

## Theo van Boven

Theo van Boven (\*1934) grew up in a Protestant family in the Netherlands. He studied law at Leiden University and joined the foreign service in 1970. During this time, the government of Joop den Uyl (1973-1977) decided to make human rights an essential part of its foreign policy. Van Boven, who represented his country at the UN Human Rights Commission, became a key figure in implementing this policy. In 1977 he left the Dutch foreign service and became Director of the UN Human Rights Division (1977-1982). Until his retirement, he held many different positions in the UN human rights apparatus. He was a member of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (1986-1991), Special Rapporteur for the Rights of Victims (1990-1993), member of the Committee on the Elimination of Racial Discrimination (1992-1999), and Special Rapporteur on Torture (2001-2004). His biography mirrors how human rights became a key concept of international politics in the second half of the twentieth century.

## Interview

The Interview with Theo van Boven was conducted by Rainer Huhle. Both know each other from their work at the UN. The interview was conducted by Rainer Huhle via zoom on Friday, June 16 2021 from 10-12 AM.

### Huhle

Good morning, Theo. I am very delighted to have this biographical interview with you today. I'll start with your early years that seem important for the way you later engaged in human rights. I understand that you had previously been engaged in religious studies, you had worked with the World Council of Churches, and your PhD in law was on the international protection of religious freedom.

### van Boven

That is correct.

### Huhle

So I wonder how important this religious education and your religious beliefs were for your engagement with human rights in the beginning.

### van Boven

Well, I was brought up in a, let me say, traditional Protestant family in the Netherlands. My parents were perhaps more religious than I was. In fact, while I may not be considered a religious person, I tried to be guided by the religious spirit and promise that I have gratefully inherited.

### Huhle

So would you say that religion was transformed into ethical principles that led you through your later engagement with human rights? Would you establish that connection?

**van Boven**

Well, I don't know. I don't think it was transformed, but I think it is true that religion continued to play a role in my life. And that's what I can say about it.

**Huhle**

Was there something particular that finally led you to decide to study law?

**van Boven**

Well, that's an interesting question. I could also have studied, for instance, political science or the history of nations or the relationship between Europe and the other parts of the world and the global scene. So it was just by chance, I think, that I opted for studying law. I could also have chosen another area of academic studies. But in fact, by studying law I was keeping all the options open, you see?

**Huhle**

I see, yes.

**van Boven**

It was a sort of general academic training, studying law. In fact, I should also explain that I did not opt for international law at that time, but rather for comparative legal systems. In the final paper I presented at my exams related to the comparative legal systems in particular, the common law system was compared with the civil law system. And it was because of this work that I was offered a fellowship at the Southern Methodist University in Dallas. Dallas became famous or rather infamous a few years later following the assassination of President John Kennedy. We should not forget that SMU at that time conducted a widely appreciated comparative law program. And I must say I largely benefited from that and got particularly interested in international affairs.

**Huhle**

That's interesting. And for us in Germany, the Netherlands are a country always famous for and full of legal scholars. Now when you started your legal studies, did you have any figure, any professor, any law scholar that was kind of a leading figure for you?

**van Boven**

Well, there were several. But the one whom I felt very much indebted to because of his vision was Bert Röling.<sup>1</sup> Röling started off as a judge in a district court in the criminal branch, but then he was in fact selected to become a judge at the Tokyo Tribunal<sup>2</sup> where he came up with his own views. He did not necessarily follow all the majority views. But what I found very impressive was his vision of the role of international law, because he made the distinction between the community of what was called the Christian states, followed by the civilized nations, as the language was during the League of Nations period, and then finally the peace-loving nations, which was a very central concept in the United Nations Charter.

He was not very popular in the traditional law profession in the Netherlands because they were more attached to the European view, and he was a man of a global worldwide view. Which appealed to me very much. I have still kept some of his books. He first moved from criminal law to polemology, the laws of war and peace. I'm very much indebted to him. I

also went to see him to ask whether he would be my supervisor. He was in Groningen. But because of his – in the Dutch sense – non-traditional views, he was never appointed to another chair, for instance, at Leiden University, which was considered more prestigious.

#### **Huhle**

That's very interesting because of several things: firstly, as you say, that he was kind of a dissenter in the Tokyo Tribunal and secondly because the Tokyo mission was a mixture between law and diplomacy. And as I remember, after your legal studies, the first thing you did was to not go into the legal profession directly, but become a Dutch diplomat. Is that right? Could you recall what made you take this decision? Was there some special motivation, or was it just the best option you had at that moment?

### I was thus entrusted the task to represent the Netherlands in the UN Commission on Human Rights in 1970

#### **van Boven**

I should say two things here. In fact, I was not entering into the diplomatic service of the Netherlands because diplomats have their own educational training and program. I was not a civil servant. Coming back from the United States my interest in international affairs had largely grown. It was from that perspective that I approached the Ministry of Foreign Affairs.

In the Ministry they offered various interesting options including in the Department of International Organizations. And of course, the United Nations, the ILO.<sup>3</sup> and the other Specialized Agencies were part of that. It was in that context that I was asked to be a junior assistant in the Netherlands delegation to the General Assembly in New York.

