflict. This role remains just as essential during reconstruction. International non-governmental organisations represent the attention of international public opinion on what is happening in Bosnia Herzegovina. Local organisations work long term because their mandates do not rely on international agreements. They represent the active democratic commitment of the citizens of Bosnia Herzegovina.

## **5. How is a human right created ?**

The examples of rights and protection institutions which were presented in the preceding chapters, show that not all rights are the same nor have the same reach. Furthermore, they can evolve.

We have seen that the Council of Europe adopted numerous conventions (or charters). As well, the Committee of Ministers adopted a number of declarations and recommendations concerning human rights, and were followed in this by the UN and other regional organisations. These normative instruments do not all have the same legal weight. Some, particularly well known (conventions) carry a great importance because States are bound to follow them. Other (declarations), even if they do not have a binding legal value, have nonetheless contributed to common standards leading to general obligations.

### **5.1. The elements of a right**

To make the best use of the fundamental rights, it is important to understand their components. To be complete, a right must contain:

- a titular (the addressee of the right, clearly identified);
- content (what the right protects must be explicitly mentioned);
- a means of implementation (the manner in which the right is to be applied must be indicated). For example, the means and types of sanctions in case of violation.

When a right contains these three elements, it can be considered as “complete”. Normally, this is the case with rights entered into conventions and treaties, which create obligations for States. The rights proclaimed in resolutions or declarations do not include the means of implementation.

#### **5.1.1. The titular**

The titular of a right may be individual or collective. The European Convention begins its articles by “all persons”, which designates individuals as addressees of the rights. Some rights, such as the right to association, can only be exercised collectively. At the same time, they maintain an individual dimension, such as the right to belong to an association or a union. With few exceptions, the majority of human rights in international law, whether they be civil and political rights or economic, social and cultural rights, are recognised solely by their individual nature (for example, the right of minorities).

#### **5.1.2. The content**

The content of rights can demand abstention or intervention on the part of a State.

- In the first case, the right is called “attributive” or “negative”. For example, for the freedom to create an association or a union, it is asked that the State abstains from any intervention.
- In the second case, it is a “debtor” right, which requires an action on the part of the State. The right to education is a good example. The right to a fair trial also requires an action from the State.

Rights should not be categorised too quickly; they often unite the two categories of “attributive” and “debtor”. Freedom of expression requires that the State does not intervene, but does require intervention when it is denied.

### **5.1.3. Means of implementation**

Depending on the type of right, its implementation passes either by the affirmation of a violation, or by the establishment of a program of application. In a case such as torture, which is forbidden, it is evident that, according to the facts, there was or was not violation. This is known as “self-executing”. This right does not require interpretation to determine if there was or not violation of it. On the other hand, a right such as education requires means and cannot always be immediately or completely implemented by a State. This right sets goals to reach, where reaching them varies from situation to situation. Allegations of violations must be interpreted in function of the reality of the situation to determine whether or not there was a violation. These are known as “programme” rights.

This last point shows that, even if a State has the responsibility to respect and ensure respect of human rights, the actions of groups and individuals play an important role. Groups of citizens can act as “guardians” against the excesses of authority and violations, as well as disseminating throughout society understanding and respect of these standards. All elements of society: schools, media, business, individuals, etc. participate equally in the daily acts to ensure the reign of law. The application of rights indicates their real value.

### **5.4.1. Human rights coherence**

In the diversity of the rights that we have reviewed, the ideas of 1948, recommending the universality of human rights, were confirmed amongst others by the United Nations Vienna Conference on Human Rights, held from 14-25 June 1993. This Conference tried to eliminate the diverse schools of thought and tendencies created around the evolution of human rights. The end of the Cold War and the disappearance of the two blocs (Communist and Western) leads us today, from East to West and from North to South, to a single, global conception of human rights, a sort of synthesis or coherent whole.

## **5.2. The sources of law**

Amongst the sources of international public law, which includes international human rights law, one can distinguish the formal sources, which are the methods used to create international regulations, and the material sources using political, social, economic or other causes as the basis for creation of international regulations.

### **5.2.1. Formal sources**

It is only the formal sources, principally the conventions, international treaties and international custom, which interest us here.

Whatever their legal value, the conventions and declarations concerning human rights which are adopted by the United Nations General Assembly, at the universal level, and the regional intergovernmental organisations are always preceded by projects carried out by sub-groups within the organisation. It then adopts a recommendation - sometimes called a "declaration" - before finally adopting a convention on the subject. This is the path taken for the European Convention on Human Rights, which was based on the Universal Declaration of Human Rights.

There are three types of standards regarding human rights which correspond to three "moments" in the evolution of the legal value and obligatory nature of human rights texts.

### **5.2.2. The three types of standards**

Professor I. Bokatola, specialist in the rights of minorities, uses the metaphor of fruit to illustrate these three "moments". All fruit passes through three stages:

- first, the seed, where the seed has the potential to create unripe fruit;
- next, the unripe or green fruit which usually cannot be eaten;
- and finally, the ripe fruit which everyone can eat.

Applied to the subject of human rights, the metaphor gives the following three stages in the elaboration of human rights texts:

- First stage: "seed law", which is a draft text or project, the grain for a law like the "mustard seed" in the Bible which may or may not produce "unripe fruit" (a declaration), followed by "ripe fruit" (a convention) depending on where the seed falls, in other words, depending on the situation.
- Second stage: "unripe law", which is a law considered to be not yet "edible" by individuals, in other words, a declaration or recommendation which needs to slowly ripen before becoming binding for States and usable by individuals.
- Third stage: "ripe law" or a law which is finally "edible" by individuals, that is to say, a convention binding for the States which undertake to adhere to it and ensure its full application for individuals.

## **5.3. The stages of development of a human right**

### **5.3.1. "Seed law" relating to human rights**

## 1) Preparation of International Text Drafts

There is no specific, unique procedure for the creation of international texts relating to human rights. In United Nations Resolution 41/120 of 4 December 1986, entitled "Establishing International Standards in the field of Human Rights", the General Assembly asked Member States to keep in mind the following guidelines when creating these texts:

- they must be in accordance with existing international law concerning human rights;
- they must never lose sight of the fundamental character of the rights in question and, thus, convey the dignity and inherent value of the human being;
- they must be sufficiently precise so that the laws and obligations which come from them can be clearly defined and put into practice;
- as appropriate, they must be accompanied by means of implementation both realistic and efficient, including reporting techniques;
- they must elicit wide international support.

These recommendations are valid no matter where the human rights text is being written, whether within regional organisations (Council of Europe, Organisation for African Unity,...) or specialised institutions (ILO, UNESCO,...).

Each organisation has defined its own procedure for writing these texts. In general, a sub-group (a commission) is given the task, with the support of a secretariat. The draft is then examined by the principal body of the organisation and can be adopted after discussions in plenary sessions.

The preparatory work in writing human rights texts is interesting, though often neglected. In effect, it is this phase which determines the orientation of the rights on which future interpretations will rest. Courts may call upon these working documents when making judgements.

### **5.3.2. "Unripe law" relating to human rights**

#### 1) Declarations and Recommendations

The terms declaration and recommendation have very specific meanings. In certain uses, a declaration is a formal, solemn instrument, which is used on exceptional occasions to affirm principles of great importance and lasting value. Member States are expected to fully respect the declared principles, as in the case of the Universal Declaration of Human Rights.

