EUROPEAN MASTER'S DEGREE IN HUMAN RIGHTS AND DEMOCRATISATION

The Visualisation of Dignity:
Photography from an Ethical Perspective.

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Abstract

We know about human rights violations because we can see them. Photography as a means of visualisation has an immense power because images are capable of touching our emotions directly. In this context photography has a strongly political dimension when we see victims of human rights violations presented as suffering human beings. Hence, the underlying question of this paper shall be whether it is possible to say that we violate a person's dignity when we publish his or her distress. The notion of "human dignity" is a fundamental element in the human rights discourse. Yet, neither in hard nor in soft law provisions can we find any definition for dignity or other means of protection for victims and their respective publication.

This paper is an attempt to raise the awareness of the importance of photography as a means of making human suffering visible and comprehensible. A stereotyped version of human suffering affirms prejudices, which in turn can lead to discrimination. Photography is a field which can contribute to the promotion of the human rights culture by spreading the awareness that the 'Other' can be like us and very different at the same time.

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Introduction:

We know about human rights violations because we see them. Whether it is the daily look into the newspaper or watching the news on television, we are overwhelmed by images of people in danger, people living in extreme poverty and people suffering under all different kinds of catastrophes. The competition among media corporations to be the first in bringing the news and delivering shocking images has led to an unbearably low threshold, not only for media workers and consumers but also for the subjects being photographed and filmed. This has commonly led to the assumption that the public is nowadays suffering from the effects of habituation and "compassion fatigue". Much has been written about the impact of the media and the role they are playing – at least in the western world – but very little has been said about the persons who are actually shown to us as victims. Has anyone ever asked them whether they want to be photographed and filmed and shown to us in extremely vulnerable situations?

The point of departure for this paper shall be the question how far we can go in depicting human suffering. Is it possible to say that we violate a person's dignity when we publish his or her distress? And where do we have to draw the line between what is ethically reasonable to show in public and what goes too far? At all times, photography has been used as a powerful tool to point to specific problems. But is it legitimate to justify shocking images for a "good purpose"? What is the role of the photographer in this context? These are some of the questions I want to focus on from an ethical point of view. By interlacing statements of professional photographers and media workers, I will show how these issues are dealt with in their daily work.

The first chapter will introduce the topic of human rights violations and their visualisation through photography. Starting with examples of precursors of photojournalism, I will look at this specific genre of news culture by showing its development from the first means of visual news to the current problems photojournalism has to face due to the technical advances in the field of television and internet. In the context of human rights violations photography has a very political dimension and this comes to the fore especially in times of war. Therefore attention will be given to the topic of war and photography. It is interesting to see how photographic coverage of wars has changed throughout history. The objectification of a person suffering has always played an important role in the development of photography as a means of propaganda. Yet, the depiction of human suffering

as a powerful tool to cause political action leads to the difficult question whether it is legitimate to show human tragedies for "a good purpose".

Although media specialists make us believe in the strong power of images, it will be pointed out that it is not that clear what a photograph provokes in our heads, as it might seem at a first glance. By referring to a psychological experiment that was undertaken with readers of a news article, I will discuss the question whether a photograph alone can turn public opinion. At any rate, when we want to determine the actual impact of a picture, it always has to be considered in its context, that is to say, within its use or channel, within its caption and text, and, above all, within its intention.

The second part of this paper will continue the discussion about how human suffering is covered by the mass media today and the role photography has to play. There has been an increased awareness as to what human rights are and how they can be covered. But does this also apply to the images published? Is it the mere reality that we see depicted or is it possible to lie with a camera? In order to answer this question I will take a closer look at the dichotomy of subjectivity and objectivity in photography. Subsequently, I will try to find out what lies behind the alleged compassion fatigue of the news consumer. Therefore the "spectacle of suffering" we witness every day in our media will be observed from three different positions: the photographer, the spectator, and the victim. I will focus on the refugee as a victim and observe what has changed until today since the refugees of the Spanish Civil War were depicted in newspapers and magazines. It will be shown that their representation depends on the political aims that want to be pursued. The expression of the asymmetric power relations between the victim and the spectator will lead to the underlying question of this thesis whether witnessing human suffering of others with a camera is ethically legitimate.

The discussion of intrusion into other people's lives for the sake of reporting will lead up to the question of dignity in chapter III where photography will be investigated from a legal perspective. Where does the line for the public's right to information end and where does the dignity of a person start? Although many international human rights instruments refer to "human dignity", the controversies start with finding an adequate definition. By giving some examples where photography is involved in legal cases, even before the European Court of Human Rights, I will illustrate the difficulties that emerge from hard law provisions concerning the notions "privacy" and

“dignity”. Furthermore, I will analyse the balance that has to be struck between the right to freedom of expression and the right to privacy.

The question whether soft law provisions are more appropriate for matters of ethically justifiable photography will be dealt with in more detail in the last chapter. For decades, the problem of visual stereotypes and discrimination in the media has been on the agenda of several UN institutions. Declarations, recommendations, self-regulations and codes of ethics are possible mechanisms against further discriminative portrayals, but they are voluntary and have no legal consequences. After a long time of visual mistreatment, exploitation and disrespect, the time has come for a different kind of representation of marginalised groups. As long as we are exposed to the same kind of representations, we will not be able to change our prejudices towards the ‘Other’. A different kind of photography is needed, but what could such pictures look like? Which possibilities exist to create ethically justifiable images? I will come back to the refugee as a victim, and by giving examples, I will show how these problems are dealt with at the Asylum Department of the Danish Red Cross.

This paper does not intend to give all the answers to the questions broached. The complexity and abstractness of ethics and photography make it even impossible. Yet, it should embody the attempt of opening a discussion in the human rights discourse about the commercialisation of the “victim” and about the borders of the legitimacy in the visualisation of human suffering.

I will start the first chapter by giving a brief historical survey over the development of photojournalism and lead over to the topic of early photographic visualisations of human rights violations.

Chapter I. Photography: a window to the world

> Photography:
> The art of obtaining images by the chemical agency of light upon sensitive surfaces. (…) Derived from *φωτος*, genitive of *φαος* or *φως*, “light”, and *γράφω*, “I draw”.[1]

The literal translation of photography as “writing with light” indicates that the procedure of taking a photograph implies a manual operation or in other words an “author”. Today, it is commonly understood that it is the photographer who is the author of a photograph and not the camera but that has not always been self-evident. In 1839, when the *daguerreotype* process became public, the camera was seen as “the pencil of nature”[2] and the first photographs of landscapes and buildings were regarded as “mirror of truth”.[3] They caused amazement because for the first time in history it was possible to visibly record reality on small lantern slides, without the subjective interpretation of a mediator like a painter. The trust that what one could see on a photograph was the true world as it is was therefore endless. Still today, most viewers take a photograph as a proof of reality without calling the objectivity of the photographer into question. Too many times it is forgotten that a photograph can only be the sum of a number of subjective decisions that have to be taken by the author behind it. This dichotomy between the subjectivity and the objectivity of a photograph came to the fore at the moment when photographic images were used in newspapers and magazines in order to illustrate the world affairs.

I. 1. The rise of photojournalism: a changing perception of reality

Today’s what we might call “visual culture”[4] of the illustrated news press can be traced back to the 18th and early 19th centuries, when illustrations first consisted in drawings printed from engravings. At the outset, only weekly newspapers contained illustrations, which were generally there to explain the text, showing primarily prominent people like royals, political leaders, the wonders of nature,

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[1] Jones, B. E. (ed.), *The encyclopaedia of early photography*, London, Bishopsgate Press, 1981, p. 405.

[2] Gruber, L. F., *Information for a Martian,* in E. Meijer, J. Swart (eds.), *The photographic memory: press photography – twelve insights,* London, Quiller Press for World Press Photo, 1988, p. 117.

[3] The technical need for long exposure times made it still very difficult to depict living objects. The problem of portraying human beings was solved with the construction of chairs with wooden supports for the neck, in order to keep the person who was sitting in front of the camera as quiet as possible. That is, by the way, also a reason why these early portraits may often seem stiff and unnatural to us.

[4] Barnhurst, K., Nerone, J., *Civic picturing vs. realist photojournalism. The regime of illustrated news, 1856-1901,* in «Design Issues», vol. 16, no. 1, Massachusetts, Institute of Technology, 2000, p. 59.

human constructions, and noteworthy events such as fires, murders and other catastrophes.[5] The job of what would later be the press photographer was then carried out by artistic engravers who went to the events – in many cases only afterwards –, gathered visual impressions and drew them later from memory. The illustrations were often deliberate compositions of different visual angles and gave a subjective and even “privileged” view of the happening, a fact which was generally accepted and understood by the reader. One-to-one illustrations of reality or the concept of realism had not yet become a criterion for authenticity as they should at the turn of the 19th century. Slowly, the photographic language contributed to a change of how truth and objectivity were perceived, namely as authentic documents submissive only to the laws of nature.[6]

It is interesting to observe, as Barnhust and Nerone put emphasis on, that the rise of photojournalism was not a sudden and self-evident consequence of the invention of the camera and its technical enhancement, as one might assume.[7] For long time photographs were just tools coexisting with other forms of illustrations such as drawings, sketches, cartoons, advertisements, maps etc. The characteristic of photography of delivering exact details did not always correspond to the reader’s wish to have this privileged view of certain events nor did it correspond to the then common view of leaders in rather theatrical and stiff poses. Photography had the power to reveal that leaders were not as distinct from the rest of the population as they might have wished. As a consequence, it is said that the realism of the medium even contributed to “the disappearance of an implied model of citizenship”.[8]

Another interesting observation can be made concerning a shift in the topics of illustration. Due to the changing interests of the readership together with growing technical developments, the size of persons being depicted changed: was it first people appearing very small in the landscape and next to constructions such as railways, bridges, buildings etc., by and by, persons started to “grow” and they were shown as taking part in happenings such as battles, political meetings, sport events, and competitions of all kinds. The novelty of showing the human body in action as well as reproducing emotional expressions on the face corresponded to the “rise of a realist ethos, both in art and literature, and in social sciences”[9] by the turn of the century. Ordinary people, however, were not

[5] Idem, p. 64.
[6] Idem, pp. 71-74.
[7] Idem, p. 60.
[8] Idem, p. 78.
[9] Idem, p. 61.

yet a matter of interest to the bourgeois reader. Until the late 19th century, they were normally not shown at all or only in crowds. While portraiture was reserved for the leaders, whose faces were mostly engraved from photographs[10], ordinary people were embodied as physiognomic stereotypes, following the pseudo-science and tradition of what has later been called "eugenics".

In brief, it was not only a matter of advanced printing techniques and an improved financial efficiency that made photography finally triumph over manual illustrations. Its new role has rather to be seen in the context of a changing perception of reality, different topics of interest and a shift from a subjective perspective in the drawings to an allegedly "more objective" one of the camera work. I want to lead now over to the topic of violations of human rights and their respective visualisations, even if a hundred years ago nobody would have called it that way.

I. 2. "Concerned photography": examples of early claims of injustice

Showing to the world shocking images of human horrors with the intention of mobilising action is not something new or something that could be considered as characteristic for modern times. Since it took its first steps, photography has been used as a means to educate people, to reinforce political positions, to convince others of certain standpoints, and to influence public opinion. By giving three examples, I want to point out how the power of photography as a visual medium started being employed for claiming social injustice.

At the end of the 19th century, photography as a medium that would deliver reality started being used as "social documentation" for the purpose of drawing attention to social grievances and injustices. The publication of *"How the other Half Lives"* by the Danish photographer Jacob Riis in 1890 has been denominated the "landmark moment in the marriage of social realism, journalism, and photography"[11]. Working first as a police reporter and then for the *New York Tribune* and *The Sun*, Riis started to take photographs of the abominable living-conditions in the slums of New York, where the poor people were crowded in tenements, sleeping in cellars and sewers. His photographic evidence is said to have been influential on remedying these social nuisances and on enhancing and controlling the laws on the protection of the child, the building of schools, the tearing down of

[10] Idem, p. 72.
[11] Idem, p. 74.

shanties and more.[12] The photographs themselves are still very discrete in showing emotions; in the foreground rather the surroundings than the human beings are depicted. Nonetheless, his documentation is remarkable, given the technical obstacles at that time.