#### **Huhle**

That's interesting. And I found that in your early years as a Dutch delegate or member of the delegation to the United Nations, one of the persons you worked with very closely was Father Beaufort.<sup>4</sup>

And I wonder what you could tell me about him and his possible influence because in the history of the early United Nations, he's considered a very conservative representative, very Catholic, very restrictive in some matters related to human rights, but at the same time a human rights champion. Would you say he was an important influence for you or did you struggle with Beaufort?

#### **van Boven**

Well, Beaufort was also a professor of international law at the Catholic University in Nijmegen. I'm not aware of major publications on his part. In the early years of the drafting of the Universal Declaration of Human Rights he already wanted to introduce a clause about the divine origin of man. But he did not succeed, and rightly so to my mind, because it was the French delegate René Cassin,<sup>5</sup> a very well-known personality, who argued, "How can we now in a political assembly or in a political environment decide whether man is of divine origin. That cannot be voted upon in a political way." And he was right.

In fact, Beaufort stood for a rather traditional conservative sector of the delegates in the Third Committee<sup>6</sup> of the General Assembly. Thus, he voted strongly against the right to self-determination by peoples being included as the first article in the International Covenants on Human Rights.<sup>7</sup>

Father Beaufort certainly was a pleasant person. I was also sort of carrying his books and/or his documents in a briefcase. But at one stage, I got into conflict with him. That happened when there was a discussion on religious rights and principles as developed in a study entrusted to someone called Arcot Krishnaswami,<sup>8</sup> who was an Indian national. On that occasion, father Beaufort quoted or read out a statement which I thought was literally the position of the Vatican. This happened just before Pope John XXIII proclaimed his Encyclical *Pacem in Terris*.<sup>9</sup> And when he read that out, I questioned "Is this the Netherlands' position you are explaining or describing?" Then I said to him, "It is my considered view that you are not expressing the Netherlands' position here, but the old Vatican's position." He was rather angry with me for making a statement like this. I responded by taking up the matter with the Netherlands Foreign Ministry.

So that was a clash I had with him. Nevertheless, he was a very nice man, he liked to play cards and good food and all of that. Some years later, after Father Beaufort had passed away, the Netherlands was again elected member of the UN Commission on Human Rights. The Foreign Minister Joseph Luns<sup>10</sup> then reckoned that a Catholic member of Parliament, would be the proper candidate for the Netherlands.

Then one of my supervisors, a Director General in the Ministry who had started to have confidence in me and who was not a human rights expert but dealt with international development issues, argued that van Boven should be the Netherlands delegate and not the person the Foreign Minister had in mind. The Foreign Minister conceded and I was thus entrusted the task to represent the Netherlands in the UN Commission on Human Rights as from 1970 and onwards.

#### **Huhle**

Now that was the start of a very long career in the UN human rights system and it is my impression that from very early on one of your primary concerns was really giving civil society and especially victims a voice in the United Nations, which seemed kind of an odd idea because the UN at the time was still an organization shaped almost exclusively by states, right?

#### **van Boven**

Yes.

#### **Huhle**

It's not the picture we have today. So how did that come about? What moved you to plead for more civil society and victims' participation in the decision making in the United Nations?

#### **van Boven**

Well, this was what I called the third system. The first system was the political one

representing the interests of states. The second pillar in that system represented economic interests of major corporations. And then I felt that there should also be a third system. What I had in mind was a system of non-governmental civil society organizations.<sup>11</sup>

**Huhle**

Can you mention some specific initiatives that led to creating this third system in the United Nations in which you participated?

**van Boven**

Well, it was in fact important that the so-called third system would be instrumental in defending the rights of people. That was what I had in mind.

**Huhle**

Now there was one channel for submitting complaints to the United Nations about human rights violations. That was the 1503 channel.<sup>12</sup> And that was the only thing existing because the Human Rights Commission had decided very early on in the late 1940s it would not accept individual complaints. What was the way to open up that system at the time? I think you were also famous for being quite outspoken on human rights in challenging what is called quiet diplomacy, the traditional ways of bringing up topics in the United Nations.

**van Boven**

Yes, that was the so-called 1503 Resolution, which was seen by many as a major step forward so that at least gross violations of human rights were to be taken up. However, it did not really work that way. Going into detail, I do remember that, while I was having lunch with Commission members invited by the United Kingdom's Ambassador in Geneva, he said, "Well, this afternoon we will have a meeting on the 1503 procedure. And I for one think that this matter should not be dealt with by the United Nations at all because we are already dealing with the Northern Ireland situation elsewhere in the European context."

Indonesia, then also on the 1503 list, said, "Well, we are dealing with our problems regarding political detainees in the framework of the International Red Cross. And therefore, it is not necessary that the United Nations get involved in that" and so it went on. They all had certain arguments. There were seven cases of countries. It convinced me that this sort of confidential procedures is not effective, particularly when gross violations of human rights are involved. I strongly felt that such issues needed to be dealt with in the public domain and not in private conversations.

However, this does not exclude certain life-threatening situations, for instance the death penalty. Confidential steps should be taken by the UN leadership to save lives. But, in the face of consistent patterns of gross violations of human rights, this is a matter of serious public concern and needed to be dealt with publicly.

**Huhle**

Beyond the strictly political sphere at the UN at that time, there was a forum for human rights debates that was a bit more independent because it was full of experts – the Sub-Commission on the Prevention of Discrimination.<sup>13</sup> You soon became a member of that Sub-Commission. How did that come about? Who called on you to become a member of this Sub-

Commission?