On the other hand, a recommendation is less formal. Apart from this, there is no difference between a recommendation and a declaration. Each sets out, in most cases, general principles or standards concerning human rights.

#### 2) The Reason for Declarations

In practice, the adoption of declarations or recommendations (second step) generally precedes that of conventions (third step). There are important reasons for this order of adoption.

In effect, experience shows that if numerous States are ready to approve a proclamation of principles, they are far more hesitant when it is a matter of binding themselves to an international convention. Therefore, in a specific field, when it seems that deep divergence may stop States from ratifying a convention, it is preferable to at least get their recognition of a certain number of common principles. In view of the difficulties encountered in preparing international conventions, it seemed wise to foresee another process in the form of a declaration of principles.

There is another reason for the adoption of declarations before that of conventions. In the case where a convention is prepared but is not ratified or only ratified by a minimum number of States, the principles contained in the convention will have no significance. On the other hand, if there is a solemn declaration, no matter what else happens, this will remain the basic reference text on the subject for international organisations and States. In a way, this is an attempt to create international law by “saturation “ or “intoxication”. When the declaration has been adopted by a large majority and has the consensus of a large part of the international community, it can become a means of pressure by States on each other and can even give birth to international custom on condition that it is widely applied without ambiguity.

### 3) The Legal Value of Declarations

As for recommendations, declarations concerning human rights have no obligatory judicial weight: the people for whom they are intended are not bound by them nor do they commit any offence by not respecting them. The simple act of calling a text a “declaration” rather than a “recommendation” does not make it obligatory for anyone. Also, from a strictly legal point of view, declarations and recommendations well merit the name of “unripe law” because they need to “ripen” to become binding for States and able to be solicited by individuals.

Nevertheless, given the solemnity and broad significance of “declarations”, it can be considered that in adopting them, States manifest their hope that members of the international community will respect the principles they proclaim. In consequence, although “unripe law” non-binding from a legal standpoint, declarations and recommendations may be very constraining morally and politically - they are undeniably a means of moral and political pressure. The hostility of a State to a declaration or recommendation which has received the support of more or less the majority of States obliges it to take a defensive position.

These moral and political considerations are even more pressing when one understands the means of psychological pressure with which declarations are invested - the solemnity of the proclamation, formulated in the same manner as conventions, etc. All this can be even further reinforced when declarations and recommendations contain control mechanisms to measure progress in applying the proclaimed principles or to signal oversights or weaknesses in their implementation. These types of control mechanisms some exist in human rights declarations, as for example in the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

Finally, the absence of binding judicial power does not mean that declarations and recommendations have no significance. They are part of the creation of new international common law; as long as they represent the desire of States to be legally linked and that they are widely practised in a clear and consistent manner. This is the case, for example, of the Universal Declaration of Human Rights.

#### 4) The Universal Declaration of Human Rights

By defining "a common ideal to be met by all peoples and by all nations", the Universal Declaration of Human Rights does not have, in itself, a binding legal value. At the same time, some States, by the act of incorporating it into their constitutions, have accepted to respect it. In this sense, the binding character of the Universal Declarations comes less from the text itself than from the unilateral agreement of the State to accept it. On the other hand, the Universal Declaration has been cited by other resolutions and international instruments, and since its adoption, has had wide-ranging moral and political repercussions. All regional conventions for the protection of human rights refer to the Universal Declaration in their preambles.

Over the years, the Universal Declaration has become a reference document, even a source of international law. It influences UN politics and, along with it, that of all States; it is one of the instrument whose provisions have most eminently contributed to the creation of international custom. As mentioned above, international custom, along with conventions and international treaties, forms the principal formal source of international public law, including international law on human rights.

#### **5.3.3. "Ripe law" relating to human rights**

As stated, adoption of conventions or treaties (third step) always takes place after that of declarations or recommendations (second step).

## 1) Conventions, Treaties, Charters, Protocols

A treaty is an international agreement between two or more States, which in the field of human rights, contains provisions for the promotion or protection of one or more human rights. A treaty usually carries the name of “convention”. On a more general level, some conventions received other titles (covenant, charter). A text to modify or add to the clauses of a convention is normally called a protocol. A convention is based on the general principles and standards contained in the declaration on the same subject which preceded it. This third phase in the development of texts sets out precise rights, fixes limitations or restrictions on exercising these rights and explains the obligations to be taken on by States.

## 2) Procedures to Complete a Convention

Conventions are texts with a binding legal value for the States for which they are intended. This is why conventions, contrary to declarations and recommendations, require signature by States either at the time of their ratification or at the adherence of States, future members (or parties) to these conventions. The procedure to complete a convention is comprised of several successive steps which lead to the final expression of consent by a State to be bound by it. These steps are: negotiation, signature, approval and ratification, to which we must add adherence, all leading to the convention coming into effect. The process remains the same whether the text is created at universal, specialised or regional level.

### **1. Negotiation**

The negotiation of conventions is carried out in the same way as for declarations, or actually, declarations have been “conventionalised” since their creation has been copied from that used for conventions.

The text of a convention is always composed of a preamble and the terms of enactment. The preamble states its objectives and goals. The enacting terms include, first of all, the articles, secondly the final clauses, i.e., procedures for amendment, revision, methods of operation and expansion, duration of the convention, etc., and finally any annexes which are usually technical or complementary provisions regarding specific articles of the convention.

### **2. Signature**

The end of negotiations is broken into two parts:

- 1 - the vote or adoption of the convention by consensus of the principal body of the intergovernmental organisation which has created and negotiated it;
- 2 - signature of the convention by State representatives.

The purpose of the signature is to validate the text, in other words, to confirm that the final text is what was intended by the States. In principle, a validated text is not open to modification.

Signing marks the end of negotiation, but it does not mean that the convention has become binding for the States which have signed it. Generally, the binding legal character of a convention comes from the statement of consent to be bound by it and not from the signature. With few exceptions, signature shows a State’s willingness to continue the procedure through to the final statement of its consent to be bound by the convention.

### **3. Approval**

Approval is the first expression of a State to be bound by the Convention. It allows authorities of the States, such as parliaments for States with representative governments, to verify that their representatives have stayed within the boundaries of the instructions they received.

In general, this verification does not re-open questioning of any promised already made, as the convention is not yet binding for the State; it is only a further examination of the text prior to any legal engagement by a State. Nevertheless, it is not a pure formality, since the parliament may decide not to approve the convention. The right to refuse to ratify a convention is inherent in the notion of the formal, classic, ordinary or long convention finalisation procedure.

Parliamentary approval usually comes during the interval between the signature and the ratification of the convention. It is not actually the ratification, since in representative governments, the parliament authorises ratification and the head of state formally carries it out. After approval, parliament can no longer question either ratification or adherence to the Convention.

### **4. Ratification**

Ratification is the second action by which States indicate their consent to be bound by the convention. It is the act by which the highest State representative with authority to conclude conventions (the head of state in representative governments) confirms the conventions drawn up by his representatives during the negotiations, agrees that it is finalised and binding, and formally commits in the name of the State to carry it out. With the ratification of the convention, the State concludes the classic or ordinary finalisation procedure.

It is important to note that there is no presumption or obligation for a State to ratify a convention which it has signed and which has been approved by its parliament. The competence to ratify belongs to the head of state, that is, the executive branch, which could very well not follow-up on the parliamentary authorisation and abstain from the ratification for political reasons or he could take a very long time to do it. Whatever the reasons, the State which does not give its definite consent to be bound by the convention is not obliged to respect it nor can they take advantage of its provisions. It is only upon submission of the ratification instruments that the State is legally bound.