Another main proponent of early social documentation is Lewis Hine, who had studied sociology in Chicago and New York (1900-1905) and become a teacher of photography, when he realized that the camera could be a useful instrument for his pedagogic researches. In 1906, he started working for the National Child Labor Committee and documented children working in factories, coal-mines and in the streets. The pictures of the terrible working conditions served as mute witnesses for the lectures he was giving across the country. Later on, his "social photography", as he called his work[13], was also placed into the service of the Child Welfare League with the same goal of fighting child labour in the USA.[14]

Among the array of photographic works that can be seen in the context of claiming social injustice, I want to give a third example which is not very well-known, but nonetheless outstanding: when the English missionary couple John and Alice Harris came to the Congo Balolo Mission at the turn of the 20th century, they became witnesses of the horrors of the Belgian King Leopold's rule in the African country. The brutality of the king's soldiers was extraordinary; if the native population had not gathered enough rubber, the punishment was cutting off their hands and feet, or killing them immediately. This horrific situation was brought to light amongst other things by the photographic documentation by Alice Harris. (See illustration no. 1 in the appendix). She showed these atrocities by depicting the injured persons who look directly into the camera with a serious – one is tempted to say *reproachful* – countenance. On many pictures they are holding their mutilated black arms against the white background of a missionary's shirt, or they are holding other peoples' cut off hands, which is interesting because it shows a kind of arrangement for a better visual effect. At this point it has to be said that from a postcolonial perspective, early missionary photography in general, and not only of Africa, has been heavily – and rightly so – criticised as creating awful stereotypes. The "wild black man" was usually shown as backward in every sense. This served as an argument for the need of saving his soul and additionally "civilising" him. Besides, the photographic material

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[12] Günter, R., *Fotografie als Waffe: zur Geschichte der sozialdokumentarischen Fotografie,* 1. Aufl., Hamburg, Berlin, VSA, 1977, pp. 29-31.
[13] Rosenblum, N., *Documentary photography: past and present*, in The Museum of Contemporary Photography (ed.), *Photography's multiple roles: art, document, market, science*, Chicago, 1998, p. 87.
[14] Museum Ludwig Köln (ed.), *Photographie des 20. Jahrhunderts*, Köln, Benedikt Taschen Verlag, 1996, p. 254.

was also useful for what would today be called fund raising purposes. Harris' photographs are different, however, because they for once speak on behalf of the native population. Her visual documentation of the atrocities that were taking place in the Congo was soon embedded in political campaigns against King Leopold; the couple itself was touring across the US from 1905 to 1909, showing the remarkable magic lantern slides. According to Jack Thompson, in days where people were not at all used to seeing this kind of ferocity on television, on the screen, or even in the newspaper, it must have had a deep and shocking impact on the viewers.[15]

The great impact photographs were having on the population did not remain unnoticed by the political leadership. Soon, photography started being employed in the realm of visual propaganda for political purposes. According to Noam Chomsky, the first modern government propaganda operation started with the Woodrow Wilson Administration (1913-1921) during World War I.[16] The best example that comes to mind is the employment of the "propaganda machinery" during World War II. One only has to remember how Adolf Hitler directed his photographer Heinrich Hoffmann to portray him in the "appropriate" way, to become aware of how much influence photography was believed to have on the population.

The issue of visual propaganda goes beyond the scope of this paper, but it is nevertheless interesting to observe how much power photography has exerted and still exerts in times of war. The coverage of human rights violations is never more obviously disputed and controversial than in times of war and armed conflict. The press naturally plays a decisive role in this and even more so does photography as a highly emotional ingredient. In the following part, I will give a brief survey of how the photographic coverage of war has changed over the years.

I. 3. War and photography:

War and photography have always been said to be inextricably linked together. As soon as the photographic process became known, it was applied to witness the impact of war. Depicting the enemy's corpses in the battlefield was soon recognised as a powerful tool in order to influence the

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[15] *The Kodak and the king: what can photography tell us about the campaign against Leopold's rule in the Congo?* Lecture held by Dr. Jack Thompson, Centre for African Studies, University of Copenhagen, May 6, 2003.
[16] Chomsky, N., *Media control. The spectacular achievements of propaganda*, 2nd ed., New York, Seven Stories Press, 1997, p. 11.

further development of a war, while the illustration of the deaths and casualties on one's own side were most often strictly under the control of censorship. Although this principle has not changed and is still applicable to the conflicts and wars nowadays, there are differences in what is shown and how it is presented.

The first photographic documents of war that exist stem from the Crimean War (1854-56) and the American Civil War (1861-65). Due to the technological obstacles, namely the heavy camera equipment and the cumbersome process of chemical developing, what was shown was war in its *aftermaths*. Devastated towns, corpses on the battlefield and lunar landscapes were the earliest evidence of the effects of war.[17] It was not until the 1920s, however, that war photographers had the right tools to report directly from the battlefield. The technical improvement of the cameras and the invention of the roll film were important steps towards a better and, above all, *immediate* coverage of war. This development made it possible to record actual scenes of combat and killing which had only existed as paintings before – a fact that should not be underestimated in the context of the impact of pictures of human suffering on the viewer.

The first war that was extensively covered by war photographers was the Spanish Civil War (1936-39). One of the best known photographs ever, which shows the impact of fighting in an extraordinarily graphic way, dates from that time: Robert Capa's *Death of a Republican Soldier.* There is an interesting controversy going on among experts who say that this photograph had been staged as there exists a second photograph of another soldier with a very similar (or the same?) background, while others reject this idea completely. There are even rumours that the photo agency Magnum keeps Capa's negatives with the same soldier falling again and again which would be a proof that the "dying" was staged.[18] Even if there are convincing arguments on both sides, the problem of staging war imagery is known from World War I, where reality was changed by arranging corpses and cannonballs for the pictures that were taken.[19]

The issue of showing dead combatants is very interesting. Photographs of dead American soldiers were published for the first time in World War II. One of the most controversial publications was

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[17] Sontag, S., *Regarding the pain of others*, New York, Farrar, Straus and Giroux, 2003, p. 20.
[18] Interview with Per Folkver, photo editor-in-chief of the daily Danish newspaper *Politiken*, Copenhagen, June 12, 2003.
[19] Cf. *American photography. A century of images,* http://www.pbs.org/ktca/americanphotography/features/social.html

George Strock's *Dead GIs on Buna Beach*. It appeared in *Life* magazine in 1943 after initially being held back by military censors.[20] This picture shows three American corpses lying on the beach after the landing in New Guinea; their heads are burrowed in the sand so that their faces are invisible to the viewer. This is a phenomenon that can be found repeatedly when American soldiers were shown dead – their faces were always prone, shrouded or turned away.[21] "This is a dignity not thought necessary to accord to others. The more remote or exotic the place, the more likely we are to have full frontal views of the dead and dying"[22], observes Susan Sontag.

The embedding of war reporters and photographers on the battleground found another height during the American War in Vietnam. "America's first true televised war"[23] as it is has been called, was a turning point in several aspects. It ousted the war photographer as primary source of visual information due to the new technology of television, and by allowing relatively great freedom in the publishing process, pictures were published which showed the war atrocities also from the opposite angle. The war in Vietnam is often referred to when asking whether images are powerful enough to change public opinion. Famous images like the naked young girl running down the street after a napalm attack[24] or the execution of a Vietcong suspect by a South Vietnamese police chief[25] became icons of war which have been considered of great influence on the turn of opinion among the American public. Today it is commonly accepted in the academic discourse that the media played a fundamental role in the course of the war. But even if the loose censorship has been blamed for losing the war, it has been proved that the media did not have the intention to do so and that its photographic icons were not responsible for the anti-war movement.[26] Nonetheless, even if they didn't change public opinion immediately, they definitely helped to turn it, which served as a lesson to the American officials in that they would not let such a thing happen again.

This force of the media was remembered well also by other countries, namely in the early 1980s during the British - Argentinean War over the Falkland Islands. The control exercised by Britain's Ministry of Defence both over the visual and the textual coverage was so strong that it became

[20] Idem.
[21] Sontag, S., *Regarding the pain of others*, op. cit., p. 70.
[22] Idem, p. 70.
[23] Daniel Hallin cited in Brothers, C., *War and photography. A cultural history,* London, New York, Routledge, 1997, p. 202.
[24] Photographed by Huynh Cong 'Nick' Ut in 1972.
[25] Photographed by Eddie Adams in 1968.
[26] Brothers, C., op. cit., p. 210.

legendary as one of the modern wars worst reported on.[27] There was no direct media transmission from overseas, and the few films that were shot came back to Britain with a considerable delay. Showing the horrors of the conflict seemed to be a taboo. BBC editors were even instructed by the Ministry of Defence officials "not to use a picture of a body in a body bag, not to use the phrase 'horribly burned'".[28] Caroline Brothers remarks: "Their control extending beyond the excision of military sensitive information, the censors aimed to clean up coverage in accordance with their notions of *good taste*, almost invariably in the name of *civilian morale*."[29] [emphasis added] This argument of "protecting" the citizen and the excuse of holding back images of "bad taste" are often heard, especially in times of war. Theoretically, this could be seen in accordance with a claim for ethically legitimate photography. But in this case, the British population was patronised by the government which almost completely prevented photographic coverage and thereby the people deprived of their right to be sufficiently and properly informed.

I. 4. Decadence of today's war coverage?

The shift away from human casualties to the concentration on technical imagery under a more or less hidden censorship has led to the hypocritical news coverage, as I would characterise it, of the late 20th century until today. The two Gulf wars against Saddam Hussein and the "fight against terrorism" in Afghanistan were presented as the world's first wars where "live participation" on the television screens and the Internet was possible. I call them hypocritical because even if the mobility of the reporters travelling with the armed forces has never been better, and even if they were provided with the most advanced technological equipment, the civilian population saw less than ever. Cameras are now even installed on military weapons and tanks, which indeed deliver images never seen before. But even so, the rigid censorship reduces the cruel war reality to the technical imagery of cruise missiles, arms, aircraft etc. For these wars to be backed by the split international community and its own population, the US government exercised strict control on the mass media outlets in order not to show what should not be seen. One only has to remember the scandal that arose when the British and American prisoners of war were shown on Arab television.

[27] Idem, p. 206.
[28] Robert Harris cited in Brothers, C., op. cit., p. 209.
[29] Idem, p. 209.

It seems that war has never been more unreal despite the technical possibilities of media coverage in the 21st century. The pictures of individual pain and suffering, of dead and wounded human beings have mostly disappeared from the surface, thereby totally distorting the impact of war especially on civil society but also on the fighting soldiers themselves. War has become something clean.

Compared to what has been called *"l'âge d'or* of photojournalism"[30] during the 1960s and 1970s, where news photographs were ostensibly still having "morale, conscience and political exigency", today's photojournalism is said to suffer under a certain decadence.[31] Edgar Roskis criticises in particular the "cloned, repetitive and banal images" as he calls them:

> "L'accord, le consensus sur les standards (de ce qui intéresse, mérite, émeut, etc.) est désormais si large que, d'un même événement, des opérateurs différents peuvent rapporter des images absolument identiques. (…) Dans la plupart des cas, il s'agit d'obtenir, en négligeant tout ce qui pourrait compliquer les choses, l'opposition duale la plus nette possible, le symbole pur comme le cristal, dégagé de contingences visqueuses, éclatant telle la fontaine d'eau claire, seule propre à étancher la soif, à établir la lumière, à emporter l'adhésion: d'un côté, les baïonnettes, les fusils, les chars, les vautours, les terroristes, les islamistes; de l'autre, les torses nus, les fleurs, les regards implorants, les populations démunies, les victimes affolées, les distributions de médicaments et de nourriture. Encore l'uniforme tend-il à disparaître derrière le rideau de la censure, car de nos jours le soldat, humanitaire, chirurgical, ne tue plus: il soigne."[32]

The restricted use of photography in times of war goes together with this reproach of symbolic simplicity, of showing the world merely in black and white, good and bad. The mention of the imagery of the soldier, who doesn't kill but care, is a further allusion to the fact that the public can be duped easily.

Would the opposite standpoint of banning ugly images from our sight be the right solution? Susan Sontag once claimed an *"ecology of images"* to defy the flood and consumption of cruel pictures.[33] Almost thirty years later, however, she revokes her idea of cutting them back: "There is not going to

[30] Roskis, E., *Tant de clichés et si peu d'images…,* in «Le Monde Diplomatique», Janvier 2003, p. 16.
[31] Idem, p. 16.
[32] Idem, pp. 16-17.
[33] Sontag, S., *On photography*, London, Penguin Books, 1977, p. 180.

be an ecology of images. No Committee of Guardians is going to ration horror, to keep fresh its ability to shock. And the horrors themselves are not going to abate."[34] The argument of documenting the world's pain in order to bring relief, to make it unforgettable, is legitimate and strong. The question how the Holocaust would be remembered if it existed only in 'decent' representations is warrantable.[35] Maybe Sontag is right, when she argues:

> "Beautifying is one classic operation of the camera, and it tends to bleach out a moral response to what is shown. Uglifying, showing something at its worst, is a more modern function: didactic, it invites an active response. For photographs to accuse, and possibly to alter conduct, *they must shock*."[36] [emphasis added]

Also Galtung and Vincent remind of the importance and responsibility of the media to show war as the horror that it is:

> "(…) as inhumane as it may appear, *the press should not avoid the use of graphic footage*; that which can be called *'blood and guts' stories*, just because they are considered repulsive by some. While repulsive, such perspectives do provide vivid glimpses of the horrors of war. War is not pretty, and its costs can be phenomenal (in terms of money and human lives). By providing such scenes, the public will be forced to address the ugly realities brought on by war."[37]

Nevertheless, they also try to find a balance in order not to go too far: "Of course, journalists must balance the presentation of such images with the requirements of good taste. This should not be an opportunity to profit from the war by displaying sensational material."[38] The line that has to be drawn between "good" and "bad" taste is very thin and depends on many different factors. But before focusing in more detail on this question, I want to take a closer look at the power of photography. The next part will deal with situations where pictures shocked the world, thereby opening the way for a subsequent political response.