**van Boven**

Members of the Sub-Commission were appointed by the Commission. Other than members of the Commission, the Sub-Commission members were appointed in their individual capacity, and at least some, perhaps the majority, were quite independent.

In the Sub-Commission we were taking up all kinds of issues. Particularly the question of not only ethnic minorities, but also of indigenous people, was and still is of major importance. And thus, a decision by the Sub-Commission had considerable lasting impact as a UN organ, and moreover it had the support of a good number of people from various continents.

Yet within the Commission and later also in the UN Council for Human Rights, independent expertise was not appreciated. Nevertheless, the role that the Sub-Commission had played was taken over by what is now called the Special Procedures, which constitutes a backbone of the human rights promotion and protection system in the United Nations.

**Huhle**

Yes, we will come back to that a bit later, but before that, I'd like to talk about the name of the Sub-Commission, whose full name was Sub-Commission on Prevention of Discrimination and Protection of Minorities. And later on, you also became a member of the Committee on the Elimination of Racial Discrimination (CERD).<sup>14</sup> So what importance for your human rights thinking does or did fighting discrimination have in the overall context of human rights protection?

**van Boven**

Well, I think that fighting discrimination, whether it was discrimination based on gender or on ethnic origin, was a widespread desire and considered goal to pursue in many parts of the world. This was seen as a human rights issue, but also as of major political interest.

**Huhle**

Okay, but putting it into more philosophical terms, would you say that fighting discrimination is kind of a core principle of human rights, or is it just one item next to others like protection from torture or other main topics in our human rights protection system?

**van Boven**

Well, it is to be counted among the irreversible principles in international law.

**Huhle**

As part of your fight against discrimination, you also engaged, for some time at least, very much with the rights of indigenous people, correct? Is that part of antidiscrimination work, or would you say that was a special issue? And did it have a specific starting point for you?

**van Boven**

Yes, it did have a specific starting point. I learned that largely when I was a Human Rights

Director on a fact-finding mission to Chile<sup>15</sup> accompanied by some of my staff members. One of them was originally from Guatemala, his name is Augusto Willemsen Díaz.<sup>16</sup> Whenever we visited people in prisons, he immediately made contact with indigenous people. He came to the conclusion that the indigenous people there, the Mapuche Indians, had suffered even more than any other group in Chilean society.<sup>17</sup> I think that even today the promotion and protection of the rights of indigenous people is and remains a major concern and a major task today and in years to come.

#### **Huhle**

Let me return to your work in the Sub-Commission because it was the Sub-Commission that also started some revolutionary work in the United Nations, namely ordering specific and investigative reports on certain country situations, especially on Chile, of course. I think that was the beginning of a new phase in your work in the United Nations. Can you tell us how the Sub-Commission decided to engage with these investigations into Chile? Because it was unheard of before in the United Nations that the UN dared to investigate a specific country situation. And of course, the Chilean government,<sup>18</sup> as later the Argentinean government,<sup>19</sup> reacted very aggressively against that.

#### **van Boven**

Well, of course, there already were consistent patterns of violations of human rights that were under main investigation. That was in fact the situation in South Africa and in the Middle East. There were already major UN resolutions on those situations and then we developed that further. It was the way to open up a much broader investigation of human rights situations, with Chile opening the door. The USSR at that time agreed for their own reasons, since a Marxist government<sup>20</sup> had been involved. This was an important step, although when it came to dealing with gross violations of human rights in Argentina, the Soviet Union was on the other side and didn't go along. Of course, I asked them, "Why are you defending the socialists in Chile and leave the socialists in Argentina aside?" I did not receive a satisfactory reply.

#### **Huhle**

But would you consider the appointment of the special rapporteur on Chile the first step towards the establishment of what later became the special procedures, or would you say that was something very specific apart from what we now know as the special procedures? I'm asking because it seems like the Working Group on Enforced Disappearances<sup>21</sup> grew out of that Chile involvement with the Sub-Commission.

#### **van Boven**

Well, there were a number of aspects. I think one was that, as I said, it broadened the spectrum of international and UN investigations. Also, relating particularly to Argentina, we developed the thematic approach, as a nonselective theme so as to move forward and establish a machinery by way of a working group, whose members were not only from the West but also from other areas, such as from Iraq, Algeria, and so on.

I had to deal with a Secretary General who was not very interested in human rights.

**Huhle**

In the middle of these initiatives that kind of renewed or refreshed the human rights protection system in the United Nations and actually completed the very important mechanisms and instruments, you were nominated in 1977 as the Director of the Division of Human Rights.<sup>22</sup> You were nominated by Secretary General Kurt Waldheim,<sup>23</sup> who later became very much criticized because of his Nazi past. Why do you think you were appointed as Human Rights Division Director in the middle of ongoing struggles with some member states, like the South American dictatorships? Was that an important signal? It strikes me that you were known already as a human rights fighter, somebody really quite engaged. So they must have known whom they put in that position.

**van Boven**

That's true. In fact, Waldheim only appointed me after he himself was re-appointed because he was securing his own position. He waited before appointing me until after his mandate was renewed as Secretary General. So that's one part of it. I had to deal with a Secretary General who was not very interested in human rights, let's face it. I had to deal with him, but my main boss, if I may say so, was a high-ranking American diplomat, who was the highest U.S. official at that time in the United Nations, Mr. Buffum<sup>24</sup>. He was a former U.S. Ambassador to Lebanon.