### **5. Adherence**

Adherence is the act by which a State which has not participated in negotiations and has not signed the text shows it consents to be legally bound by the convention. Adherence has the same value as signature and ratification.

### **6. Entry into force**

In order to begin applying a convention, the conditions for its entry into force must be completed. Traditionally, the final clauses of a convention treat the entry into operation not as the time of unanimous ratification, but rather when a specific number is achieved. This number can be revised, downward to facilitate the effective date, or upward if a larger participation is deemed necessary for reasons of efficacy. This number is included in the final provisions of a convention.

## **7. Reservations**

During ratification proceedings, States may put one or more reservations on specific provisions of a convention. The practice of reservations means that the State is not bound by certain provisions to which it is opposed, but it recognises the rest of the convention. A State always has the right to retract any of its reservations. It is not possible, however, for a State to place such a number of reservations that there remains nothing left of the convention for the State to support.

States also have the possibility to make declarations of interpretation during ratification or adherence. In these declarations, the State specifies details of how it sees its responsibilities, and even more importantly, how it will apply the convention.

The limitation of the number of ratifications necessary for the entry into force of a convention and the possibility to put reservations on it are certainly an evolution in the convention finalisation procedure, in that they facilitate and accelerate implementation. However, the increasing use of reservations ends up by weakening the conventions they are applied to. In effect, while it is true that using reservations may favour the universality of conventions by providing an escape hatch for States which might otherwise not adhere to them, the price to pay is the weakening of the integrity of conventions.

## Part III - Educating for Human Rights

### 6. How can human rights education be developed in the school?

In the first part we have seen the links between human rights and human rights education, as well as the founding principles of the latter. Left aside for a long time, human rights education has taken on importance during this decade with the United Nations proclamation of the “Decade for Human Rights Education”. For its part, the Council of Europe had already been preoccupied with the subject. In 1978, the Committee of Ministers adopted a recommendation on human rights teaching (R (78) 41). In 1985, they updated that first text by adding a new recommendation on teaching and learning human rights at school, known by its number: R (85) 7.

There is not an “academic” definition of human rights education. All the same, this 1985 recommendation gave the teacher of human rights a number of reference points by giving suggestions on:

- the introduction of human rights in curricula,
- the skills to be developed,
- the knowledge to be acquired,
- the democratic climate to be established in the school,
- the teacher training to be promoted.

#### 6.1. The mission of the school

Democracy and the respect of human rights allow everyone to assume their responsibilities; the citizen must be able to make knowledgeable choices in the interest of the whole of the community. For this to happen, the school must be seen as having a central place in the process of forming future citizens. At the same time, the desire to see these persons contributing to the future of a democratic society (equitable, free, responsible) must not remain at the stage of good intentions: it must become a clearly expressed will to have any chance of happening. In this spirit, changing the mission of the school must be on the agenda.

##### 1) Educate on Human Rights

Even if it is far from being effective, the guarantee of basic rights for all must serve as our reference and guide our choices.

As tangible tools, the international instruments serve as an anchor for education in democratic values. This touches on ground not usually familiar to teachers, such as international human rights law. As grim as the “world of laws” may seem, a knowledge and understanding of basic judicial terms and concepts cannot be avoided: “no democracy without law”. From this perspective, human rights education must be an integral part of the school’s mission. This preoccupation is not new. It led, for example, the World Association for the School as an Instrument of Peace (EIP) to make the text of the Universal Declaration of Human Rights accessible to everyone, by translating it into the fundamental vocabulary developed following Piaget’s studies, to facilitate the development of human rights education in schools.

## 2) Instruct

It is a fact that over the past decades, the mission of instruction given to schools has been enlarged to social and psychological domains. The widely supported concept that the school must aim at developing the total child bears witness to this, yet is not enough to create citizens as we understand it. In many cases, this widening has happened to the detriment of intellectual development, which remains, after all, the primary goal of the school. Such diversions are dangerous when one considers that democracy rests on knowledge and capabilities without which it is impossible to understand the world.

## 3) Socialise

If the school is to serve as a lever for the emergence of democratic society which respects human rights, it is clear that socialisation must be added to its mission to instruct. Socialisation consists of learning to live together, respecting communal social rules with a desire to promote values of justice, freedom and responsibility. Socialisation prepares students to assume their future social roles. This exercise includes practising participation in the micro-society of the school, which becomes a stimulating place inciting initiative and where everyone can develop their creativity and cultivate their critical spirit.

In a pluralist society, socialisation also leads to intercultural education, that is, education aimed at developing attitudes and behaviours respecting differences, open-minded and sharing. At a time when an increase in racism, xenophobia and intolerance can be seen everywhere in the world, it becomes ever more urgent to shape minds capable of understanding that diversity corresponds to richness.

### **6.1.2. Bringing human rights into the school**

While it is fairly simple to come to a consensus on the importance of the school in building democracy, the question of “how to build” leads to debates going back to the fundamental democratic values and human rights. A sensitive subject, because it touches the heart of what inspires teachers, whether they are aware of it or not. Some of these values cannot be avoided from the moment one talks in terms of participative and pluralist democracy: justice, liberty and solidarity. Each refers to the others and adds to them; thus, justice presupposes equality, freedom implies responsibility, solidarity calls for commitment. Once proclaimed, these values must direct the means chosen to implement them so that democracy becomes effective in a pluralist society.

#### 1) The School, Site of Value Conflicts

A society’s education policies are founded on its values. If the society in question is democratic, justice, freedom and solidarity should direct the orientation of the education system. What happens in reality? What values does the school give to future citizens of changing societies?

Each society gives the school several missions, often contradictory: to create responsible, decisive citizens; to develop the technical and economic skills needed by society; to carry on traditions, etc. Caught between dominating ideologies and democratic values, the school finds itself in an ambivalent position, generating tension and loss of reference points. This

context greatly influences the reception of education for democracy and human rights in schools.

## 2) Avoiding the Mis-use of Authority

The use of authority often leads to confusion. It can be seen as merited superiority or as seduction which imposes obedience without constraint, respect, confidence. Seen from this angle, the authority of all educators must rest on their ability to guide students so that they are able to exercise their freedom with a concern for justice: an authority “authorised” by others. In this sense, “authority implies an obedience through which men keep their freedom”.

Without re-opening the numerous debates around the question of authority versus non-authority taking place since the 1940’s, one good point of the controversy was to force holders of authority (teachers, directors) to reflect on the use they made of it. Are they ready to “modify the weight of their power and authority in order that those around them may develop responsibility and, therefore, their personalities?” The work implied in the question shows the path yet to be taken.

It must be recognised that the teacher-student relationship incites by its very being an inequality of status; but the student remains for all purposes the equal of the teacher concerning their fundamental rights. If directive behaviour goes hand-in-hand with the institution, one must never lose sight that the school must form free and responsible beings, concerned about justice. With that, the scholastic establishment is expected to be a place to learn freedom and, thus, responsibility. Looking at the research concerning the reproductive function of the school, we are given to believe that “social order rests on the ability to control dominant groups which use the school to reproduce their dominant position, in line with their particular interests”, rather than a vehicle of emancipation. Authority, which should be a vehicle of democratic values, thus finds itself weakened, leading Professor G. Mendel to say that it is just “the mystifying mask of violence”.