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[34] Sontag, S., *Regarding the pain of others*, op. cit., p. 108.
[35] Taylor, J., *Problems in photojournalism: realism, the nature of news and the humanitarian narrative,* in «Journalism Studies», vol. 1, no. 1, Manchester, Metropolitan University, 2000, p. 130.
[36] Sontag, S., *War and photography*, in N. Owen (ed.), *Human rights, human wrongs. The Oxford Amnesty lectures 2001*, Oxford, University Press, 2002, p. 81.
[37] Galtung, J., Vincent, R. C., *Global Glasnost. Toward a new world information and communication order?*, University of Hawaii, Manoa, Hampton Press Inc., 1992, p. 212.
[38] Idem, p. 212.

I. 5. Shocking the world for a "good purpose":

As I indicated already earlier, governments and military administrations have become more aware than ever that images are able to influence the barometer of public opinion in a significant manner. Many incidents can be enumerated where the publication of a picture strongly influenced the political action that was taken subsequently. The news footage showing one of the eighteen killed American soldiers being dragged through the streets of Mogadishu during the peace-keeping operation in Somalia in 1993 is a good example where the visual documentation influenced the government's policy after its shocking impact. The fact that this footage existed and that it was shown to the world is said to have had a far greater effect that the deaths of the soldiers themselves.[39]

It has to be borne in mind that a certain level of censorship is exerted in every state, not only under totalitarian regimes. The differences are made by more subtle and less conspiratorial acts of news suppression like triage or omission.[40] And, of course, there is different weight put on different parts of the world, as Per Folkver, photo editor of the Danish newspaper *Politiken,* remarked:

> "When there is an earthquake in San Francisco and one person is killed, we have breaking news in Denmark and worldwide because there is so much television communication from San Francisco. When there is an earthquake in Turkey where 6.000 people are killed, the first day you have a note on page 17 and then, after some days, the communications will tell us how serious that is and so it will maybe move… But don't be sure it would ever hit the front page. And if there is an earthquake where the people are *black*, you can't read it in the paper. I'm a little rough now and maybe we are not the worst, but [cynical:] life has different values in different parts of the world. The white people like you and me, we are very, very expensive; our life is more expensive than of black people in Africa."[41]

Selecting information can also fall victim to intentional ignoring. A good example is the genocide in Rwanda during the 1990s. Although some Western governments were well-informed about the unbelievable atrocities that were taking place, the deliberate suppression of its news coverage was

[39] International Council on Human Rights Policy (ed.), *Journalism, media and the challenge of human rights reporting*, Versoix, 2002, p. 78.
[40] Phillips, P., Project Censored (eds.), *Censored 2001. 25 years of censored news and the top censored stories of the year,* 25th anniversary edition, New York, Seven Stories Press, 2001, p. 53.

done for political reasons. The photographic images and film footage that attracted worldwide attention were carried outside relatively late. Hence, the international community was afterwards heavily accused of having failed to prevent the genocide.

This was slightly different in the case of the outbreak of ethnic cleansing in Former Yugoslavia. The initial inaction of the international community changed after the massacre of Srebrenica in 1995, when more than seven thousand Bosnian Muslims were killed by Serbian troops. Again, it was the visual documentation of the happenings that crossed the borders and convinced the outside world that "something had to be done": "With the help of emotion-laden media coverage, including stomach-turning scenes of carnage, the atrocity sent shock waves through Europe and the United States."[42] The fact that during the subsequent national and international coverage terrible mistakes concerning unbalanced and one-sided reporting were committed is a different problem.

A further example is the reporting on the famines in Ethiopia and Sudan during the 1980s which the two governments concerned tried to keep secret. Thanks to an increased coverage by journalists, in particular photojournalists and world famous photographers like Sebastião Salgado, the tragedy that was happening could not be hidden.[43] When it was no longer possible to keep the international attention away, the media were to report that the government had already taken action. Photographers and reporters were permitted to document the scenario, but they were accompanied "for security reasons" and, as it turned out afterwards, they were only led to selected communities where the terrible effects were not as strong as in the closed areas.[44] James Nachtwey, who spent many years photographing in Africa, explained: "It's important for readers of publications to understand that most of the pictures they see of famine victims are taken in feeding centres, are taken in places where food has been sent."[45] Nevertheless, the pictures of the starving population that were published around the world, caused waves of humanitarian help and donations. The images used for those purposes were, of course, well considered and selected with prudence.

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[41] Interview with Per Folkver.
[42] O'Neill, M. J., *Developing preventive journalism*, in K. M. Cahill (ed.), *Preventive diplomacy: stopping wars before they start*, 2nd ed., New York, Routledge, 2000, p. 70.
[43] Article 19, *Starving in silence. A report on famine and censorship*, April 1990, p. 45, text at www.article19.org/docimages/1022.html
[44] Idem, p. 44.
[45] *James Nachtwey. War photographer,* video, Christian Frei film productions, in assoc. with Swiss Nation Television and Swissimage, 2001.

Everyone can immediately recall those images; they have become burnt into our brains. Children with big bellies, flies in their eyes and serious expressions crying for help have been haunting us.

By giving a few, randomly selected examples out of many, I wanted to draw attention to the difficult question whether the publication of human tragedy is legitimate for a "good purpose". With the argument of being there to create documents that will bring relief, media workers sometimes forget that they are actually intruding into the lives of human beings in very vulnerable conditions. The fight for access to the victims among reporters gets out of hand very easily and reaches a limit where their behaviour is not acceptable anymore from an ethical point of view. In too many cases, the victims are beset and used without being granted due respect and understanding for their individual situation. The line until where *shooting* photographs of a person suffering is ethically justifiable is not easy to draw. It is a very subjective feeling that depends to a large extent on the journalist's own values. It has to be emphasised that there are all kinds of photographers and not all of them have the same intentions, standards or tasks to fulfil. I will come back to the role the photographer is playing in this kind of situations in another part.

To conclude, photography *is* a very important factor in the coverage of human tragedies. Nevertheless, it has to be clear that however strong images may be, actions are always taken for political reasons and photographic evidence might help but not serve as a *cause*. Photographs themselves are said to lead only rarely to the desired social reaction in a direct manner.[46] This seems to be contradicting to what I have been trying to prove, but in fact it shows that the power of photographs alone is not very strong if it is not embedded in an adequate context. The following part will discuss the alleged power photographs are believed to have.

I. 6. The power of images:

According to the Czech philosopher Vilém Flusser, there are two fundamental incisions in human culture that can be observed since primeval times: the invention of scripture and the invention of technical images.[47] He speaks of a new ruling "idolatry" as opposed to the former "textolatry": not

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[46] *American photography. A century of images,* http://www.pbs.org/ktca/americanphotography/features/social.html
[47] Flusser, V., *Für eine Philosophie der Fotografie,* Edition Flusser, Bd. 3, 9. Aufl., Göttingen, European Photography, 1999, p. 7.

the article explains the photograph anymore but the photograph illustrates the article.[48] And it is true: we are surrounded by visual images everywhere and all the time. There is no possibility to escape from visual news and advertisements which are believed to exert strong power on us. But is this alleged power really unrestricted? Can it be that we are at its mercy, unable to defend ourselves but instead forced to believe in what we see in a picture? As I have already indicated, these assumptions have to be queried.

In 1995, the Parliamentary Assembly of the Council of Europe released *Recommendation 1276 on the Power of Visual Images* stating that:

> "1. We are increasingly surrounded and influenced by images: photography and cinema, but also television, video and computers. Visual images are becoming increasingly powerful. So powerful in this surge in visual imagery that we are now confronted with the concept of 'virtual reality' with the further risks of manipulation of images portraying news and information that it entails.
> (…)
> 3. Visual images record reality but they also convey stereotypes. In some cases images undermine written messages and are used to by-pass advertising regulations. Most people do not know how to 'read' visual images and this can lead to misinterpretation and manipulation. However real they may seem, images should not be taken for reality."

This expression of concern even on a political level is understandable as photographic images can become highly political as soon as they are framed in a corresponding context. I agree with Flusser when he says that images are prevailing in today's "news culture". This phenomenon has led so far that a certain happening "did not take place" if it was not covered by the mass media. Also the photo editor Folkver put emphasis on the problem of a missing photograph for the text, or the other way round that there exists a very good picture but not the right story for it.[49] The media, in turn, are in need of pictures to transport the message to the public. Yet, even if it cannot be denied that images may have a considerable force, many political and news experts tend to exaggerate the influence of images, maybe simply because scientists have not been able yet to explain which neurobiological processes take place in our brain while we look at a picture. One of its inherent

[48] Idem, pp. 11 and 55.
[49] Interview with Per Folkver.

characteristics, which makes an interpretation so difficult, is that a photograph can be read in many different ways for the lack of a clear language or a universal code system.

> "A fundamental characteristic of photography, and one which has made the medium hitherto seem so obtuse to the historian, is the lack of a single signifying system upon which all photographs are based in the same way that all works in English are based upon the English language, and all music is based upon laws of rhythm and tone. (...) the photograph instead conveys its meaning iconically through a heterogeneous complex of codes, (…) all lifted omnivorously from the culture in which the image is immersed."[50]

It has been argued by Domke, Perlmutter and Spratt that "the widely held notion that vivid images often drive public opinion is overly simplistic". They postulate, in contrast, "that images most often *interact* with individuals' existing understandings of the world to shape information processing and judgments."[51] In order to prove this hypothesis, in 2000, they conducted an experiment with 79 US-American college students who were presented with an article regarding the legacy of the Vietnam conflict, 25 years after the fall of Saigon. In one condition, the news story stood alone, in another condition, the same article was accompanied by John Paul Filo's famous photograph of a young woman screaming beside the body of a student who had been shot during anti-war protests at Kent State University in 1970.[52] After having read the article, the students were asked to fill in a questionnaire about the US-government with items concerning their trust in the federal government, their affective considerations about it, evaluations of recent presidents etc.

As the authors say, it seemed reasonable to expect that the students who had read the article with the photograph would be more inclined to respond sympathetically with the protestors, and conversely, against the war and government, especially as they were college students themselves and more likely to identify with the victims on the picture. Yet, their hypotheses expressed exactly the opposite:

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[50] Brothers, C., op. cit., p. 18.

[51] Domke, D., Perlmutter, D., Spratt, M., *The primes of our times? An examination of the 'power' of visual images,* in «Journalism», vol. 3, no. 2, London, Sage Publications, 2002, p. 136.

"H 1:

Individuals receiving news coverage of a social issue that includes a visual image highlighting protestors affiliated with a particular viewpoint *will develop more positive impressions of the opposing viewpoint* than individuals receiving news coverage of the same issue that does not include this visual image.

H 2:

The relationship between individuals' news-relevant considerations (e.g. about the Vietnam era and the US government) and more general evaluations of one's information environment will be much stronger than among individuals receiving news coverage that does not include that image."[53]

As the results of their experiment showed, the two hypotheses surprisingly proved to be correct. As to hypothesis 1, the students presented with the article containing the photograph indicated "significantly more positive impressions of the government than subjects presented only with the news article"[54] due to their reaction against the protestors. The authors explain this outcome drawing upon research which suggests that the presence of constant negative public perceptions of protest groups, as it was especially the case during the Vietnam War, influences the viewer who is regarding an image related to a protest group.[55]

Regarding hypothesis 2, the persons who had the article with the photograph proved to have a closer association between their considerations about the government and more general judgments such as their optimism about the future or their perception of the political system as corrupt or not.[56]

The authors of the experiment came thus to the following conclusion:

> "The reality, we suggest, is that individuals of course *can* be persuaded by images, but that one's pre-existing values, cognitions, and feelings often play a major role in how images are attended to, interpreted and acted upon."[57]

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[52] The photograph *Girl screaming over a dead body at Kent State* won a Pulitzer Price in 1970 and is regularly referred to as having had profound impact in moulding public opinion against US involvement in the Vietnam War. (cf. Domke, D., Perlmutter, D., Spratt, M., op. cit., p. 136).

[53] Idem, pp. 138-139.

[54] Idem, p. 143.

[55] Idem, p. 142.

[56] Idem, p. 145.