I had to deal with Mr. Buffum but also with his main assistant. And his main assistant, called Mr. Jay Long,<sup>25</sup> turned out to have – and I was not immediately aware of that – very close connections to the CIA system active in the United Nations and the United States. And as it turns out he worked closely with my deputy, who was appointed during the tenure of my predecessor, Marc Schreiber,<sup>26</sup> and his name was Pierre Sanon.<sup>27</sup> I only started to realize gradually that they worked for other purposes than I had in mind.

I even shared information with a deputy from Africa, but I did not realize that he had completely different interests. Some friendly people warned me and said, "Theo, don't trust everyone the way you are doing." They were right because I was rather naïve in this regard by not fully realizing what forces are at work in the international system and in the United Nations. This I only discovered later. I made mistakes by trusting people who did not deserve it.

**Huhle**

And finally, I guess it were those people who contributed in 1982 to the non-renewal of your contract in the position of Director of the Human Rights Division, which is a long story, of course, and we have to go into that, too, especially the conflict with Argentina because Argentina took a very strong stand against any human rights initiatives from the United Nations. Could you go a bit further into the details? I know this has been described very aptly in the book by Iain Guest,<sup>28</sup> but for the interview it would be very important to hear your version of what happened to your efforts to protect the Argentinean people from the repressive measures of the junta regime.

**van Boven**

Well, very strange things happened. There was a man, he was Argentinean and a staff



member of what was called the Joint Inspection Unit. He wanted to speak to me, and I said, "Well, okay, but let us have some others joining our conversation." He didn't want that. Anyway, we did have that conversation, and indeed he wanted to directly undermine my authority and my work.

From the beginning while I was Director of Human Rights, Argentinean officials were trying to obstruct my work. I still possess a full file with letters addressed to the Director General of the Geneva Office and to the UN Secretary General and Mr. Buffum all criticizing me and insisting that I was not neutral by taking up matters in a partial manner. This continued during the entire five years of my tenure as Director of Human Rights as a means to undermine my work.

#### **Huhle**

But still, under your leadership as Director important measures like the establishment of the Working Group on Enforced Disappearances were implemented, which was, as you said before, the expression of the intent to take the issue of enforced disappearance from the specific country situation, especially in Chile, to a general level. And the Group was composed of the five UN regional groups and is still existing and still working today. Was it your idea or was it a joint effort of many people? How did this group come about?

#### **van Boven**

Well, it was certainly a joint effort. And it came into being rather late – but better late than never. Countries like France, to take one country, and a number of others, and I must say also, at that time, the United States put its weight behind the creation of such a Working Group. It's all well described in Iain Guest's book. What also had a major influence, I think, is that persons from Argentina like the Madres<sup>29</sup> and also the Abuelas<sup>30</sup> came to Geneva and they sat in the public gallery. Not only were they an embarrassment to the Argentinean diplomats but also accused of being close to the "terrorists."

Their presence, their coming to Geneva, I think that was the first time that victims presented themselves that way in Geneva. We also had problems with Cambodia and the Red Khmer, but they did not have the capacity to come to Geneva. The Argentinean victims came themselves as persons, carrying the photographs of their beloved disappeared persons. I invited them to my home, to come and trust me in my personal support for their cause.

#### **Huhle**

Which leads us back to your engagement for more participation of victims and civil society in the UN system. The mere presence of the Madres and Abuelas was part of that, I suppose. Now in 1982, you were finally dismissed although, technically, it was a non-renewal of your contract, but everybody understood it as a dismissal. You made a very interesting speech<sup>31</sup> before you had to step down, which was received as quite provocative by many people. Can you remember that moment, and describe how you felt?

#### **van Boven**

Well, I felt I could not function credibly without expressing things clearly, to call a spade a spade, and that the moment had come for me to speak up as I had done before. When I

explained that I had to leave, that my contract was not being renewed, I pleaded for the establishment or the appointment of a High Commissioner for Human Rights,<sup>32</sup> a High Commissioner not reporting to the Secretary General, but with his own mandate approved by the General Assembly. I said that not considering myself as a candidate for that post, but pleading for such a position. It was only many years later in fact, at the Vienna Conference<sup>33</sup> in 1993, that such a decision or such an advice and recommendation was formalized.

**Huhle**

When you gave that speech to the Human Rights Commission close to the end of your mandate, how did you feel the reaction of people assisting you at that moment?

**van Boven**

Well, I did receive a lot of support. And there was a large group of some 50 organizations that expressed their views to the Secretary General. There were even some U.S. congressmembers who wrote letters of support for what I had been doing. Of course, I was pleased to see this broad support in many countries. But then others saw my departure from the United Nations from a very different perspective. I was told that the Chilean newspaper *El Mercurio*<sup>34</sup> was elated.

**Huhle**

Sure. This was not the end of your UN career because not much later you were nominated as a Special Rapporteur for the Rights and Remedies of Victims and gross Human Rights Violations. I think your name is probably best known for the so-called Van Boven Principles on the rights of victims to reparation.<sup>35</sup> So you were not ousted completely from the UN. You came back in the special position as a rapporteur. You reported several times to the commission. And finally, your project was adopted and is now the basic document on the rights of victims in every aspect. It's still a document cited everywhere in the United Nations. How was it possible you could return in such an important and official position?