## 3) The Role of Speech

The shaping of active, responsible citizens, conscious of belonging to the “human community”, is a long process with many elements. The first concerns the place and power given to students’ speech. Students must be able to use it amongst themselves in order to arrive at collective ideas. To learn this demanding procedure, they must be able to see the need for it.

Although it is included in an article of the United Nations Convention on the Rights of the Child, recognition of students’ speech is far from common. In general, space and time within schools are handled, managed, administered by the only decision-making bodies of the school: the directors and administration. School newspapers - when they exist - are monitored, sometimes even censored; posters are controlled, etc. Analysis of school rules shows us that, even in countries having taken “measures” for students to participate in decisions, the obstacles are numerous along the road leading to true democratic education.

C.R. Escoubés reminds us to be wary of implementation methods which tend towards the farcical: “Elections are botched up and delegates considered as non-entities. They are not allowed to express themselves, or when they do their words are turned to derision, or even worse yet, they are treated as the “scapegoats” of the class. The process which allows

delegates to participate in class councils requires the *absence of collective power-gathering of the students in the establishment* which creates a caricature of the representation role. This manipulation places authority under false pretences, even under force, leading students to doubt the values and behaviour of adults in the school and, hence, their authority. Violence, as a means to become respected, finds therein a model for authority, even a legitimacy and a justification.

The culture of human rights in the scholastic establishment must rest on the affirmation that “each child has the right to become what he can”. In this spirit, a structure with student participation allows all voices to be heard. Through the election of class delegates and delegate councils, students participate in the democratic running of the institution and, in doing this, progressively prepare themselves to assume their rights and responsibilities as citizens. In recent times, a variety of factors have favoured such participation. The new architecture of establishments, more open to conviviality, have replaced the strict classrooms and corridors of yesterday with their enclosed feeling. The movement of secondary school students imposed itself as spokesperson to political and scholastic authorities.

#### 4) Giving More Place to Civil Society

As long as the existing power structure is not threatened, the school willingly opens its doors. But, like students, members of the civil society - notably parents - find their words go unheard most of the time. There again, the power structure imposes its limits on democracy. Despite the emphasis of recent years on the importance of partnership in the evolution of education, the participatory structures for parents, like those foreseen for students, are too often shams of democracy. Consulted for appearance's sake on decisions already taken, parents feel the same feeling of powerlessness vis-à-vis the school and, discouraged, risk to put themselves in the hands of representatives elected for the sake of form. A basic question must be kept in mind: can an authority credibly inform others of rights which may be used against it? The answer is not simple, but one fact appears: this authority cannot be the only one with the responsibility for information. In order for information to be complete and credible, other sources, such as civil society for that which concerns schools, must also participate in the dissemination of it.

Nevertheless, there are places where scholastic legislation foresees the creation of participatory structures. This gives hope that with time and a lot of determination, the authority - and in many cases, authoritarian - positions in scholastic establishments will progressively be replaced by co-operative management. The challenge is great when you know that no change is possible without a transformation of the establishment's power system and that the obstacles mentioned above are fed by the attraction this power has when used for personal gain. The, all too often, will of school directors to keep it, makes it unlikely, and in certain cases, impossible, to have real participation by members of civil society.

Democracy, through respect of fundamental rights, must be created as "a system of power founded on the illegitimacy of all authoritarian grounds". The result of a long tradition, the authoritarian character of scholastic institutions is incompatible with this statement. Therein lies the paradox of a democracy which "aims to create the type of citizen whose development is dependent on their previous existence."

#### 5) Summary

It is on this base of crisis and urgency that today there is a growing desire to make the school an instrument of democracy. Moreover, the call for scholastic democracy runs up against strong resistance amongst those who are not ready to share the power given to them by their social position. Losing its legitimacy, authority becomes authoritarian, at the same time denying students apprenticeship of freedom and responsibility.

We can, nevertheless, be gladdened over the existence of international human rights protection instruments, which always give inspiration for promoting education in democracy in schools.

Starting with interdisciplinary methods and subjects centred on concrete problems such as the non-application of human rights, the school can bring knowledge to students which helps them understand the major problems of society and humanity and develop a critical approach: "The understanding and experience of actual human rights situations are, for youth, an important element in preparing to live in a democratic, pluralist society. It is a part of social and political education which encompasses international and intercultural understanding."

The question which, however, is raised is how to defend a democracy if the school does not prepare democrats? There is no ready-made solution, but an answer in development to which each person can add their contribution; a slow and patient development, calling for reflection and a critical mind.

## **6.2 Scholastic regulations**

The best element for evaluating the place of human rights in a school is an analysis of school regulations. Setting the school's goals and, above all, the way they will be reached, the regulations distribute the roles, organise the power, and show the links of the school to its environment.

### 1) The Student, Subject of Law

The student is a participant in his education. It is because he has rights and responsibilities that he is a full partner. This being so, he must still be able to draw on the consequences resulting from daily life in his scholastic establishment.

To be a subject of law signifies ability to speak, to express ideas, opinions, to show agreement or disagreement - in other words, to fully participate in setting the game rules.

It is written that democracy can only be learned in a democratic setting, where participation is not only permitted but also encouraged, where opinions may be openly expressed and discussed, where freedom of expression is guaranteed to students and teachers, where impartiality and justice reign, where everyone feels stimulated and challenged.

### 2) The Right to Expression by Participation

It is utopia to believe that young adolescents can become responsible citizens, capable of participating in community life, unless they had previously been exposed to the necessary skills and responsibilities.

To shape free beings, they must be given speech. Article 12 of the Convention on the Rights of the Child stipulates, in that regard, that the child has the right, in all questions or procedures concerning him, to freely express his opinion and to see that opinion taken into consideration.

It can be asked if, in a general manner, the principles of human rights education contained in this convention translate into the following aspects of scholastic life:

- scholastic objectives and organisation;
- teaching methods and pedagogical approaches;
- student-teacher relations;
- the contribution of each to the well-being of the scholastic community.

A. Hart, professor of environmental psychology at City University of New York, proposes a series of minimal conditions which a pedagogical project must satisfy for the participation to be something other than artificial and manipulative. There are four of them:

- the children must understand the reasons for the project;
- they know who took the decision for them to participate and why;
- their role has a reason and is not purely figurative;
- they want to participate and agree to collaborate once they have been informed.

### **6.2.2. Authority and its democratic legitimacy**

Participation of students in school life brings back thoughts on authority. Whether it is wanted or not, this authority exists. Teaching staff and school directors are given it by parents and scholastic legislation. These latter give them the responsibility to help young people shape their lives and confer to them the power to see that objective is met. At least this is the case in countries where the democratic legitimacy of such legislation is recognised as in accordance with international human rights law.

The democratic character of scholastic legislation, nevertheless, does not render useless a reflection on egalitarian relations between youth and adults at school. How can these relations be developed, knowing that *de facto* there is authority attached to it, however legitimate it may seem?

Persons in authority situations in the school may use the power granted to them by the law to animate, facilitate interpersonal and inter-group relations, to help persons and groups achieve their respective objectives and to become more creative and fulfilled. This is why it is desirable for authority holders to put emphasis on the means used to help young people participate in their own development. At the same time as they assume the responsibility to ensure that the school reaches the objectives prescribed by law, holders of authority must ensure that the rights of students are respected.