This experiment is an illustration that we are far from knowing what actual impact images have on its beholders. Although it is often believed that photography is received directly and "unfiltered" by our brain, rather the opposite is the fact: it runs through a number of filters which can be personal like the ones mentioned above (experiences, attitudes, moods, values etc.) but also more general ones such as culture, education, security, wealth, and others. As the photographer Robert Frank once said: "It is difficult to describe this thin line where matter ends and mind begins."[58]

To conclude, the question whether photographs alone can turn public opinion must be answered with no. There is no doubt that they play a decisive role in what we talk about, what moves us etc.; their influence in this aspect should not be underestimated. But for public opinion to take an opposite stance (can public opinion take a stance at all?) which could lead to mobilising action, it cannot be seen apart from its underlying coherency. One of the components that is decisive for a photograph to have political influence is its usage. With a quote by W. Eugene Smith I will lead over to a closer explanation of the different genres of photography which are important in the context of this thesis:

> "Photography is a potent medium of expression. Properly used it is a great power for betterment and understanding, misused, it can kindle many troublesome fires. Photographic journalism, because of the tremendous audience reached by publications using it, has more influence on public thinking and opinion than any other branch of photography."[59]

I. 7. Different genres of photography determining its meaning: press photography, documentary and photojournalism

The issue of filtering an image is closely related to the fact that there exist different genres of photography. It is essential to note that according to its usage, photography moves in different channels, where each channel determines its meaning. It makes a crucial difference if a picture is published in a political magazine, in a commercial advertisement or if it is nicely framed, enlarged and in the spotlight of an art exhibition. There is no doubt that, meanwhile, these channels have become more interwoven and permeable but one has to be aware that with each crossing to a

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[57] Idem, p. 147.
[58] Cited by E. Bennett, *Black and white are the colours of Robert Frank,* reprinted in N. Lyons (ed.), *Photographers on photography. A critical anthology*, New Jersey, Prentice-Hall, 1966, p. 66.

different channel, the picture also gets a new significance.[60] This has to be kept in mind especially when photographs are interpreted and under critique. Besides its use and intention, a photograph has always to be seen in its different levels of context. One of them is the textual context. A single word as caption beneath can change the whole meaning drastically. To bring just one example out of many: a beholder can perfectly be charmed by abstract black and white photographs of fine-lined, subtle forms in the shape of flowers, until the caption tells him that these are actually the sprinkler nozzles of a gas chamber as had been used in the concentration camps of World War II.[61]

Before further investigating how human rights violations are present in photography, the differences between "press photography", "documentary" and "photojournalism" have to be made clear. These notions are frequently confused and overlapped without considering their fundamental characteristics and semantic differences. It is not a matter of content that divides these fields, as one might assume, but rather a question of purpose, time, and influence of the photographer that determines the respective definition. Press photography has been operationally defined as "the provision of pictures to fill specific editorial needs", with the press photographer "providing an ongoing service – the rapid production of specific images whose use is largely predetermined."[62] Emphasis has to be put on the extremely short time limit the photographer has in order to establish a relationship between him and his subject, which often results in rather "stereotypical and ephemeral"[63] images. Furthermore, the photographer has normally little or no influence on the text that will be published in connection with the image and "experimental deviations from the predictable, no matter how successful, are rarely welcome".[64]

Documentary photography, on the contrary, implies a work composed of several images – it has been even argued that only a series of photographs can display the photographer's intention[65] – which allows most of the times a deeper analysis of and a better engagement with the topic. The photographer is able, or even wanted to bring in his own point of view, expressed not only in the pictures but possibly in the corresponding text as well. In short, documentary photography is more

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[59] Smith, W. E., *Photographic journalism,* reprinted in N. Lyons, op. cit., p. 103.
[60] Flusser, V., op. cit., p. 49.
[61] The pictures mentioned are taken by the photographer Klaus Fritsch.
[62] Coleman, A. D., *Depth of field. Essays on photography, mass media, and lens culture,* Albuquerque, University of New Mexico Press, 1998, p. 38.
[63] Idem, p. 39.
[64] Idem, pp. 38-39.
[65] Flusser, V., op. cit., p. 36.

likely to be the photographer's personal project. It may be intended for a publication in a magazine but does not necessarily have to be. In the last chapter about stereotypes I will come back to the importance of this kind of working with photography.

When it comes to photojournalism, its basic structure is the picture essay and its primary vehicle is the journal, the magazine, or newspaper. "As the name also implies, some relationship to text is inherent in this form – sometimes nothing more than bare-bones captioning, but often more extensive informational/ editorial commentary."[66] Throughout this paper, I will make a difference between the terms press photography for matters of "hard news business" and documentary photography when referring to a form of possible "alternative reporting".

After having shown how photojournalism emerged, I want to take a leap to our present time. I will take a closer look at the mass media and explain what I mean with the term "spectacle of suffering".

[66] Coleman, A. D., op. cit., p. 37.

CHAPTER II. The "spectacle of suffering": different positions

II. 1. Human rights as a news topic:

The media as our prime source of information are without doubt an important tool for the promotion and understanding of human rights. As I stated at the beginning, certain human rights violations were already covered by the media before the creation of the modern human rights system in the 1940s. A difference between early reporting then and news coverage today can, however, be seen in the fact that plain reporting of a violation has led to the awareness that one's *rights* can actually be claimed in the case of a violation. In the course of time, the perception of the importance and relevance of human rights has increased among journalists, news editors, and also the readers. During the last two decades, human rights as a legal issue have become a news topic. On the one side, this is due to the incorporation of human rights into the policy framework of governments and the permeation of human rights into international relations. On the other side, a large number of human rights organisations have emerged which have been feeding the press with their information. It has been observed that since the 1990s the mass media make reference to human rights more often and more systematically.[67] Furthermore, it can be said that their coverage prevails in the North, and that civil and political rights are more reported on than economic, social and cultural rights.[68] Interestingly, both in the North and the South, the assumption is held that human rights violations occur only 'abroad'[69]; the perception that it is a "foreign matter" influences the coverage of human rights as a legal topic to a large extent.

Media is more than news culture, however. Before I start elaborating on the topic of human rights violations and suffering in the media, I will clarify how the term "media" will be used here:

> "*Media* is an all-encompassing term referring to the presentation and transmission of information by a multiplicity of outlets (radio, television, print and the Internet). (…) The term media, however, is widely understood to refer primarily to news". [70]

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[67] Cf. International Council on Human Rights Policy (ed.), op. cit.
[68] Idem, pp. 2-3.
[69] Idem, p. 103.
[70] Idem, p. 7.

For the purpose of this thesis a further differentiation has to be made between TV broadcast and print media, due to their characteristics of delivering moving or still images, respectively. I also want to put emphasis on the fact that the notion of "mass media" I refer to belongs to the news industry as we know it in the westernised world. It is characterised by its concentration in few, mostly private business corporations, by its competition for time and access, and by the impact of new technologies. As a consequence, the fast flow of news has been accused of having led to a trend of superficiality, where more importance is given to the presentation than to the contents. For the context of human rights coverage this means that "human rights issues become 'human interest stories', forced to adhere to certain emotional clichés."[71] In this chapter I will deal in more detail with these emotional clichés and what they mean for the subjects presented to us as victims.

II. 2. The question of responsibility and manipulation:

"If it bleeds, it leads"[72] goes the saying among newspaper editors. Judging the daily newspapers and magazines by their negative headlines, one could assume that the world is a horrifying place, where one catastrophe follows the other. Apparently, positive reporting doesn't interest us as much. Is it true that "unpleasantness and misfortune 'sell' better than the portrayal of goodness, and that curiosity is best satisfied by negative things"[73]? It seems to lie in the nature of daily newspapers that they report on hard-hitting, shocking accounts. According to Folkver, they are simply *easier* to report on.[74] In a world of news available around the clock along with its commercial competition, it is in many cases the headline and the enlarged picture beneath that are the decisive factors whether the consumer will buy the newspaper or not. Therefore it is understandable that in order to contrast the vast offer of newspapers and magazines, the picture on the front-page has to stick out for sensation and unusualness. The consumers' hunger for amazing images on the one side, and the media corporations' pressure of being the first to publish the most incredible image on the other side, have both led to a spiral of craving with very high thresholds. This observation leads to the fundamental question to what extent newspapers are entertaining or informing. The creation of the term *"infotaining"* is a proof for this phenomenon. On the other hand, press photography has the "disadvantage" that the reader has normally seen the breaking news images already on television or

[71] Idem, p. 1.
[72] Sontag, S., *Regarding the pain of others*, op. cit., p. 18.
[73] Gruber, L. F., op. cit., p. 124.
[74] Interview with Per Folkver.

internet the night before. So the role photography is playing in the news business has changed over the decades. It now has the opportunity to report in an additional manner, parallel to what can be seen elsewhere. Folkver remarked:

> "I believe we have to challenge the other half of the brain with the essence of what photography is able to do. Photography is brilliant to make you *feel*. (…) People slaughtered in Bosnia, in Kosovo – we are not putting those pictures in the paper but that's because you would not be able to make people understand it *more* than writing about it. They are seeing the pictures elsewhere, on the television, and we agreed in *Politiken* that sometimes you are able to tell a story without showing the worst thing. (…) The worst thing is that people don't see what you want to tell them, because they just can't have it. I believe in that you discuss it very seriously what you will bring but don't bring horrifying pictures because it's horrifying. On the other side I stand for this opinion that we are too polite, that we are too soft. (…) I would like us to be less polite and more direct. We have ethical rules for the paper but it is always a new discussion."[75]

Besides delivering information and/or entertainment, the media are also powerful political opinion-makers. They constitute a form of social identity and moral conscience of a state and its population. Therefore, the grade of responsibility media workers are bearing is high, and it has to be taken into account on a daily basis when decisions are made. This responsibility of editing news applies, of course, to photographers as well. The notion of the "decisive moment" coined by Henri Cartier-Bresson is very much related to the dilemma of objectivity that we find in many news reports. The controversy that rises is not so much the problem of altering a photograph through later manipulation but rather the insight that *a photograph can never be objective*. The simple fact that an infinite number of decisions are made before, while, and after the picture is taken automatically leaves a visible handwriting of the photographer and in many cases also the photo-editor. Is it then possible to "lie" with a camera, even if it depicts reality by the simple fact that light has touched photo-sensitive material?

> "Even without staging a picture, there are countless ways to lie with a camera from the choice of lenses to the choice of when to push the shutter button, from the choice of angle to the final cropping, or in the choice of whether to use colour or black-and-white film. (…) By removing

[75] Interview with Per Folkver.

> colour from a situation through the use of black-and white-film are we more, or less, honest? When we eliminate something from a scene by using selective focus to blur it beyond recognition are we manipulating the truth? Even made with the best of intentions, pictures can lie simply because the photographer or the editor is uninformed."[76]

This sounds indeed frightening. The emergence of digital cameras and image-editing into the news fabrication which came along with new technologies has caused even more mistrust. But despite some views to the contrary it can be said that the contents of pictures are in general not more significantly changed than they were in the darkroom before the new era of digital recording and editing. The standpoint of the photographer – not only in the moral and political but also in the physical sense – carries much more weight than the new possibilities of image altering. In a situation where the photographer has to report from an area of war or armed conflict, it is crucial on which side he stands. Simply by framing a picture, the danger of manipulating the later "document of reality" is always present. Moreover, objective reporting where both sides are equally presented is in this case simply not possible. This fact has to be taken into consideration when talking about photography. The dilemma of subjectivity versus objectivity can only be balanced by the awareness and simple recognition that even if a photo doesn't lie, it doesn't tell the truth either.[77]

How much responsibility does the photographer have as a mediator between the victim, the perpetrator and the viewer? Does his presence influence the course of the situation in which he finds himself? These are some questions I will focus on by elaborating on the role of the photographer.

II. 3. The role of the photographer:

In a video made recently about James Nachtwey, one of the most well-known war photographers, the spectator can accompany the photographer and observe how he is working. The particularity is that the makers of the documentary fixed a video camera on his camera, so that every shot that is taken in a specific situation can be followed by the viewer. One scene is especially striking: it shows a family in Kosovo who is mourning next to the grave for their killed son. Men are situated around the grave, kneeing and with serious, mute expressions on their faces. Then, the video camera sways to a scene where the female relatives are shown. A group of young and old women are

[76] Garrett, W. E., *Teacher without a lesson*, in E. Meijer, J. Swart (eds.), op. cit., p. 81.
[77] Caujolle, C., *Photography and its uses*, in E. Meijer, J. Swart (eds.), op. cit., p. 57.

gathered closely together, they are crying and supporting one another by grabbing each other's arms. The viewer is confronted with a situation of incomparable desperation and mourning, until the camera angle widens and shows that at a distance of approximately one meter stands Nachtwey, photographing this distress. He is kneeling in front of them, holding his camera into their faces at such a close distance that the viewer remains stunned. At a moment where the sight is disguised, he quickly takes out his equipment to measure the light; – all in all, it reaches a level of absurdity. A subsequent cut switches to the small video camera and one can now look through the "eyes" of the photographer. An aesthetically perfect black-and-white tableau of the group of women appears. One feels immediately reminded of the images that were published in the newspapers and magazines when they reported on Kosovo. We know this kind of pictures, but we haven't seen until now how they are produced in the situation on site.