**van Boven**

Well, I started with a mandate of the Sub-Commission of which I was member. It took me three or four years during which I updated the work. And I did most of the work myself. And after some years, I presented my final report together with a set of principles and guidelines. The matter then got moved to the Commission on Human Rights where it was left pending. It was only after a number of years that the matter was taken up by Cherif Bassiouni, a skillful legal craftsman. Anyway, the work was done – although put in other hands. At the same time, there was also Louis Joinet,<sup>36</sup> the main drafter of the Impunity Principles<sup>37</sup>. Our work was much interrelated, but unfortunately there was not much coordination between the two exercises. Louis was a dear friend, and he did lots of work for human rights and in particular for Latin America. This work on impunity was started by Louis, the other by myself.

**Huhle**

Can you explain how you proceeded to establish these guiding principles on the rights of victims? Did you write them based on your own experience as Director of Human Rights and as a member of the Sub-Commission or did you call for a participative process? Did you hold many workshops or consultations?

**van Boven**

Yes, we had a big consultation here in Maastricht to which a great number of knowledgeable persons were invited. We all benefited from their knowledge, writings, and input. This was a collective process of human rights experts from many parts of the world. Thus, the actual drafting was done with the help of good, skillful people.

**Huhle**

Could you mention some of these skillful people?

**van Boven**

One name I would like to mention is Dinah Shelton.<sup>38</sup> She has also been active in the Inter-American system. She was an extremely skillful drafter of legal texts.

**Huhle**

Of course. Now, to my surprise, I saw that in 1990, you left the human rights work at the UN and stepped into this new process of establishing international criminal law. You became the Registrar of the International Criminal Tribunal for the Former Yugoslavia. Was that inspired by your former friend and professor, Röling, or if not, what motivated you, as it looks like a surprising shift in your career?

**van Boven**

No, I can't say who inspired me. I felt that after all, the setting up of the Yugoslav Tribunal was a very positive step. I believed that it could be most helpful, and France, for instance, contributed much to the introduction of the notion of *partie civile*.<sup>39</sup> I think this was a promising exercise. So why did I get involved? First of all, as I said, this was a promising development. Secondly, I was asked to be the Registrar.<sup>40</sup> Usually, it is helpful for the host government as in the case of the Netherlands that the Registrar at least is familiar with the Netherlands administration.

**Huhle**

You once said that when you started at the ICTY, you had nothing in your hands but the relevant Security Council Resolution and that you did not stay in that position of Registrar for very long. You stepped down soon. Does this have to do with a lack of support, or otherwise?

**van Boven**

Well, I came in at the time when there were not yet any cases pending. The President of the Tribunal was Antonio Cassese,<sup>41</sup> a good friend of mine. We have worked together on many issues, also in the Sub-Commission. I still have a great deal of admiration for his strong capacities and convictions. It was a pity that, because there was not yet much adjudicative work, we got into disagreements about small administrative issues. That was a great pity because he's my friend and my comrade.

But in retrospect, I must say, it was perhaps an unwise decision to leave at that time. I should have given it a better chance, for myself also, although I did not have very strong career ambitions, but at least I wanted to serve a good cause. Recently I was back in The Hague in view of the forthcoming closing of the Tribunal and I was invited to join. I was

also pleased to use the occasion to pay tribute to Antonio (Nino) Cassese, whom I admire a great deal.

**Huhle**

Your short tenure at the ICTY was not your only stint in international criminal law however, because you then became a member of the Dutch Delegation to the Elaboration of the Rome Statute.<sup>42</sup> Can you tell us about your role in the drafting process of the Rome Statute as a member of the Dutch Delegation?

**van Boven**

In fact, the chief member of the delegation was supposed to be Adrian Bos, but he was ill and hospitalized. I was called to replace him. But I did not have the advantage he had of a long process of negotiations and involvement for many years. Adrian Bos had substantial experience with that and was widely respected. I came in as a new outsider, thus my position at the conference was not very prominent. Of course, I was very pleased with the outcome. At the end of the day, while the vote was taken, supporters were standing on their chairs and tables and applauded.

**Huhle**

So these were the two excursions into international criminal law in your long career. How would you weigh the importance of international criminal law with respect to human rights law? Would you put it on an equal footing, or is human rights law more important for you than international criminal law? How would you balance these two aspects of human rights protection?

**van Boven**

I think the Statute of the International Criminal Tribunal also has a strong human rights orientation. I do think that now all the articles on war crimes, crimes against humanity, and so on have a very strong human rights connotation. So I would not say one is outweighing the other.

**Huhle**

I see. You soon returned again to a very important position in the human rights system with your new mandate as the Special Rapporteur on Torture, which was more or less the last important mandate you had in the United Nations system. Did you apply for that or did they call you, and what was your experience as a Special Rapporteur on Torture?

**van Boven**

I don't think I ever applied actively for certain jobs. And it was in fact a friend of mine, Leandro Despouy,<sup>43</sup> who was at that time the Chair of the UN Commission on Human Rights. He discussed with me if I would be interested to be the Special Rapporteur on Torture. This position came to me through him. It was a very challenging job; I was receiving urgent appeals on a daily basis. I had a list of 15 countries involved which I wished to visit. It was a very demanding position with special procedures.

To my mind I remained loyal to the United Nations.

**Huhle**

Do you remember which countries you visited in that function?