Seen in this way, the exercise of authority is no longer an obstacle to democratic scholastic life, but rather an element for equality and a lever for fulfilment.

### **6.2.3. Scholastic regulations: an issue for exercising rights**

Whatever they are, regulations carry values. The fact of consciously and willingly choosing to create scholastic regulations based on the principles of the Universal Declaration of Human Rights or the Convention on the Rights of the Child, promotes a group of values such as peace, equality, fraternity, justice, tolerance and solidarity. This also signifies giving a sense to the participation of each person and offering them the possibility to build and live a motivating education project which brings them together. It is a dynamic spirit founded through the affirmation of individual rights and freedoms and the recognition that they may be free and responsibly exercised.

In this spirit, we feel that school regulations ought to bring together the following conditions:

- prior consultation of the people concerned;
- participation of the interested parties in preparation of the contents;
- a simple and clear presentation and formulation;
- knowledge of them by all persons for whom they are intended;
- observance by everyone, without exclusion;

- the prevalence, in all cases of non-observance, of non-punitive, educational intervention.

## **7. What is the teacher's role in human rights education ?**

### **7.1. Renewal of the teacher's role**

#### **7.1.1. Centred on the student**

“Centred on the student” is the theme of an almost-secular debate between “ancients and moderns”. It was at the beginning of the century that educational theories based on observation of children's development inspired sweeping changes in the activity of teaching. In response to the school called “authoritarian” where the child is invited to take a passive role, defenders of the active school note the necessity to take the child's development into account in teaching. Subsequent work on the psychology of development and, closer to us, differentiated pedagogy or in the field of constructivist theories, call for the definition of apprenticeship as a process. In other words, instead of the question of how to transmit to learners, substitute the question of how children learn.

Other ideas, more centred on the role of the scholastic institution, underline the importance of speaking out in the process of freeing subjects from the weight of the institution. In addition, work conducted in the field of cultural anthropology shows the influence of cultural roots and the historic memory of the individual in his relationship to knowledge.

#### **7.1.2. Allowing the student to live his rights**

Human rights education suggests that these rights could be - or must be - lived firstly through the relationship which the teacher establishes with his students and the students amongst themselves. Secondly, education of human rights and peace must be inscribed in a developmental pedagogic undertaking. Finally, this education targets the resolution of value conflicts wherein the teacher takes the role of mediator.

The mentality of teachers has also evolved from the “Napoleonic military” heritage and progressively given way to pedagogical approaches marked by their openness and dialogue. Actually, school projects now think they represent interests shared by members of the entire scholastic community. On the socio-pedagogical level, the error is now seen as an integral part of the learning process and teachers have the duty to accompany students all along their path.

##### 1) Favouring Co-operative Pedagogy

Even if the words of students are only rarely taken into account when decisions are taken which affect the life of the school, it must nevertheless be acknowledged that, since the 1960's, efforts have been made to add value to those educational undertakings which call for greater involvement of students. These directions have allowed teachers to experiment co-operative approaches - often inspired by the pedagogy of Célestin Freinet, who was a proponent of team work and mutual help. Thus, student councils are put in place to encourage sharing about problems, to favour peaceful resolution of conflicts and to participate in decisions touching on the rules for the classroom. The taking into account of

students ideas, the frequency of meetings and the operation of the councils varies from one class to another in function of the teacher, who in all cases remains the holder of power.

## 2) Installing a Climate of Confidence in the Class

When a teacher succeeds in establishing an atmosphere of confidence and respect in the class which allows all students to participate in decision-making, these pedagogical practices then favour speaking out by students, who then develop a feeling of belonging to the group/class. The act of being able to express oneself and to be listened to in a community to which one belongs, is one of the fundamental conditions in exercising citizenship and we can rejoice to see these pedagogical approaches developing. On the other hand, one should remain vigilant that knowledge is not ignored since the school is the place where we form persons capable of understanding social issues and making the necessary changes in the interest of the human community.

### **7.1.3. Teaching in a society in transformation**

The question of autonomy and scholastic democracy can also be asked in the framework of evolving scholastic policies. The theory of “globalising”, according to which social origins determine scholastic success, is not the only explanation for the difficulties currently facing scholastic systems.

#### 1) Favouring Common Approaches Amongst Teachers for Problem Handling

Social structures have changed and the reception of a growing number of children from a plurality of cultures pose new challenges for the school, notably concerning scholastic failure. In the midst of a period of scholastic renovation, some authorities propose new points of reference to resolve this problem: individualisation of student’s educational path, team work by teachers, putting the student at the heart of pedagogical activity. This new approach is concerned about a better management of a “community of problems”.

It must be remembered, however, that this approach is based on ideas which might sometimes be difficult to reconcile. In an effort for civic sense and social justice, the first of these concepts wants all students to benefit from all educational services available. The second is called domestic in that it is geared to the quality of social relationships, the reception, co-operation, of basic democracy. The third is of the industrial type because it tries to respond to skills needed on the competitive marketplace. The last one is that of inspiration, the motor of innovation, somewhat in the image of new management styles for creative business.

#### 2) Being A Mediator Between Students and Their Environment

There are new socio-educational parameters accompanying important social changes: difficulty of social integration, erosion of personal autonomy, loss of stable employment, no guaranteed housing, etc. It is within these changes that children today are growing up, with new cultural references. In this context, the challenge is great for the promoters of scholastic democracy who are calling for renovation of the school’s role. They must act as mediators between youth and their social environment, particularly parents. Social and cultural mediation can also lead to the integration of all the participants in a friendly education project and avoid yesterday’s creation of stereotypes which led to isolation.

#### 3) Involving All Participants

It is recognised today that collaboration of the different educational partners significantly influences the chances of scholastic and social success of children. This collaboration represents an essential element in all undertakings in the prevention of exclusion in that it is proactive and concentrated.

While examples of collaboration between schools and communities are still rare, they have shown that involvement of civil society in scholastic life is a good means of creating solidarity amongst individuals and actively contributes to democratic life. But it is far from being commonplace and, in many cases, relations between civil society and the school are false. This fact, however, must not lead to discouragement, but rather to patience and determination. Experience shows that perseverance bears fruit and while the latter may seem like “little things”, they are nevertheless undeniably “steps forward”. Analyses of the mechanics of power show how important details are: “always scrupulous techniques, often very small, but which have their importance because they define a type of political investment, a new “microphysics” of power.”

## **7.2 Renewing pedagogical evaluation**

This theme leads to questioning of both the intentions and the results of evaluation. The intentions concern mainly the objectives aimed at by the evaluation. The act of formulating these in such a way as to answer both societal development needs and individual learning needs - where they will hopefully one day also participate in this same development - does not suffice to eliminate questions which could reduce the evaluation process to only covering the needs of the moment. On the other hand, the evaluation could also lead to affirmation of freedom of learning by favouring the development of a critical mind in students.

Seen from different angles, evaluation can be as much an emancipatory tool and a lever for social selection, even exclusion. From this perspective, what are the main challenges to face to make evaluation in the scholastic environment a “partner” of human rights?

### 1) Evaluation as a Way Forward

To open up access to success, it is necessary to place learning in a larger perspective, even though more complex, which is that of change. No apprenticeship avoids the “voyage”, with its threshold to pass from one place to the next. Life events can change the cultural or intellectual evolution of a child. It suggests questioning of values taken for granted. It opens the way to the complexities of relations with humanity and with knowledge. It is opposed to rigid, hardened pedagogical practices.