Although the viewer of the video is overwhelmed by the feeling that he wants to protect the subjects taken pictures of, this family does not seem to be disturbed by Nachtwey's presence. In an instant where the sight is hidden again, one can even observe how a man opens the view for the photographer with a handgrip. This raises the thorny question of authenticity: to what extent does the presence of the photographer (and also the Swiss film crew!) influence the course of the events and the behaviour that take place in front of the cameras? The short gesture of the man and the fact that during the whole scene the persons filmed and photographed were ignoring the camera, make it clear that Nachtwey was not behaving against their will. In the course of the video, he explains:

> "Those pictures could not have been made unless I was accepted by the people I'm photographing. It's simply impossible to photograph moments such as those without the complicity of the people I'm photographing, without the fact that they welcomed me; that they accepted me; that they wanted me to be there. They understand that a stranger, who has come there with a camera to show the rest of the world what is happening to them, gives them a voice in the outside world that the otherwise would not have. They realize that they are the victims of some kind of injustice, of some kind of unnecessary violence and by allowing *me* there to photograph, they are making their own appeal to the outside world and to everyone's sense of right and wrong."[78]

[78] *James Nachtwey. War photographer,* video, Christian Frei film productions, in assoc. with Swiss Nation Television and Swissimage, 2001

This is, of course, controversial. The argument that the photographer is there "to give them a voice" has something very paternalistic.[79] It must not be forgotten that media workers are in fact earning their money with other people's misery, sometimes even going so far that it comes close to exploitation. Concerning this reproach Nachtwey admits the following:

> "The worst thing is to feel that as a photographer I'm benefiting from someone else's tragedy. This idea haunts me. It's something I have to reckon with every day, because I know that if I ever allowed genuine compassion to be overtaken by personal ambition – that would have sold my soul. The only way I can justify my role is to have respect to the other person's predicament. The extent to which I do that is the extent to which I become accepted by the other and to that extent I can accept myself."[80]

This statement also indicates the emotional pressure on photographers of being exposed to extreme situations where they have to maintain a clear mind and make the best decisions according to their conscience and to the given task they have to comply with. Besides, having respect for the other person's distress, encompasses a certain physical behaviour and a mental consent between the photographer and his subject. The problem of achieving consent will be dealt with in more detail under the legal aspects in chapter III.

Photography has the special and difficult task to bear witness in order to bring change. For us western viewers, however, the reality of cruel happenings is most of the times far away. That is why photographers have to go there in our place. Maybe it is naive to believe that the world will become a better place, but for Nachtwey, it is often his only thought and hope why he continues being a war photographer:

> "In the field, where your experience is extremely immediate, what you see is not an advertisement for Rolex watches on the next page. What you see is unmedicated pain, injustice and misery. It has occurred to me that if everyone could be there just once, to see for themselves what white phosphor does to the face of a child, or what unspeakable pain is caused by the impact of a single bullet, or how a piece of shrapnel can rip someone's leg off. If everyone could be there to see for themselves that fear and that grieve just one time, then

[79] Taylor, L. (ed.), *Visualizing theory. Selected essays from V.A.R. 1990-1994,* London, New York, Routledge, 1994, p. xviii.
[80] *James Nachtwey. War photographer,* video, op. cit.

> they would understand that nothing is worth letting things get to the point where that happens to even one person, let alone thousands. But everyone cannot be there and that's why photographers go there to show them, to reach out and grab them and make them stop what they are doing and pay attention to what is going on. To create pictures powerful enough to overcome the diluting effects of the mass media and shape people out of their indifference, to protest and by the strength of that protest to make others protest."

To conclude, the role of the photographer in site is without doubt controversial. He bears a high degree of responsibility in delivering images which should be "as objective as possible" at the same time being exposed to difficult and often dangerous situations. When photographers are sent to areas of catastrophes they know what the news editor expects from them. Besides, the "commodity" that will be delivered has the task of attracting the reader/ spectator in one form or another to the possible violation of the portrayed persons. As I mentioned earlier, the front page image is often the decisive factor for buying the newspaper. In the following part, I want to investigate in more detail the role of the spectator and what is behind the alleged "compassion fatigue".

II. 4. The spectator:

We as news consumers in the western hemisphere are sometimes criticised for living in a "society of spectacle" where "something has to be turned into a spectacle to be real – that is, interesting to us."[81] Moreover, it is commonly assumed that we have been fed for such a long time with the most horrible and stomach-turning pictures that nothing can lure us away from our couch anymore, that we are suffering under a "compassion fatigue". Images are coming and going so fast that we are daily watching other people suffering, mourning and dying without even being able to comprehend their individual pain and misfortune. This is especially the case for the fast moving images on television, in contrast to still photographs which remain. The latter can be looked at again and again, studied in detail and at leisure – which is, by the way, one of the reasons why television will never make photography obsolete.[82] "They are far away", "there is nothing we can do", "it's not my fault" are self-alleviating thoughts when we switch the TV channel or turn the page. But have we really become familiar and indifferent to other people's calamity?

[81] Sontag, S., *War and photography*, op. cit., p. 268.
[82] Gruber, L. F., op. cit., p. 121.

The critique that we are overwhelmed by images of suffering and that we are becoming too familiar with them is not something new, as it could be believed. On the contrary, as early as in 1800, Wordsworth, an English poet, complained about the *"blunting of mind"* produced by daily events and hourly news of *"extraordinary incident"*.[83] The term "society of spectacle" has been criticised by Sontag. "Fancy rhetoric, this", she argues. "To speak of reality becoming a spectacle is a breathtaking provincialism. It universalizes the viewing habits of a small, educated population living in the rich part of the world, where news has been converted into entertainment (…)."[84] This imbalance of news reception has always to be considered, when we speak of "us as viewers" and "them as victims".

The French social scientist Luc Boltanski, too, deals with the "spectacle of suffering" (a term he borrows from Hannah Arendt's essay "On Revolution"), and the relationship between the "spectator" and the "unfortunate". According to him, to have knowledge of suffering points to an *obligation to give assistance*. "Why else present a spectacle of suffering human beings to unconcerned people, if not to draw their attention to it and so direct them to action?"[85] Boltanski follows up the question on what conditions the spectacle of suffering brought to us by the media is morally acceptable. He finds different possible forms of reaction for the viewer who is confronted with the images of a suffering human being:

> "In relation to the media, the spectator occupies the position (…) of someone to whom a *proposal of commitment* is made. (…) the spectator can accept the proposal made to him, be indignant at the sight of children in tears being herded by armed soldiers; be moved by the efforts of this nurse whose hands are held out to someone who is starving, or feel the black beauty of despair at the execution of the absolute rebel proudly draped in his crime. He can also reject the proposal or return it. "[86]

In his opinion, there are two forms of action that are targeted at, when the spectator is brought into a moral dilemma by contemplating a suffering unfortunate from afar: *"paying and speaking"*[87]. By talking about what he saw and how he was affected by it, there is a possibility for the spectator to

[83] Cited in Sontag, S., *War and photography,* op. cit., p. 107.
[84] Idem, p. 110.
[85] Boltanski, L., *Distant suffering. Morality, media and politics,* Cambridge, University Press, 1999, p. 20.
[86] Idem, p. 149.
[87] Idem, p. 17.

actively involve himself and others, even when the circumstances in which the suffering takes place cannot be changed. Boltanski describes the different phases of the spectator as *pity*, which is transformed into *indignation* and *anger* and finally results in the speech act of an *accusation*.

> "Clearly, the accusation is not addressed to the unfortunate himself. The transformation of pity into indignation presupposes precisely a redirection of attention away from the depressing consideration of the unfortunate and his suffering and in search of a *persecutor* on whom to focus."[88]

Another possibility for the spectator is sympathising with the unfortunate's *gratitude* inspired by the intervention of a *benefactor*, like a nurse or helpers distributing bread for example.[89] A third route besides accusation or sympathy is the one where the spectator is "courageously looking, allowing himself to be overtaken by the horrific":

> "Once the fictional characters of the persecutor and the benefactor have been dispensed with along with their illusory reflections, the *enragé* victim and the grateful *misérable*, suffering is looked at in the face and confronted in its truth, that is to say as pure *evil*."[90]

This interesting analysis of what occurs in the head of the spectator points to the understanding that we are not suffering under a compassion fatigue but that our lack of interest and emotion is rather due to the missing possibilities to react. The feeling of powerlessness, that there is nothing we can do about it, might be an explanation why we might appear indifferent on the outside. On the other hand, we may talk about remote events, especially for the reason that there is "nothing else we can do", which would confirm Boltanski's thesis of the act of speaking as a form of reaction. Sontag argues in the same line when she says: "If we could do something about what the images show, we might not care as much about these issues."[91] She does not believe in the phenomenon of compassion fatigue: "(…) it's not true, I think, that because of the surfeit of images we're responding to less. (Less compared to when? When was the baseline for optimum responsiveness?) We're probably responding to more."[92]

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[88] Idem, p. 57.
[89] Idem, p. 77.
[90] Idem, p. 119.
[91] Sontag, S., *War and photography,* op. cit., p. 117.
[92] Idem, p. 271.

She raises another interesting aspect of the role of the viewer by drawing the line between the people who have a *right to look* and those who remain *voyeurs*:

> "Perhaps the only people with the right to look at images of suffering of this extreme order are those who could do something to alleviate it – say, the surgeons at the military hospital where the photograph was taken – or those who could learn from it. The rest of us are voyeurs, whether or not we mean to be."[93]

In this context, it can be added that the iconography of suffering has a long history. [94] In the literal spectacles of suffering, the ancient Greek tragedies, human suffering was shown to an audience which was to undergo a *"catharsis"* evoked by *"eleos"* (pity, compassion) and *"phobos"* (fear). Although this was "only theatre", the phenomenon of voyeurism involves a secret enjoyment of seeing other people suffer. It cannot be denied that many of the images of agony that circulate in the public have a very aesthetic component. The right angle, the right colours (or black and white photographs which can easily be accused of being even more aesthetic), the right light, the right frame together with a frozen expression of suffering in a face can generate something beautiful to look at. The Danish photographer Jan Grarup affirms that this is a reproach frequently directed towards him and the photographs he takes. Yet, he does not understand what is wrong with taking beautiful pictures.[95]

The footage of the plane crashes into the towers of the World Trade Center on September 11, which was shown again and again, had something fascinating we did not get tired looking at. The description of this tragedy happening "as if it was in a film" is an ironic reference to the violent and stomach-turning scenes of Hollywood films and computer-games. Yet, in the cinema or in front of the computer, one can easily accept those images and even enjoy a slight shivering while looking at the spine-chilling – which means the more realistic the better – special effects. What makes the difference to seeing it in the evening-news? The fundamental difference lies in the mutual consent between the producer of films and video games and the receiver that the later will allow the producer to deceive him with an illusion. At the end, it is clear that "it was a film" or "a game". Human rights violations and the consequential suffering, however, are not a game but real.

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[93] Idem, p. 42.
[94] Idem, p. 253.

The media clearly bear the responsibility to make human rights violations intelligible without sentimentalising or commercialising its victims. As we see the world through the window of our media, we also establish our contact to and our opinion about other people far away to a large extent through our broadcast and printing industries. Subsequently, I will focus on the other side of the camera lens: the person presented to us as “victim”. I chose the example of the refugee because it always has a political connotation besides its humanitarian aspect. First, I will trace back the image of the refugee, how it was created during the Spanish Civil War, and then compare it to what we perceive it as today.

II. 5. The victim: the example of the refugee during the Spanish Civil War…

There exists an interesting analysis by Caroline Brothers, who compared the photographic coverage of the Spanish Civil War in French and British pro-Republican and pro-Insurgent magazines and newspapers of that time. She points out the differences of coverage in the two countries by arguing that “(t)he photographs chosen for publication did on one level represent Spanish civilian life in war, but that representation must be recognised as refracted through a culturally specific lens. It was above all the collective fears, ideals and expectations of societies distant from Spain that were formulated and given substance in these fragile paper signs.”[96]

To illustrate this statement she focused on the refugees of the Spanish conflict and compared how they were portrayed in the British and French pro-Republican newspapers and magazines such as *Daily Worker*, *Picture Post*, and *Vu*, in contrast to the pro-Insurgent *Illustrated London News*, *Daily Mail, L'Illustration*, and *Le Matin.* The portrayal of the refugees in both countries had similar characteristics: the refugees were shown as powerless, passive victims, not surprisingly the majority being women, children and elderly. “Flight was never perceived as an active choice or a positive decision, escape never a bid for survival involving the rejection of a passive role”.[97] Thereby, they were neutralised politically which deprived them of their decision, expressing also a political statement. Last but not least, a certain pathos was inherent in the depiction of the journey as an

[95] Interview with Jan Grarup, reportage photographer for the daily Danish newspaper *Politiken*, Copenhagen, May 13, 2003.
[96] Brothers, C., op. cit., p. 138.
[97] Idem, p. 143.

emotionalised drama. So far the similarities; but the interesting fact is how and why the refugees were also depicted differently.