**van Boven**

Well, I visited Uzbekistan, I could tell all kinds of stories about that country where systemic practices of torture were the order of the day. I also visited Spain since the country did not respond or comment on allegations of torture in the annual reports. In our report I included petitions we had received from Spain, but these were ignored and not replied to but then Spain realized that this attitude was not in their interest. So in fact they then invited me as Special Rapporteur to make an official visit to the country. I thought that this was a fair gesture and we negotiated the terms and conditions of the visit.

**Huhle**

The Spanish government, after receiving and reading your report, said, “This report is virtually unacceptable in its entirety, being unfounded and lacking in rigor, substance and method.” That was not a very friendly comment for the Special Rapporteur.

**van Boven**

No, it really was very harsh. In fact, I was not fully surprised, but I thought that my report was well founded and that I should take up the matter with those who had proper knowledge of the Spanish situation. Thus, I approached the European Commission against Racism and Intolerance (ECRI),<sup>44</sup> an organ of the Council of Europe. I agreed with them that I should come and see them, based on the understanding to keep my consultation confidential. We discussed the Spanish situation because ECRI was also very much involved. In fact, ECRI was preparing a report on Spain. In my consultation with ECRI I came to the conclusion that my views on Spain did not differ from those held by ECRI. They were of the same nature and the same scope. However, I felt compelled to make these findings public. This happened in the year 2005.<sup>45</sup> And now, more than 15 to 20 years later, I see no reason not to disclose the matter.

I may add that much attention was given to the situations in Uzbekistan and Spain, but other country's situations were also investigated in relation to the anti-torture mandate. I'd like to mention my prospective visit to the Peoples Republic of China, which was duly prepared but ultimately postponed by the government. I further want to mention the torture allegations regarding U.S. prison conditions in Guantanamo Bay and in Bagram Bay (Afghanistan), equally under U.S. rule and to be taken up with the U.S. It was no secret that while prison conditions in Guantanamo were very bad, Bagram Bay under U.S. rule was worse.

In my ensuing contacts with the United States, I was criticized for being selective. In response I argued that my main cause was defending universal and fundamental human rights and that the United States was an important nation with a leadership role in human history.<sup>46</sup> So I had my difficulties, not only with Spain, but also to a large extent with other nations.

**Huhle**

Not only as Special Rapporteur on Torture. I think you had to confront this kind of issue many times during your career in the human rights system of the United Nations. I recall what you said after leaving your post as Director of the Human Rights Division: “Of course, you cannot worry all the time only about keeping your hands clean because if you want to defend the rights of people and individuals, you must sometimes compromise and negotiate with their oppressors, and one has to bargain with the devil.”<sup>47</sup>

It struck me because you were famous for not dealing with the devil. Then you said, “But if you want to be effective, you sometimes have to deal with the devil.” In retrospect, after so many decades of working in that field, how would you evaluate the difference or the tension between being outspoken, being clear, being principled, and the necessity of negotiating even with the devil sometimes?

**van Boven**

Let me first say that I’ve been thinking about that. Clean hands are not a part of my vocabulary. I only was interested in being credible. After being appointed Director of Human Rights in 1977, in the first staff meeting I drew attention to Article 100 of the United Nations Charter. It states that staff shall not seek or receive instructions from any government or any other authority external to the Organization and refrain from any action which might reflect on their position as international officials responsible only to the Organization. To my mind I remained loyal to the United Nations in spite of all kinds of experiences I had.

**Huhle**

Obviously, there are questions to which there are no perfect answers. Let me ask you another question about the balance in your life work: You have always been a law professor. And at the same time, you have been involved in many positions at the United Nations. You have been a human rights activist. My question is how these two roles fit together in your life balance. The scholar-activist is still a rather rare figure. Most people are either scholars or activists, and to combine these two roles is not easy. How do you see the balance for you, looking back at all these stations in your life? Are they complementary or do academic work and activist work clash?

**van Boven**

No. I would say they may be complementary. I have two footsteps, one inside and one outside the university and my academic colleagues respect that. The university has given me the chance to use the one foot as long as I remain faithful to the university with the other foot – two feet, one inside and one outside.

**Huhle**

Let me ask you one last question, which is also related to that. We all know that human rights are under great stress in the world of today. In fact, they always were, but today, we feel it very strongly again, not only in the real world, but also in the academic world. In the world of human rights theorists or philosophers are a lot of voices to be heard today that talk about the end times of human rights, that their role is done. They have to be replaced by something different. What do you think about the changes necessary in human rights in the future so that human rights will have a future?

**van Boven**

Well, I'm not so optimistic. I remember the Berlin Wall. How it was constructed and torn down and envisioned as a symbol open to the future. And now, since then, we again have walls and fences constructed in many places, walls and fences in Mexico-United States, the wall in the Palestinian territory, walls and fences in between the Mediterranean and the Balkan states.

What we see now is a policy of pushbacks, pushbacks against asylum seekers. Of course, migration and asylum seeking are not necessarily the same. Those who seek asylum in Europe are not even given the chance to do that, they are being pushed back. Even the European Court of Human Rights about three years ago issued a reversing judgment.

The tearing down of the Berlin Wall was not followed by the demise of other fences and other walls. This gives me the reason to not be too optimistic in world terms as much as I have always tried to see our human rights perspective in a global way, in terms of gender, ethnic origin, and identity.

**Huhle**

Well, I don't know whether we should end on this pessimistic note, but maybe you are also realistic. Would you like to add anything else which I didn't ask but which is important for you to communicate?