The objective of this method of managing complexity and unknowns allows examination of “how proposed innovations lead all human beings (students, teachers, directors...) to interrogate, question, even transform existing rules”. This method assumes there is a choice of evaluation techniques which take into account the complexity of the act of learning seen as having multiple passages.

Learning evaluation can, thus, associate the mastery of knowledge, behaviours and skills to a dynamic process of construction, which by definition, is uncompleted. The act of learning, of saying, of thinking requires time and is built at each person’s own rhythm. A

closed system which encourages the illusion of “measurable efficiency” leads to a double failure: its own and that of the student judged as a poor performer compared to his peers at a given moment in time. This new paradigm of learning asks educators “to bring out the sense, transform executors into participants, feed the network of information, turn centrist into autonomy, sterile order into fertile paradox, mechanical application into anticipation”.

Teachers committed to this path agree to make the effort to get out of their theoretical rut to help children overcome the learning obstacles generated by their living conditions. The most difficult of all in the educational process is learning how to think as a free being, a fully participating citizen. This is only possible if educators show the willingness and courage to put aside their power in order to let their knowledge serve in the valorisation of individuals and the respect of their rhythm of learning.

## 2) In Favour of Educational Evaluations

If we start from the right of children to education and the objectives targeted by education, we can ask under what conditions a student can accept a negative evaluation of his learning without it having disastrous consequences at emotional and social levels? To try and answer this question, the act of evaluation must be broken down as it is a complex process, involving:

- 1) the psychological, sociological and didactic dimensions of teaching;
- 2) an understanding of the emotional issues linked to the evaluation process;
- 3) the need to create a distinction between evaluation and selection;
- 4) the definition of the concept of equality of opportunity;
- 5) the difference between learning and directive modes;
- 6) a knowledge of the diagnostic and predictive functions of evaluation;
- 7) the creation of continuity between evaluation and future orientation.

Evaluation can be seen as a support for the student in achieving his learning. It helps to resolve problems and to find solutions. In this way, evaluation is an element in building the student’s identity; it is not, in this sense, neither discriminatory nor selective.

To keep its democratic character and respect for human rights, evaluation can only be done in isolation, because bringing it up leads to comparison in a context of a plurality of skills. The diversity of resources necessary for evaluation favours insertion rather than exclusion. For this, obstacles to constructive evaluation must be continuously identified: the convictions, perceptions and values of the person facing the teaching, the standardising weight of organisations, the resistance to change.

To respond to these difficulties, the teacher must lean towards:

- 1) those who determine the contents being evaluated;
- 2) the operational factors of the evaluation: methodologies, strategies, procedures and tools.

### **7.3. Renewing teacher training**

Particular attention must be placed on knowledge, which never stops becoming greater and more complex. Teachers are called on to master interdisciplinary approaches regarding

world-wide issues and to have on hand methodologies for understanding and analysing the complexity of knowledge, notably for human rights.

### 1) Using the Range of New Pedagogies

Teachers must also be familiar with pedagogical approaches for education for democracy. This assumes that these are coherent with stated values and that they push teachers to be creative in their pedagogy, without falling into the trap of “pedagogism” wherein all content is taken out of those methods known as “active”. Co-operative methods such as conscientiousness pedagogy, institutional pedagogy and project pedagogy - to cite only a few - offer promising directions to follow.

### 2) Using the New Information Technology

The phenomenon of communications and information handling must also be taken into account in teacher training. Technology evolution has overturned our reference points and the mass media now take a priority place in daily life. No one should see this as the creation of a “world culture”. The proliferation of information sources calls for a great deal of vigilance. From this perspective, education on the media should receive particular attention and creation of a critical mind should remain a constant preoccupation.

In societies which are permanently redefining themselves, teacher training should continue the entire length of a career. This undertaking can only come from the person themselves; the commitment of each person must be counted on.

## **8. What are some ways to become familiar with human rights texts ?**

In the preceding chapters, we have seen many of the elements which come into play in human rights education: the state of a rule of law, the democratic climate in a school, the pedagogical relation between student and teacher, etc. All these items contribute to human rights education. To help the student, so that the concepts and instruments of human rights become familiar, there are also precise contents to be learned. For this pedagogical work, we propose below a sample of activities which allow the student to work in an enjoyable manner on the content of human rights texts and on the ways to apply them and/or get them implemented.

### **8.1. Learning the human rights texts**

Taking into account the judicial nature of human rights texts, reading them is not always easy, even if their usage often shows that they are not fixed documents. A number of simplified versions have been developed, in particular of the Universal Declaration of Human Rights, the Declaration on the Rights of the Child and the Convention on the Rights of the Child. Without calling upon these versions, it is possible to “bring” students into these documents so they may work with them. The pedagogical activities below allow:

- learning the contents of human rights protection instruments,
- illustration of the diversity of perceptions of the contents,
- reflection and sharing of opinions on the contents,
- putting the contents into a real context.

#### **8.1.1. Learning the European Convention on Human Rights**

Objective: Learn the contents of a legal text for the protection of human rights through a methodology of co-operation between students.

Key words: co-operation, human rights, education, rights.

Materials required: The European Convention on Human Rights, sheets of paper, different coloured crayons.

The ECHR is a text which, as all legal texts, is not easily readable. Nevertheless, once the strictness of style is overcome, the clarity of its writing is less inaccessible. The part concerning the definition of rights is entitled “Title I”, composed of 17 articles, from Article 2 to Article 18. The other parts define the methods of application of the Conventions (The Commission and the European Court of Human Rights). Section I is therefore essential for understanding the rights contained in the ECHR.

- 1) Create groups of five persons (1 minute).
- 2) Prepare the same number of copies of the Convention as there are groups. Divide each copy of the Convention into 5 parts, with all copies divided in the same manner. We

propose the following division: A=Articles 2-3-4 / B=5-6-7 / C=8-9-10-11 / D=12-13-14 / E=15-16-17-18. An additional part can be added concerning the rights contained in the Protocols (2 minutes).

3) Each member of the group receives one of the 5 different parts of the text (with a distinct mark for each different part). (1 minute).

4) The participants leave their original group to join members of the other groups who have the same part of the text as they do. By doing this, they create 5 “groups of experts, one for each part of the text. (If the “groups of experts are too large, divide them into sub-groups). (1 minute).

5) As a “group of experts”, participants look at their portion of the text and share their views with each other with the goal of increasing their knowledge and understanding of it. The teacher supervises, if necessary, understanding of the text (30 minutes).

6) While still in their “groups of experts”, the same participants look for the best ways to pass on their part of the text to the other members of their original groups and help each other to prepare this transfer of information (20 minutes).

7) Participants go back to their original groups, where each participant teaches their part of the text to the other members of the group, who in turn do the same. (30 minutes).

The teacher or trainer may decide to test the participants to assess their level of knowledge.

It is important to clearly explain to participants the objective of learning all the rights in the Convention, because the quality of learning of each group member depends on the quality of preparation of each participant in their “group of experts”. The reciprocal responsibility of all participants as well as true co-operation between them are the key words of the experience.

The division we proposed tries to give a certain coherence to the group of rights which are then discussed in each “group of experts”.