> "While the power relations these photographs articulated between reader and subject relegated the refugee invariably to the position of docile, feminised victim, the press of opposing sympathies differed considerably in the way they contextualised these victims. While the pro-Insurgent press of both nations situated them in closed histories with positive, finite outcomes – showing rescue effected or security attained – the pro-Republican press left their stories open and their fate unsealed."[98]

"Open stories" were brought in the form of depictions of journeys in progress, where time and location were generally not specified, thereby implying an indefinite future for the refugees. By moralising and emotionalising the refugee issue, it was a call for intervention in aid of the Spanish government. The presentation of the refugees as victims was enforced by bringing pictures taken from above –looking literally down on the people. These pictures were often brought in the form of picture essays in film-like sequences with beginning, middle and end.

On the pro-Insurgent side, the refugees were more defined as "a problem" than a human tragedy. The cause of their flight was never asked for and "closed histories with positive, finite outcomes" meant that compassion was only a secondary term. The larger part of the images showed the refugees having reached their destinations, like safely arriving across the French border which was the most photographed subject. "Not struggle but the relaxation of struggle, arrival rather than the journey, was thus the main concern of the pro-Insurgent press."[99]

This, in turn, caused preoccupation in both countries, namely the fear of invasion by the mass exodus of the unknown "other" and the economic burden these refugees would imply. The French press concentrated therefore on the "Fishermen of Fontarabie" as model refugees in France. The text and the captions accompanying the photos of the settled refugees in *L'Illustration* are exemplary: "These people are the most agreeable refugees in the world", "They insist on nothing.

[98] Idem, p. 159.
[99] Idem, p. 152.

What is more, they ask for nothing; they are happy to live on their humble provisions, protected against misfortune by the obliging courtesy of old France…"[100]

In Britain, on the contrary, the attitude was much more negative, namely overtly defensive. The photographs in *Daily Mail* identified the refugees as aggressors, showing British guards at the border of Gibraltar (which it shared with Spain), refusing further entry. A caption in the *Illustrated London News* stated: "The frontier guarded so that a limit might be set to the number of Spanish refugees, since the fortress became so crowded that there was a risk of epidemics."[101]

To conclude, by taking the example of the refugee, Brothers made her point clear that the coverage of the Spanish Civil War was not so much about giving an "objective" impression of what the war was like, but that these images published in the two countries rather "signalled above all a growing apprehension among the British and French that their own fate was inscribed in these icons from Spain."[102] It has to be considered that bringing images of human suffering has not only to be seen in the political context where the tragedy is happening, but also in the country where it will be received as news.

II. 6. … and the refugee today:

I want to dwell a little more on the topic of the refugee as a victim. Some of the points Brothers elaborated on are not different from nowadays. To express it in extremes, the topic of refugees appears in our mediated surrounding under two different angles: the described fear of intrusion by strangers which often results in xenophobic and racist reporting, and the portrayal of wretched suffering by humanitarian organisations for fund-raising purposes. On both sides terrible stereotypes are created, which may be useful for their respective intentions, but they do not consider the values and wishes of the persons *utilised* for those purposes. As the anthropologist Michael Jackson describes, the refugee does no longer stand as a subject for him or herself, but "is reduced to being an object – isolated, exposed, fixed, categorised, and judged by the Other."[103]

[100] Cited in Brothers, C., op. cit., p. 158.
[101] Cited in Brothers, C., op. cit., p. 157.
[102] Idem, p. 160.
[103] Jackson, M., *The politics of storytelling. Violence, transgression, and intersubjectivity,* University of Copenhagen, Museum Tusculanum Press, 2002, p. 68.

Are we able to understand the individual pain and state of shock refugees are in, when they are shown as anonymous, speechless mass? Has anyone ever thought of the feeling of *shame* refugees can develop, once they are deprived of all their belongings and depicted from one day to the other as poor people in the world's newspapers? Jackson pleads for a critical reconsideration when we speak about or portray the refugee in the media:

> "Doing justice to refugee experience also demands that we reflect critically on the tacit links between the ways in which refugees are conventionally constructed in academic and bureaucratic discourse, and the ways in which they are stereotyped in vernacular discourse and the media. (…) This style of discourse likens refugees to primitives, peasants, children, or the elderly – categories of persons who are marginal to centres of power. Defined in terms of their emotionality, appetites, instincts, and dependency, 'they' form an undifferentiated and anonymous mass, a crowd, a pathology. In this discourse, there is an uncanny parallelism between media clichés and expert commentaries. The photo images are of huddled masses, lost souls with hands outstretched for help, or of people on the move like migrating herds."[104]

His description of the refugee as marginalised from power corresponds very much to the notion of "the victim" in general. This almost allegoric character is in the scarcest cases shown as someone who should deserve respect but rather as a wretched object, arousing compassion from the side of the viewer. These feelings establish a very asymmetric power relation. There is no doubt that the victim finds him or herself at our mercy, we being the powerful and generous. When we examine our photographic memory it will be difficult to find an image where this hierarchical power relation is less obvious or even shown as dissolved.

> "In any case, photography's conventional eye has long fixed the look of disaster in the likeness of passive suffering 'victims', in both news and documentary images. Heroic or pathetic, the 'victim' invariably waits, dependent on the faint chance of relief or remedy, understood to be beyond his or her personal control. Hence the 'victim' is constructed as a universal category, constituted in images which are accepted because we recognise that we are all ultimately subject to the same common order of fatality."[105]

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[104] Idem, p. 79.
[105] Watney, S., *Photography and AIDS*, in C. Squiers (ed.), *The critical image. Essays on contemporary photography*, Seattle, Bay Press, 1990, p. 190.

Can it be that the image of the victim is a product of our own categories and perceptions? Are these perceptions always ethically legitimate? What about the dignity of the person that is photographed and filmed? Is it possible to say that the photographer is violating a person's dignity when he is taking advantage of a person's distress? Do people have to give their consent and be truthfully informed about what is going to happen with the photograph taken? What happens to the person photographed when he or she becomes an object to be looked at? By the simple fact that the photographer chooses a subject to appear on a two-dimensional picture, a certain objectification takes place. Are there any legal provisions dealing with dignity and the problem of consent? In the following chapter I will shift the focus onto the legal perspective, starting with the notion of human dignity. By giving examples from case law, I will concentrate on hard law and the problems for their application to photography that emerge from the provisions related.

CHAPTER III. Photography from a legal perspective: the notion of human dignity

III. 1. Photography as a violation of human rights?

In the previous chapters it was my intention to point out that photography can be a very powerful instrument for drawing attention to social injustice and eventually bringing alleviation to the victims of human rights violations. Now I will argue that photography can constitute a violation itself. Whether it leads to a violation of a person's dignity through an act of disrespect and humiliation, or a violation of the right to privacy, photography can also constitute a threat. In this chapter, I shall take a closer look at photography from its legal perspective.

My point of departure is the question whether it is possible to speak of a violation of human dignity, especially in cases when suffering is the topic of a photograph. Even if human dignity is inseparable from the enjoyment of human rights, it will be shown that it is not easy to formulate this issue in legal terms or even in terms of a violation of human rights. But even if hard law provisions are not apt to apply to publications of human suffering, there are nevertheless *moral* rights of a subject that is photographed. Such moral rights fall under the realm of journalistic ethics which will be dealt with in the last part of the thesis. In this chapter I will draw upon examples where the persons depicted did not consent either to the form in which they were portrayed and/ or to the publication that was made afterwards. Is there something like the right to one's image? Do people have to agree to the form in which they are shown in a newspaper or a magazine? And do the media have unrestricted rights in publishing everything they want? One could assume that the original definition of the right to privacy as the "right to be left alone" should also apply to private persons (victims) and not only to public figures. In practice, there is a slight difference, however. By referring to case law I will show the various restrictions for a person to claim a violation of his or her right to privacy.

In the context of photography and media, the right to freedom of expression is crucial when considering someone's private life. Which right carries more weight, the individual right of privacy or the right of the public to be informed about what generally falls under the term "public interest"? Are there any restrictions to the right of freedom of expression? In order to answer these questions,

I will examine the balance that has to be struck between these rights. There exist complaints before courts where photography is involved, even before the European Court of Human Rights, but it will be shown that for photographs of human suffering hard law provisions are not enough.

In the following, I will introduce to the topic by giving an example of photographic history: Walker Evans' meanwhile world-famous pictures that were taken by order of the American Farm Security Administration project.

III. 2. An introduction: the dignity of Walker Evans' sharecropper families

During the American Depression era in the late 1930s, photographers were hired by the federal government to document rural low income groups. The visualisation of poverty should foster support for relief programmes. This task was carried out on behalf of the Farm Security Administration (FSA) under the direction of Roy Stryker, a university lecturer on economics. He had a clear idea of what he wanted to see on the photographs stipulated not only "the specifics of region, milieu, or activity when making the assignments but also indicated what type of mood, expression, 'feeling' he was after. (…) When subjects smiled into the camera, they were stage-managed into more somber poses; sharecroppers who wore their best clothes to be photographed were told to change into their ragged everyday wear, persuaded not to wash begrimed hands and faces for the camera."[106]

Walker Evans, who was working as a photographer for this project, certainly did not mean to be disrespectful towards the poor farmers he was taking pictures of. But the later publication of his photographs caused indignation among the subjects when they saw themselves and their relatives shown in a way they could not appreciate. As it turned out many years later, when the *New York Times* reporter Howell Raines visited some of these families in Alabama in 1980, they felt ashamed of the poverty they were shown in. Their pictures had not only been collected by Stryker but had also been published for a different purpose. They became visible to a large public due to Evans' photographic contribution to the book *"Let Us Now Praise Famous Men"* written in 1941 by James Agee.

> “These southern sharecropper families are still living in rural poverty, and are still, ‘mad as hell at Walker Evans’. ‘These pictures are a scandal on the family’, one woman told Raines, ‘How they ever got Daddy’s picture without a shirt on and barefooted, I’ll never know.’ The families say they were promised that these pictures would never be seen in the South, and certainly not on the front cover of a mass-market paperback sold in local drugstores and bus stations.”[107]

It is not easy to take position against or in favour of Stryker’s orders, which basically is a problem of authenticity. It seems reasonable to assume that the photographs were taken with good intentions, and as the title reveals, the book was written with the intention of romanticizing rural life. Yet, the tenant families were taken by surprise, because they were not asked whether they consented to the publication of their images. Although the picture of the barefoot man without a shirt probably depicted everyday life, his relatives felt offended and embarrassed by the fact that this was visible to everyone. From a practical point of view, it is understandable that the message that wanted to be transported had to be made visible, and poor farmers in their Sunday suits would not have given the right impression. From an ethical point of view, however, this constitutes a certain problem. Is it ethically legitimate to publish a photograph that does not correspond to the subject’s own idea of how he or she wants to appear?

Besides the portrait photographer who gets paid for taking pictures of people only in the way they want to be shown, this claim would lead to absurd obstacles for photographers of other fields and even change the fundamental principle of photography of being a subjective, spontaneous means of recording reality. Reality is not always as we want it to appear. Everyone of us wants to be shown in his or her best light and many people feel uncomfortable with the way they are depicted on photographs. For private family pictures this vanity carries little weight but when people find their image which they did not consent to be published in a magazine or advertisement, legal difficulties may ensue.

The example of Evans’ tenant families would not be possible anymore today due to the restrictions of photographing persons for commercial purposes. Nowadays, there are strict rules for model

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[106] Solomon-Godeau, A., *Photography at the dock. Essays on photographic history, institutions, and practices,* Minneapolis, University of Minnesota Press, 1991, p. 178.
[107] Gross, L., Katz, J. S., Ruby, J. (eds.), *Image ethics. The moral rights of subjects in photographs, film, and television,* New York, Oxford, Oxford University Press, 1988, p. 10.

releases as soon as pictures are used for commercial purposes like advertising. Newspapers and magazines, on the contrary, enjoy more freedom due to the understanding that it is their duty to inform the public. Nevertheless, there exist many cases where photographed persons have objected to the publication of their images. I will come back to this point later. My question for now will be whether human dignity is a term that could play a role when photographing and publishing the suffering of human beings.

III. 3. Human dignity and self-respect:

Before raising the question whether it is possible to violate a person's dignity when we photograph and publicise his or her distress, the signification of the term "dignity" has to be agreed upon. This paper is not an attempt to find a new definition and the solution for an on-going and broad discussion, but nevertheless, the notion should be narrowed down to a basis where the debate can be started from. Disregarding the historical evolution of the term dignity and all that has been said about it in the realms of philosophy, psychology, sociology, politics and others, the safest ground to start from is its legal aspect.