**van Boven**

We are influenced by what is happening today in terms of natural disasters. So I don't know what the countries and the international community have to do in that matter. I'm really shocked by what happened today in Belgium, we are part of that here in Maastricht, but much more in the Ardennes in Belgium and in particular in Germany.<sup>48</sup> That is not only a human rights matter, but also a human existence issue. On such a day, I wish that all those who are working in Germany now in particular realize that we cannot be the master of the natural systems, but we can at least help to attenuate the effects.

Lektoriert von Insa Kummer und Emily MacKenzie.

## Fußnoten

1. Bernardus Victor Aloysius (Bert) Röling (1906-1985) was a Dutch legal scholar and criminologist.
2. The International Military Tribunal for the Far East (1946-1948) was an international criminal court that tried 28 Japanese military and political leaders accused of crimes against the peace, war crimes and crimes against humanity. Different from the IMT in Nuremberg, all eleven concerned states of the Pacific War theatre, including the colonial powers of the time, had a judge sitting on the court. Röling, representing the Netherlands, became known for his independent views during the proceedings and his dissenting opinion in the judgement.
3. International Labour Organization; the ILO was one of the remaining international organizations that had been founded (1919) under the League of Nations and continued within the system of the United Nations.
4. Franciscan Father L. J. C. Beaufort was a member of the Dutch Senate representing the Catholic Party. He represented the Netherlands in the UN's Third Committee of the General Assembly when this body debated, in 1948, the draft Universal Declaration of Human Rights. Beaufort became notorious there for his repeated attempts to introduce Catholic concepts into the Declaration.
5. René Cassin (1887-1976) was a French legal scholar and judge. During WW II he had been a member of De Gaulle's government in exile. As French delegate to the UN he became one of the prominent drafters of the Universal Declaration of Human Rights.
6. The Third Committee (also called Social, Humanitarian and Cultural Committee) of the General Assembly of the United Nations is inter alia in charge of matters related to racial discrimination, fundamental human rights and the work of the United Nations High Commissioner for Refugees.
7. The common article 1 of the two main Human Rights Covenants of 1966 (International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)) reads: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."
8. Arcot Krishnaswami was an Indian legal scholar and long-term servant to the United Nations. He was appointed a Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in which capacity he presented a report on "Discrimination in the Matter of Religious Rights and Practices" (E/CN.4/Sub.2/200/Rev. 1, 1960).
9. Encyclical of Pope John XXIII, 11 April 1963, on the rights and obligations of individuals and of the state, as well as the proper relations between states.
10. Joseph Luns (1911-2002) was a Dutch politician and diplomat, 1956-1971, he served as foreign minister and also as Secretary-General of NATO.
11. The involvement of NGOs goes back to the founding of the UN. NGOs had played an important role in the negotiations after the war; the Charter provided for the possibility of involving NGOs for consultative purposes.
12. Since the Commission on Human Rights decided in 1947 that it had "no power to take any action in regard to any complaints concerning human rights" (U.N. Doc. E/573), victims of human rights



violations had no channel to direct individual complaints on such violations to anybody of the United Nations. ECOSOC Resolution 1503 (U.N. Doc. E/1970/13/Add.1) established, in 1970, a procedure for transmitting petitions to the Commission as implemented in 1971 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

13. The Sub-Commission on Prevention of Discrimination and Protection of Minorities was established in 1947 as a subsidiary body of the former Commission on Human Rights. It was renamed in 1999 as Sub-Commission on the Promotion and Protection of Human Rights. After the transformation of the Human Rights Commission into the Human Rights Council (2006) the Sub-Commission was dissolved and in its place a new body, the Human Rights Council Advisory Committee has been installed.
14. The CERD is the Treaty Body supervising the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the first UN treaty on Human Rights, adopted in 1965 by the General Assembly.
15. The visit by the Ad Hoc Working Group to Chile took place in July 1978, after several attempts to visit the country had been denied by the Pinochet regime. See Report of the Ad Hoc Working Group to inquire into the situation of human rights in Chile submitted in accordance with General Assembly Resolution 32/118 (A/33/331, 25 October 1978).
16. Willemsen Días was a longtime staff member of the UN human rights secretariat. He was a principal promoter, as Rapporteur of the Sub-Commission and in other functions, of the UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in September 2007. See: Augusto Willemsen Días: "How Indigenous Peoples' Rights Reached the UN", in: Charters, Claire and Rodolfo Stavenhagen (eds.): Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples, Copenhagen (IWGIA) 2009.
17. The military junta under Augusto Pinochet, which came to power in 1973, expropriated 80 percent of the lands that had belonged to the Mapuche communities. The government considered organizations of the Mapuches as communists and severely persecuted its leaders. After the repression eased by the end of the 1970s, the Mapuches succeeded in founding the Ad Mapu in 1980 to denounce government repression and to make their demands for land heard.
18. From the violent coup d'état of September 1973 until 1990, the Chilean Government consisted of a military Junta headed by army general Augusto Pinochet.
19. From the military coup d'état of March 1976 until 1983, Argentina was ruled by a military Junta.
20. The Soviet Union had been an ally of the government of president Salvador Allende (1970 -1973) and Allende's Socialist Party.
21. The Working Group on Enforced Disappearances (WGEID) was created in 1980 as the first "Special Procedure" of the UN Human Rights Commission to report on thematic human rights topics. It is composed of five experts from each of the five world continents.
22. The Division of Human Rights was created as a directorate of the General Secretariat. In 1982, shortly after the departure of Van Boven, the Division of Human Rights was upgraded to a Centre for Human Rights, headed by an Assistant-Secretary-General. In 1994, following a decision of the Vienna Human rights Conference, it was transformed into the Office of the High Commissioner of Human Rights (OHCHR) and transferred from New York to Geneva.
23. Kurt Waldheim (1918-2007) was an Austrian diplomat and UN Secretary General from