### **8.1.2. A ladder of values and human rights**

Objective: The goal of this workshop is to draw attention to the fact all the rights do not have the same importance depending upon the circumstances. They are, therefore, not always seen in the same way by everyone. At the same time, this diversity underlines in parallel their indivisibility.

Key words: sharing, values, perception, human rights, education, rights.

Materials required: individual copies of the ECHR, scissors, pins or tape, envelopes, large sheets of paper or such, glue, arts and crafts items.

Once the students are familiar with the rights contained in the Convention and its Protocols, it is interesting to let them “use” these rights and, above all, to share their perceptions of them.

The goal of this workshop is to draw attention to the fact that, according to circumstances, rights do not always have the same value. They are, therefore, not always perceived in the same manner by everyone. At the same time, this diversity underlines their indivisibility.

1) Participants individually choose the six rights of the ECHR and its Protocols which seem to them - for them at this moment - the most important.

2) They cut out these six rights. The remaining rights which they have not chosen should be put into an envelope to be used later.

3) Participants then individually rank the six rights in a decreasing order according to their present perception of their importance.

4) Using pins, they mount the rights on a larger sheet of paper, forming a ladder.

Example: 1. (the right considered the most important of the 6 rights chosen)

2. ...

3. ...

...

6. (the right considered the least important of the 6 rights chosen)

5) Participants group together by twos to present to each other their ladder and their reasons for creating it in that way.

6) Participants can re-group in other pairs to repeat the sharing.

7) Participants then go back to individual work on their ladder. Following the sharing, they may modify the order of their ladder, bring in new rights from their envelope, or decide to not change anything.

8) Each adds one or two rights which they discovered the importance of during the sharing, and incorporates them into their ladder.

9) Each person then permanently attaches their ladder to their paper, adding the date to it.

10) Reunited as a total group, participants can create a mural or choose another form to illustrate the view of human rights which is held by the group. The envelopes with the unused rights in them should not be discarded.

This workshop can be enlarged to include the rights in the European Social Charter. It might be interesting to see then which categories of rights are preferred over others.

It can also be interesting to repeat this workshop later, to compare the ladders in order to note the degree to which circumstances make us prefer certain rights and to show how they are all important.

Through its moments of sharing, this workshop also opens up participants' perceptions of each other.

### **8.1.3. Pictures and texts**

Objective: The goal of this activity is to use drawings to stimulate discussion and reflection on what is included in human rights.

Key words: rights, freedom of opinion and expression, stereotypes, universality.

Materials required: human rights texts, books of drawings or comic strips.

1) Presentation of comic strips or cartoons. Amongst those which can be used are: Dessine-moi un droit de l'homme published by EIP, The Human Rights Album of the Council of Europe or the comic strip of the "all different, all equal" campaign of the Council of Europe.

2) Work in small groups to associate the drawings with the rights contained in the texts which have been studied. Two working methods can be used at the same time:

- the facilitator chooses for each group a certain number of rights for which they must find appropriate drawings;
- conversely, it is possible to start with drawings to which they must associate the appropriate rights from the texts they have studied.

3) Presentation by each group to the total group of their choice of association of drawings and rights; discussion between the groups.

Even if all the groups use the same method, they can make different associations. It is an excellent start for discussions on the content and interpretation of rights.

### **8.1.4. Understanding human rights through role plays**

Objective: To put the contents of texts into real contexts. This activity can also be used to work on showing respect and protection of human rights.

Key words: rights, protection, solidarity, individuals

Materials required: photographs (taken from magazines, post cards, etc., showing persons in precise situations, but without any text), human rights texts.

1) Having chosen a photograph, without necessarily knowing the context in which it was taken, present it to the others:

- a. trying to identify the person shown in the photograph;
- b. trying to situate the environment in which the action shown took place;
- c. describing the situation of the person with regard to the rights which have been studied.

2) Next, choose one or several persons presented by participants and write them a message of solidarity and advice, telling them of the possibilities offered to them by the human rights protection mechanisms.

As a pedagogical tool in learning the European Convention on Human Rights, the objective of this exercise is the practice of an active methodology, applicable at different teaching

levels and in different cultural contexts. The student becomes an actor in his education, he learns to understand himself better, to clarify his values and to improve his interpersonal relationships. The exercise puts in practice learning strategies using co-operation, participation and interaction.

## **8.2. Human rights in action**

Understanding of these texts must not remain passive. Human rights, as has been frequently mentioned, are not only texts, but texts which are given their meaning through practice. Below, we propose some pedagogical activities to work on putting human rights into practice:

- in situations outside the school,
- in the school,
- in a group.

### **8.2.1. Human rights in the news**

Objective: Using specific cases, identify instances of human rights violations.

Key words: obligations, appeal, violations of rights.

Materials required: newspaper photographs with their captions and articles, human rights instruments.

- 1) For study in groups, distribute one or more newspaper cuttings illustrating a case of violation of human rights.
- 2) In groups, try to establish the facts of what happened as reported in the cutting.
- 3) Identify the rights concerned by the situation.
- 4) Identify the protection procedures which could be called on in these particular cases.
- 5) In plenary, each group presents their case and potential next steps. Comments and discussion by the whole group on the rights and mechanisms selected.

### **8.2.2. The rights of child beggars**

Objectives: a) to become aware of situations of exclusion in the world and in one's professional environment; b) to propose, in the educational setting, actions to take against different forms of exclusion.

Key words: co-operation, dignity, rights of the child, exclusion, international governmental organisations (IGO), international non-governmental organisations (NGO), partnership, protection of rights.

Materials required: case studies available on request; UN: [Human Rights: A Compilation of International and Regional Instruments](#).

Steps in running the workshop:

A. First part

1) Presentation of five case studies concerning working children, based on real situation taken from the documents of international organisations (UNICEF, for example) or from the press.

2) Each working groups gets one case study.

3) Participants are asked to compare the case studies to the Universal Declaration of Human Rights, the European Convention on Human Rights, and the Convention on the Rights of the Child. The goal is to identify violations of the rights and fundamental freedoms of children as illustrated in the cases.

4) Participants are then asked to identify the legal means of protection of children's rights and to list the governmental and non-governmental organisations which could intervene in these situations.

B. Second part

The second part of the workshop is aimed at letting participants share their experiences and ideas in order to create a non-exhaustive list of possible interventions:

- a) to raise awareness of students and parents of violations of children's rights;
- b) to associate the school with this project;
- c) to make local and national authorities aware of this matter;
- d) to favour the intervention of IGO and NGO in violations of rights.

This exercise is close to that of a simple analysis of the contents of rights based on case studies; at least, for the first part. In the second part, students must have first studied the institutions for the protection of human rights, including non-governmental organisations. This activity might accompany brainstorming on the importance of civil society and involvement of citizens in the protection of human rights. Examining the situation of working children allows exploration of basic economic and social rights, often neglected. In addition, this exercise can be expanded to other areas of human rights.

### **8.2.3. Moving from wishes to rights**

Objectives:

- a) to point out the obstacles in the way of scholastic democracy (internal regulations, administrative standards, etc.);
- b) to identify the conditions required to establish democracy in the school;
- c) to lead to the participants to identify concrete means for the implementation of scholastic democracy;
- d) to incite creation of democratic education projects adapted to the different contexts of the participants.

Key works: attitudes, citizenship, co-operation, consciousness, scholastic democracy, self-esteem, project pedagogy, participation, authority relations, responsibility.

Materials required: crayons, large sheets of paper.