"All human beings are born free and equal in dignity and rights", states the first article of the Universal Declaration of Human Rights of 1948. This refers to the Preamble of the Charter of the United Nations where *"faith in fundamental human rights, in the dignity and worth of the human person"* had been reaffirmed two years earlier. From the Preamble of the Vienna Declaration and Programme of Action of 1993 we learn that *"all human rights derive from the dignity and worth inherent in the human person"*. This signifies that even if there is no such right as the "right to dignity", it constitutes a basis without which human rights cannot be enjoyed. More references to dignity as a fundamental principle of human rights can be found in other international law instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and three of the four Geneva Conventions to name only the most important. Also international institutions and organisations like the ILO, the UNESCO, the WHO, the Council of Europe and even the UN Security Council have been referring to the term dignity. Yet, one problem remains everywhere: there is no further explanation given what "human dignity" actually embodies. It is commonly

agreed upon that human dignity is universal and inherent in every human being. But how is it possible then, to talk about the "violation of someone's dignity" or about the possibility "to lead a life in dignity", when dignity is something we possess already by the simple fact that we are human beings?

According to philosophy professor Herbert Spiegelberg, this paradox can only be solved by the comprehension that we are speaking about dignity in different senses, namely about *"human dignity in itself"* which is the inner, self-sufficient worth of being that cannot be lost, and the *"grounds of human dignity"* which constitute the characteristics that allow a person to be respected and which are violable. His question, which results from this differentiation, is therefore: can human dignity be identified with "worthiness of respect"?[108] I would answer the question with yes: human dignity is a quality that entitles every human being to personal respect towards him or her. So, at a moment when we are uncertain whether we are violating a person's dignity by taking a photograph, we have to consider if our behaviour is respectful or disrespectful. The Danish photographer Henrik Saxgren affirmed that this is a decision that has to be considered on a daily basis while working on location.[109]

Although there might be different perceptions of what a manifestation of respect towards a person is, I don't deem it necessary to give a more precise definition of the term "respect" than the following where an act or attitude of respect is described as something negative, as it "involves at least a standing back from what is respected and at the same time an attitude of non-interference with it."[110] The notions "dignity" and "respect" are universal, fundamental values that can be found in every society, or in other words, "being conscious of the other person's dignity expresses the very foundation of the human face of society."[111]

My working definition for the term dignity in the context of photography will be that it constitutes the right of every person – even if dead – to be respected as a human being. There is a simple but self-evident rule in "photographic humanism" that might also correspond to this claim: "not to show

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[108] Spiegelberg, H., *Human dignity: a challenge to contemporary philosophy*, in R. Gotesky, E. Laszlo (eds.), *Human dignity. This century and the next. An interdisciplinary inquiry into human rights, technology, war, and the ideal society*, New York, Gordon and Breach, Science Publishers, 1970, p. 58.
[109] Interview with Henrik Saxgren, professional freelance photographer, Copenhagen, June 18, 2003
[110] Spiegelberg, H., op. cit., p. 58.

others as one would no wish to be shown oneself".[112] For news photographers whose task it is to deliver pictures of people suffering from catastrophes, this rule could signify a serious obstacle, however. But even if there is no commonly accepted legal definition for human dignity, it is probably more effective to follow Spiegelberg's proposal that says:

> "one of the best approaches to an exploration in depth of what human dignity means is to start from the experience of 'indignation' at the 'indignities' suffered by human beings in concrete situations and to ask: What is it that revolts us most in what they have to undergo? (…) what is being done to the victim's personality and how this is reflected in both the victim and the victimizer. The revolting thing about it is not only the physical happenings but the attempt to break down the personalities of the victims and deprive them not only of the respect of others but of self-respect. Even though such indignities cannot destroy the person's inner worth and claim, they certainly represent an "affront", i.e. confronting dignity face to face with something that is incompatible with it. What seems to be happening is that dignity, whatever it means, is prevented from manifesting itself. For dignity needs a way of expressing itself, of shining forth, of having a sphere of free influence."[113]

Applied to the realm of photography, this statement leads to the question of how the dignity of a human being can be visible on a photograph. This is a very complex issue and impossible to answer in a universally valid manner. As I explained in the previous chapter, due to the many different ways one single photograph can be read in, there can never be a clear-cut and definite interpretation. Because of this obstacle, it is more efficient to study examples where the *lack* of dignity is comprehensible, as Spiegelberg proposed. This can be done either through the visual impression the viewer gets considering all the different filters I referred to earlier, or through the knowledge we have about the situation the picture was taken in, such as in the example of Evans' farmers. In my opinion, *self-respect* and *consent* are the keywords in the determination whether a person's dignity is violated. David Statman sees the moral concept of self-respect tightly connected to the notion of human dignity and its respective violation, a *humiliation*:

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[111] Bresson Ladegaard Knox, J., *Dignity and the essence of man,* in Centre for Ethics and Law (ed.), *Dignity, ethics and law. Bibliography*, Copenhagen, 1999, p. 22.
[112] Boltanski, L., op. cit., p. 33.
[113] Spiegelberg, H., op. cit., pp. 60-61.

> "It is this injury to (subjective) self-respect that explains the moral wrongness of humiliation. (…) Defining violations of dignity as behaviours that humiliate (…) might help to give our constitutional concept of dignity a clearer and more practical meaning."[114]

What do professional photographers say to this reproach of violating a person's dignity? When asked about his personal point of view, Henrik Saxgren defended rather the photographer than the suffering victim. He is of the opinion that "compared to the whole life situation of suffering people, the level of assault from the side of the photographer is nothing":

> "My basic opinion is that a lot of people are overestimating the level of humiliation and assault. If you have starving people in the third world or poor people suffering from a war, and a photographer is allowed on the scene to watch and to report about what he or she is seeing, a lot of times the people who see the pictures in the newspapers get angry at the *photographer* and not at the situation. Attacking the images is very appealing and very strong and very emotional. It's hard for people to handle their emotions and instead of attacking the reasons for the war or the starvation they attack the photographer for telling the story. They create some excuses for not being able to deal with the pictures, (…) so they say: 'Oh, the photographer has gone too far, he has been too close, he assaulted the people he saw because he violated their dignity. I don't think so. Of course, there are examples of some idiots but in general, I feel that you are attacking the messenger and not the case."[115]

Balancing a single person's dignity with the suffering of a whole population fits into the justification of the "good purpose" I dealt with before. But coming back to the legal perspective, what does case law tell us about this problematic issue? Dignity and respect on one side, humiliation and degrading treatment on the other are terms that have been dealt with also before courts, although not explicitly in the context of photography. I will give an example where the judgment of the court could have consequences also for the realm of degrading images.

[114] Statman, D., *Humiliation, dignity and self-respect*, in D. Kretzmer, E. Klein (eds.), *The concept of dignity in the human rights discourse*, The Hague, London, New York, Kluwer Law International, 2002, p. 227.
[115] Interview with Henrik Saxgren.

III. 4. A violation of human dignity in case law:

Looking at case law, there exists a very interesting case in France concerning the dignity of a human being. In 1991, the mayor of Morsang-sur-Orge prohibited the attraction of "throwing dwarfs" by visitors of a discotheque. Although Mr. Wackenheim, the dwarf, had participated voluntarily – of course for remuneration – the French Conseil d'État (Administrative Supreme Court) condemned the responsible "Fun Production" society for the reason that the spectacle of throwing dwarfs "which consists in utilising a physically handicapped person as a projectile (…) undermines the dignity of the human person".[116] The Court rejected the appeals, and relying on Article 3 of the European Convention on Human Rights (*"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."*), it decided for the first time that "the respect of the dignity of the human being is one of the components of public order" and that the municipal police has the authority of prohibiting such an attraction in order to prevent or stop a disturbance of the public order.[117]

This judgment reaches very far and one is tempted to wonder why other degrading and humiliating activities for remuneration such as prostitution have not been considered yet. Although that case has nothing to do with photography, a parallel can be drawn to the controversial business of pornography where the dignity of the persons depicted is often questionable. With the aim of leading up to the problem of consent I will give a short excursus on pornography as a business that sells images of humiliation and degradation for sexual pleasure and which is therefore disputable from an ethical point of view. I want to put emphasis on the fact that there exist, of course, different degrees and kinds of pornography; furthermore, it is not only women that are depicted, but in order to make my arguments clear, I will have to generalise.

III. 5. Excursus: pornography

Pornography is a highly debated issue between those who oppose the exposure of showing mostly women in a humiliating way, and those who advocate the right to freedom of expression considering pornography also a form of women's rights. The reproach most often reiterated – even

[116] Judgment of October 27, 1995, No. 136727.
[117] 27 octobre 1995 – Commune de Morsang-sur Orge – rec. Lebon p. 372.

in UN documents[118] – is that pornography as misogynist material contributes to violence against women. On the defendants' side, there are other persons, who don't take the cause-and-effect relationship of pornography and violence for granted and defend pornography as underlying every woman's responsibility and free decision.[119] In Wendy McElroy's words "(p)ornography is nothing more or less than freedom of speech applied to the sexual realm."[120] The protection of the right to freedom of expression (above all in the USA by the First Amendment), and the fact that pornography constitutes an immense business in economic terms have made it difficult to find a satisfactory solution for this on-going fight on a legal basis. The lack of an all-encompassing definition is one of the reasons why it has been impossible until now to draw the line between what is humiliating and what is still justifiable. Child pornography, which constitutes a criminal offence in every case, is the exception here.

There exists nevertheless an interesting attempt from 1983 of incorporating a definition of pornography into the Minneapolis Anti-Pornography Ordinance drafted by two women. Their definition of pornography as discrimination on the basis of sex puts emphasis on the depiction of women's degradation and humiliation:

> "Pornography means the graphic sexually explicit subordination of women through pictures and/ or words that also includes one or more of the following: (i) women are presented dehumanized as sexual objects, things, or commodities; or (ii) women are presented as sexual objects who enjoy humiliation or pain; (iii) or women are presented as sexual objects experiencing sexual pleasure in rape, incest or other sexual assault; or (iv) women are presented as sexual objects tied up, cut up or mutilated or bruised or physically hurt; or (v) women are presented in postures or positions of sexual submission, servility, or display; or (vi) women's body parts – including but not limited to vaginas, breasts, or buttocks – are exhibited such that women are reduced to those parts; or (vii) women are presented being penetrated by objects or animals; or (viii) women are presented in scenarios of degradation,

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[118] cf. General Recommendation 19 on the Convention on the Elimination of All Forms of Discrimination against Women, 1992; Report of the Special Rapporteur on violence against women, Ms. Radhika Coomaraswamy, 1994; Beijing Plan of Action, 1995.

[119] McElroy, W., *Pornography*, in R. Kick (ed.), *Everything you know is wrong. The disinformation guide to secrets and lies*, New York, The Disinformation Company, 2002, pp. 151-154.

[120] Idem, p. 154.

> humiliation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual."[121]

Despite this attempt of giving a legal definition of pornography, the question whether pornography should be prohibited by the law and to what extent, is impossible to answer in a clear-cut manner, neither from a legal nor from an ethical point of view nor is it easy to answer the question whether a woman's dignity is violated in all cases. Do women feel humiliated while they are posing for the photographer or is it "just a job" like any other? As in the case of Mr. Wackenheim, inner values, maybe even self-respect, are sold for money but in the end it underlies their own decision to do so. Without going any further into the debate of pornography I want to draw attention to the fact that a difference has to be made between the cases where models *know* what they are posing for and as a consequence consent, and those cases where it is not a person's free decision to be depicted on a photograph.

III. 6. The problem of consent:

"Nous sommes des voleurs, mais pour donner."[122] This phrase originated with one of the best known photographers ever, Henry Cartier-Bresson, who stuck to this "dogma" probably throughout his entire life. It is obvious that most of his humorous captures did not follow a previous consent of the person he photographed. We laugh about his pictures and maybe his subjects would laugh, too. But what about people who get angry when they see their picture somewhere without having consented to its publication?

> "Henry Cartier-Bresson talks about the 'decisive moment'; it's true. But the truth is also that a lot of photography is planned, is negotiated with the people on the picture. I would say that 80, 90% of the pictures in any newspaper are negotiated with the people standing in front of your lens, because you are there to take their picture and you are only there because they have agreed. You have done a deal that you can take the picture."[123]

[121] Dworkin, A., MacKinnon, C., *Pornography and civil rights: a new day for women's equality*, in C. Itzin (ed.), *Pornography. Women violence and civil liberties. A radical new view*, New York, Oxford University Press, 2001, pp. 435-436.
[122] *Contacts. Henri Cartier-Bresson*, video, Robert Delpire, La Sept Arte, KS Visions, CNP, France, 1994
[123] Interview with Per Folkver.

These are the words of a photo-editor of a newspaper and they might apply to many news photographs. Nonetheless, there are also numerous cases where the subjects of a publication were not informed or aware of being photographed. As I explained before, for a photographer, there are two kinds of consent: the first one has to be given, or *should* be given, in order to get a person's permission to take the photograph, and the second is a (sometimes) written release that allows the subsequent publication and the photographer's right to sell his negatives to others. This form of giving permission has rightly been recognised as a difficult, if not impossible problem.[124] A person will never know what he or she has exactly agreed to due to the uncertainty about what the picture will look like. But even so, both types of consent should be received in order to avoid problems of property and privacy.