- 1972-1981. His tenure was overshadowed by successive revelations about his Nazi past and his concealment of his activities in the Wehrmacht during the occupation of Yugoslavia. Nonetheless, he was elected President of Austria in 1985.
24. William B. Buffum (1921-2012), 1975-1986 Under-Secretary-General for Political and General Assembly Affairs of the United Nations.
  25. Jay H. Long, Deputy to the Under Secretary General for Political and General Assembly Affairs.
  26. Marc Schreiber, Director of the Division of Human Rights (1974-1977).
  27. Pierre-José Sanon, Division of Human Rights, Deputy Director.
  28. Iain Guest, *Behind the Disappearances, Argentina's Dirty War against Human Rights and the United Nations* (Philadelphia, 1990).
  29. Madres de la Plaza de Mayo is a group of women who came together for the first in April 1977, just one year after the violent coup of the Argentinean military, at the Plaza de Mayo in Buenos Aires in front of the palace of Argentina's government to protest against the forced disappearance of their children (or husbands). Since that first gathering, the Madres have continued to walk in circles at the Plaza, becoming one of the foremost human rights organizations of Argentina.
  30. Abuelas de Plaza de Mayo, founded in October 1977, is a group of women who aim to clarify the fates of some estimated 500 babies who were stolen from their mothers – the daughters of the Abuelas (grandmothers) - during captivity and forced disappearance. While initially almost none of the mothers could be found, so far more than 130 such children have been identified and joined their biological families.
  31. Speech before the Human Rights Commission, Geneva, February 10, 1982, quoted at length in Van Boven, *People Matter* (Amsterdam 1982).
  32. The post of a High Commissioner for Human Rights had been a long-standing claim of many human rights advocates. Finally, at the 1993 Vienna Human Rights Conference, a decision was taken to create this position which meant an important up-grading of the Human Rights Division supervised by the Secretary General. The first High Commissioner for Human Rights, Ecuadorian diplomat José Ayala Lasso, took office in 1994.
  33. The World Conference on Human Rights was held by the United Nations in Vienna on 14 to 25 June 1993. Beyond the creation of the position of the High Commissioner, the final document of the Conference, the Vienna Declaration and Programme of Action (see <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>) has been key to reaffirm the integrity and universality of human rights.
  34. *El Mercurio* is the oldest Chilean daily newspaper (founded in 1827). It has played a significant role in preparing and supporting the military coup of General Pinochet in 1973.
  35. The “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” were originally drafted by Theo van Boven. His study of the topic (“Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms” - E/CN.4/Sub.2/1993/8) was adopted by the Commission on Human Rights in 1993. In 1997 a first draft of the van-Boven-Principles was

adopted (E/CN.4/1997/104, annex). The final version was co-drafted by Egyptian/American legal scholar Cherif Bassiouni and adopted in 2005 (ECOSOC Resolution 2005/30).

36. Louis Joinet (1934-2019) was a French judge and legal scholar.
37. Joinet elaborated as Special Rapporteur of the Sub-Commission a "Set of principles" on the question of impunity, see: "Question of the impunity of perpetrators of human rights violations (civil and political). Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119" (E/CN.4/Sub.2/1997/20/Rev.1, October 1997).
38. Dinah Shelton is a U.S.-American legal scholar and author of many books on international human rights law.
39. Until the establishment of the International Court for the Former Yugoslavia there was no place foreseen in international tribunals for victims appearing in court as civil party.
40. The Registrar is the Officer of the court responsible for the budget, the administration, support services and legal support to the chambers and all other duties that are not covered by the judges and the prosecutors.
41. Antonio Cassese (1937-2011) was an Italian legal scholar and judge who assumed several prominent assignments in international criminal and human rights law. Apart from his service at the ICTY he was a judge at the Special Tribunal for Lebanon and head of UN International Commission of Inquiry on Darfur.
42. The Rome Statute of the International Criminal Court is the legal base of the proceedings of the ICC. It was adopted 1998 in Rome and entered into force in 2002.
43. Leandro Despouy (1944-2019) was an Argentinean diplomat and jurist. 2001-2002 he was president of the UN Human Rights Commission.
44. ECRI is an independent monitoring body of the Council of Europe, observing and reporting since 1994 on problems of racism and all forms of discrimination.
45. The visit to Spain was realized in September/October 2003. The Report (E/CN.4/2004/56/Add.2) was published 6 February 2004.
46. Van Boven referred the torture allegations at Bagram base and other U.S. facilities in his 2004 Report to the Commission (E/CN.4/2004/56/Add.1, 23 March 2004, par. 1811 ss.)
47. Interview with Raana Gauhar, in: Third World Quarterly 6:3 (1984)
48. The flood disaster in mid-July 2021, which affected both Belgium and Germany, cost the lives of over 200 people and caused billions in damage.

## Zitation

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