The workshop is carried out in four steps:

1) The first step is to understand the context, during which:  
a) in plenary, each participant proposes three “base elements” of scholastic democracy;  
b) based on all the propositions, each participant makes his individual choice of three elements and then chooses a partner to explain his choice to;  
c) sharing in plenary of thoughts concerning the different choices.

2. The second step is devoted to the possibilities for a student to move from “subject to wishes” to “subject to law”. What are the important wishes of students, how can they be carried out, what is necessary for them to participate in carrying them out?

The awareness of the student of his place in the scholastic establishment (“institution”) develops by his full participation in the realisation of an education project rooted in his local reality.

3) The third step of the workshop is devoted to discussions in sub-groups around the means that participants may have available to carry out the projects outlined in the previous step. In a variety of forms, these projects should contribute to the promotion of scholastic democracy in the scholastic establishment and surrounding community.

4) In the final step, each sub-group presents a synthesis of their discussions and the participants discuss together their analyses, their choice of basic elements for scholastic democracy and their proposals for democratic projects.

#### **8.2.4. A case study: human rights and school regulations**

Objectives:

- to identify those attitudes and behaviours which make it difficult to exercise basic rights and freedoms in school;
- to help teams of participants write some articles of a school charter using the principles of the Universal Declaration of Human Rights, the European Convention on Human Rights, and the Convention on the Rights of the Child.

Materials required: the Universal Declaration of Human Rights, as well as its simplified version published by the World Association for the School as an Instrument of Peace; the European Convention on Human Rights; the Convention on the Rights of the Child; case studies, crayons of different colours, large sheets of paper.

##### 1) Using case studies in pedagogy

Studies in the field of cognitive psychology have shown that analysis of specific cases helps to place learning in context. Taking into account social interactions between equals can serve as a catalyst for change.

Summarising research results recently published on the use of case studies in teacher training, N. Rome noted that the discussion about cases allows clarification of thoughts orally as well as written. It seems, therefore, adds the analyst, that the combination of written, individual reflection and oral, interactive reflection on teaching cases promotes deeper learning.

## 2) Introduction to the workshop

Can we conceive of a scholastic establishment where the directing principles are contained in a “charter” which respects the rights of everyone and guarantees the full exercise of basic freedoms as stated in the Universal Declaration of Human Rights, in the European Convention on Human Rights and in the Conventions on the Rights of the Child?

It is important to note that this activity is more of a thought-provoking exercise and does not pretend to provide miraculous solutions given the variety of situations taking place in different scholastic environments. It must be remembered that the school is often a place of non-rights, to use the expression of B. Defrance. It happens that teachers, directors and students disobey the law on more than one occasion or infringe on the physical or moral integrity of others. It also happens that the law is unknown or poorly known by the teacher himself, or he is sometimes confronted with dramatic situations which destabilise him: violence, expulsion, exclusion, etc. In some institutions, interesting paths are being explored: teams of non-teaching professionals are in the school and available to students and teachers; in other cases, awareness sessions and training are given to teaching staff.

The proposed workshop can take place during training sessions, pedagogic days or in class with the students. In the latter case, the workshop is of particular interest to educators who promote or want to promote co-operative learning.

### Examples of real cases brought up in schools in America, Africa and Europe

- Students in a primary school were insulted, beaten and then excluded for twenty-four hours because they had not swept the classroom before the teacher arrived.
- Girls were insulted, scorned or harassed by boys.
- An obese student was the laughing-stock of his classmates.
- Youth were subject to extortion by older children.
- A teacher was constantly booed by students who stopped him from teaching.
- A teacher called his students as imbeciles and mocked those who had difficulties.
- A school principal unconditionally supported the adults when there were difference with students.
- An 8-year old pupil had his mouth taped shut because he had not been given permission to speak.
- A large proportion of student were not present at school the day of their religious festival: they were given grades of “0” because the teacher decided to give a test that day.

- Students published a student newspaper in which they made comments annoying to the school administration.
- The director was afraid to punish students who aggressed a teacher carrying out his job.
- A 9-year old pupil received a punishment to write twenty times “I cannot laugh at school”.
- In a secondary school, a history teacher stated that the Holocaust did not take place.
- A school principal required a student guilty of theft to publicly confess his “crime” in front of the entire school, grouped in the recreation yard for that purpose.
- A school director did not like it that boys were pulling their hair back with elastic bands. One day, he played hairdresser and cut the pony-tail of a student “who was acting up”.
- Young Muslim girls refused to remove their headscarves in class. They were thrown out of the school.
- One day in December, a student was punished because she had used the toilets reserved for teachers. The students’ toilets were located outside and were not heated.
- A student informed against other students selling “grass” inside the school. During recreation, a number of his peers insulted him.
- In the school parking area, a teacher found his automobile covered with graffiti and the tires punctured.

### 3) Running the Workshop

- 1) Participants are asked to take a look at the UDHR, the European Convention on Human Rights and the Convention on the Rights of the Child. If this workshop is being held in a students classroom, it will be useful to take some time to study these documents before moving on the case studies.
- 2) Participants form four groups to share their impressions after their reading, and to note on paper their comments. Each group should appoint a secretary.
- 3) Each group then looks at the cases posted on the walls. Each case corresponds to a real situation lived in schools in different countries and continents.
- 4) With regard to the cases presented, participants are asked to play the role of parent, student, teacher or school director; thus, participants create four groups: parents, students, teachers and school authorities.
- 5) Each group identifies the rights and freedoms they see as priorities in schools; these rights and freedoms are then associated with articles of the UDHR, the European Convention on Human Rights and the Convention on the Rights of the Child.

- 6) Once this selection is made, each group writes four draft articles for a school charter.
- 7) The groups reunite to decide on the final contents of the charter, which is then posted on the wall to facilitate the wrap-up of the workshop.

This exercise should instigate discussion of youth-adult relations at school. It sets out the hypothesis that it is possible and desirable that traditional “internal regulations” evolve into a “charter of rights and responsibilities” inspired by the Convention on the Rights of the Child, giving place to changes which are freely adhered to rather than unilaterally imposed without appeal.

### **8.2.5. Overcoming prejudice and discrimination in a group**

Objectives:

- a) to discover what brings us together and what distances us from the “others” in a group;
- b) to experience the construction of a group identity from the awareness of differences;
- c) to give value to what each member of the group brings during the process of creating its identity.

Key words: discrimination, universality of human rights, identity, intercultural, interdependence, prejudice, values.

Materials required: crayons, large sheets of paper.

The activity is carried out in two parts. The first part has the following steps:

- 1) Brief presentation of participants and instructions for the exercise.
- 2) Individual work where each participant “spots” three other participants and notes his perceptions of them
- 3) A short feedback in plenary of these perceptions.
- 4) Successive creation of pairs of sub-groups according to the identity references proposed during the plenary session (ex: vegetarians/omnivores, athletes/artists, etc.). Sub-group members offer their opinion of the other sub-group and vice versa.
- 5) Sharing of feelings and perceptions of the attitudes shown during this exercise by sub-group members.
- 6) Formation of groups of 4 to 6 persons based on their feeling to be able to carry out a project together.
- 7) Creation by each group of a wall panel illustrating their identity references.
- 8) Showing and sharing of the wall panels by all participants.

The second part:

- 9) Analysis by the participants of the steps necessary to reach the point of creating a common project.
- 10) Personal appreciation and evaluation of the proposed steps.