A famous case, in which the subject did not consent to a publication and where a complaint would have had no reasonable chance of being successful, is the case of Dorothea Lange's portrait "Migrant Mother". (See illustration no. 2 in the appendix). Like Walker Evans, she was also working for the FSA project. One of her best known images is this portrait of a Cherokee Indian woman holding her baby while her two other children lean against her shoulders and back from 1936. Today, the portrait of this woman, Florence Thompson, is hanging in galleries and museums around the world and to quote an article of the *L.A. Times* from 1978, "she's fighting mad about it":

> "'That's my picture hanging all over the world, and I can't get a penny out of it,' the 75-year-old Modesto woman said. (…) Mrs. Thompson claims she has been exploited for the last 42 years. 'I didn't get anything out of it. I wish she hadn't taken my picture'. (…) 'She didn't ask my name', Mrs. Thompson added. 'She said she wouldn't sell the pictures. She said she'd send me a copy. She never did.'… Mrs. Thompson said she is proud to be the subject of such a famous photograph, 'but what good's it doing to me?' Mrs. Thompson said she has tried to stop publication [sic] of the photo, but lawyers advised her it was impossible."[125]

After several decades, this situation of a legal gap has changed. Meanwhile, it has happened many times and still does that persons sue a newspaper or magazine because they have not consented to their public disclosure. One of the best examples is the case of Clarence Arrington, an Afro-American financial analyst for the Ford Foundation, who was photographed in 1978 while he was

[124] Gross, L., Katz, J. S., Ruby, J. (eds.), op. cit., p. xiii.
[125] *L.A. Times,* 11/18/78:1, cited in Gross, L., Katz, J. S., Ruby, J. (eds.), op. cit., pp. 13-14.

walking on a street in New York City. The freelance photographer Gianfranco Gorgoni sold this picture to the *New York Times Magazine* who used it to illustrate an article titled "The Black Middle Class: Making it". Arrington sued the *New York Times*, the photographer and the agency *Contact Press Images* for having invaded his right to privacy. He had not noticed that he had been photographed and furthermore disagreed completely with the contents of the article, finding it "insulting, degrading, distorted, and disparaging"[126]. The New York State Court of Appeals held in 1982 that the newspaper was not liable by virtue of First Amendment privilege but that the photographer as well as the agency were liable under the law because they had sold the photograph for the purpose of trade.[127] This is one of the cases where the plaintiff was given his right, and it shows the development towards a stricter handling of images for commercial purposes. Most of the times, it is more difficult due to the overruling principle of freedom of expression.

As in the case of Walker Evans' sharecroppers, the photographed subject, Mrs. Thompson, was perfectly aware that she was being photographed at that moment and had even given her consent. Nevertheless, she didn't expect Lange's success and the world-wide publication of her image. Is it reasonable to claim the ownership of one's image? Is there something like the right to one's image? In the subsequent part I will show the difficulties that arise by implementing such a right. I will draw upon the situation in France, which is one of the countries with the strictest protection of the right to privacy.

III. 7. The right to one's image

The right to one's image was originally taken over from the right of the author, but in recent legislation it falls under the right to privacy.[128] Article 9 of the French Code Civil protects the right to privacy and, interestingly, since 1998 it also regulates *le droit à l'image* qui "consiste à accorder à chaque citoyen un droit exclusive sur la reproduction de son image lui permettant de s'opposer à toute publication sans son autorisation."[129] Although under the European Convention on Human Rights governments have the obligation to protect their citizens also on a horizontal level, the

[126] Chapnik, H., *Truth needs no ally. Inside photojournalism*, Columbia, London, University of Missouri Press, 1994, p. 301.
[127] Idem, p. 301.
[128] Guerrin, M., *Photographie: un champ qui se rétrécit*, in P. Tronquoy (ed.), *Les libertés publiques*, «Les cahiers français», no. 296, Paris, documentation Française, mai/ juin 2000, p. 69.
[129] Bigot, C., *Droit à l'information et protection de la vie privée*, in P. Tronquoy (ed.), op. cit., p. 67.

French provision – falling under national civil law and not international human rights law – is more directly applicable to non-state actors such as the media. Yet, at least in France, the right to an image has not only been applied to persons but also to buildings, parks etc. which has caused heavy criticism, especially on the part of the photographers. The avalanche of authorisations needed in order to photograph whatever constitutes an understandable threat to the press. “Si ça continue, on ne pourra photographier que la mer”, the lawyer Gérard Ducrey complained.[130] In the meantime, jurisprudence in France has acknowledged the difficulties of the press for obtaining and publishing photographs. It has been slightly transforming the status of an exclusive and absolute right to a relative right that has to be balanced with the public’s right to information.[131]

Under the aspect of a possible protection of victims, I want to mention an interesting law reform that was proposed in France in 1998. The aim was to prohibit in the future two categories of publications in the press: the showing of persons in handcuffs, which would undermine the assumption of innocence (as it has been rightly argued, this does not alter the fact that the person is handcuffed)[132], and the showing of victims of crimes and offences which *would undermine their dignity*.[133] Thereupon, *Le Monde* put the authorities to the test and presented them with ten famous photographs, asking which of those would be admissible in case the reform was adopted. The diversity of answers provoked a certain perplexity, as Cécile Prieur remarks. She criticises the shortcomings and dangers of this reform in the following manner:

> “Une interdiction de publier fondée sur l’appréciation de l’atteinte à la dignité des victimes est, on le voit bien, lourde de danger pour la presse. La dignité n’est, en effet, ni un concept juridique, ni un critère objectif, sa définition pouvant varier d’une personne à l’autre en fonction de sa culture et de sa sensibilité. Si le projet de loi était adopté en l’état, les éditeurs de presse seraient donc soumis à la subjectivité des magistrats du parquet.”[134]

This is a proof that even in a country where the protection of private persons reaches very far, a legal implementation of protecting victims from publicity is too difficult to realise. Far from being applicable to every case of images of suffering, this reform is nevertheless an attempt and at least a

[130] Gérard Ducrey cited in Guerrin, M., op. cit., p. 69.
[131] Bigot, C., op. cit., p. 71.
[132] Prieur, C., *La réforme du droit à l’image*, in P. Tronquoy (ed.), op. cit., p. 73.
[133] Idem, p. 72.
[134] Idem, p. 73.

sign of awareness that victims are exposed to publications and that these publications are not always congruent with decency and respect. A clear-cut definition of when a victim needs protection is not easy to give and it is by no means certain that legislators are qualified to define these cases.

As regards the thorny question of human dignity on photographs, I conclude that the existing hard law provisions are not appropriate. The problem of limitation is strongly related to the public's right to information and the right of the press to freedom of expression. In the subsequent part, I will take a closer look at photography as a violation of someone's right to respect for his private life and I will explain the difficulties concerning the balance that has to be struck between the right to privacy and the right to freedom of expression.

III. 8. The right to privacy v. freedom of expression:

In many constitutions and international conventions the right to respect for privacy is guaranteed as a human right. In 1890, the two American lawyers Samuel Warren and Louis Brandeis published a groundbreaking article called "The Right to Privacy". This article built the basis for the understanding of it as "the right to be left alone".[135] Article 8 of the ECHR does not give a definition of privacy but guarantees that *"Everyone has the right to respect for his private and family life, his home and his correspondence."* Furthermore, paragraph 2 states that:

> There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others.

After the sensational death of Princess Diana in 1997, the problem of paparazzi photography and the intrusion of photographers into the private lives of public persons suddenly became a more debated issue. Only a few weeks after her death, the Parliamentary Assembly of the Council of Europe passed *Resolution 1165 on the Right to Privacy*, stating that it is essentially public figures who are the victims of invasions into their private lives and that it is necessary "to find a way of balancing the exercise of two fundamental rights (…): the right to respect for one's private life and

the right to freedom of expression." The Assembly reaffirmed that these rights are not of any hierarchical order but of equal value. Assumably, this affirmation of equality was made because of the courts' general reluctance in restricting the right of freedom of expression. Moreover, the Parliamentary Assembly gave the following guideline to be supplemented in the respective legislations of the governments:

> v. following or chasing persons to photograph, film or record them, in such a manner that they are prevented from enjoying the normal peace and quiet they expect in their private lives or even such that they are caused actual physical harm, should be prohibited;

Theoretically, this could also be applied to victims of tragedies who are not public figures. Yet, practice shows that it is mostly politicians, members of royal families, and celebrities who are concerned. Besides, they have the knowledge and the financial means to sue a photographer or a newspaper. There are numerous cases where public persons sued newspapers such as *Bild Zeitung* or *The Sun* for intrusion of their private lives, sometimes successfully, sometimes not. Generally, it has been held that public figures are more exposed to publicity due to their position or profession that implies automatical coverage by the media.[136] The ethical decision that has to be made is what is legitimate for the public to know, for example about a political candidate people may vote for, and what is irrelevant and too personal. This has been decided upon whether private facts were probable to influence the person's public life. However, the possibility of misuse and threat to freedom of expression by a political leader claiming his or her right to privacy and suing critical newspapers should be kept clearly in mind.

From a legal point of view problems emerge due to the vague and unclear definitions of public interest, privacy and decency. S. H. Naismith is of the opinion that "it seems reasonable to assume that the weaker the public interest the more weight the right of privacy will carry."[137] The limitations of the media's general enjoyment of freedom of expression are the restrictions laid down in Article 10, Paragraph 2 of the ECHR:

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[135] Gross, L., Katz, J. S., Ruby, J. (eds.), op. cit., p. 8.
[136] Council of Europe (ed.), *Media and democracy,* Strasbourg, Council of Europe Publishing, 1998, p. 68.
[137] Naismith, S. H., *Photographs, privacy and freedom of expression*, in B. Emmerson (ed.), «European Human Rights Law Review», issue 2, London, Sweet & Maxwell, 1996, pp. 155-156.

> The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The Courts that are presented with the task of balancing the two rights cannot focus only on an individual's claim but must also consider the broader implication of restricting a newspaper's or magazine's publication. They must pay particular attention to the fact whether a standard or an approach advocated might in the future deter the media from publishing information in the public interest, or in other words, if a decision would have a "chilling effect" on future cases.[138] The European Court of Human Rights has so far not been compelled to take a stand. But there have been cases nonetheless before the Commission and even one before the Court in which photography was involved. In the following part, I will discuss other difficulties that appear when looking directly at the cases:

III. 9. Photography before the European Court of Human Rights:

In the following survey I will deal with S. H. Naismith and his analysis of case law where photography was an issue before the former Commission and the European Court of Human Rights. Until today, most cases where photography was related to privacy have been in connection with criminal investigations and prosecutions. In these cases, the Commission's case law is relatively clear, because competing interests such as the national security, the prevention of crime, counter-terrorism actions and alike always prevail over an individual's privacy. Yet, photographs can be considered a violation of the right to privacy, together with surveillance and telephone tapping[139], but only under certain conditions. In order to decide about the admissibility of an application, the Commission has developed a two-fold test for cases where photography was involved. First, it was examined whether the *manner* in which the photographs were obtained involved an invasion of privacy in the more restricted sense (like entering a person's house), and whether the photographs

[138] Mendel, T., *The right of the public to know and freedom of entertainment: information seen from the consumer's angle*, Paper for the conference on Freedom of Expression and the Right to Privacy, Strasbourg, 23 September 1999, p. 6, text at www.article19.org/docimages/630.htm
[139] Clayton, R., Tomlinson, H. (eds.), *The law of human rights*, vol. 1, London, Oxford University Press, 2000, p. 778.

were related to a private or public incident. Secondly, it was considered for what *purpose* the pictures were taken and/ or used, attaching particular importance to the fact that the photographs were not made available to the general public.[140]

In the case *Friedl v. Austria*[141] the applicant complained that his identity was established by the police when he and others were photographed during a demonstration. He invoked Article 8 of the European Convention. The purpose of taking the photographs had been to record the character of the demonstration as well as the conduct of the participants in view of ensuing investigation proceedings concerning road traffic offences. The case was declared admissible because the purpose of taking the photographs was not the recording and retaining of photographs of a person actually arrested or detained or under investigation, but even so, in its subsequent report the Commission reached the conclusion that there had been no interference with the right to privacy because the individuals remained anonymous in that no names were noted. Furthermore, the plaintiff had voluntarily participated in a public demonstration.[142]

The general rule has been that applicants cannot claim a violation of their right to privacy when the picture was taken (even without consent) in a public place like a square, a park, a beach etc. Even if it is understandable that sometimes it may not be desirable to publish a certain photograph, people have to be aware of the fact that they are visible for the public and therefore responsible for their behaviour. For a photographer to infringe upon the person's privacy by taking unauthorised photographs, a "reasonable expectation of privacy"[143] must be given, like one's own house, garden, yacht, and alike.

The case *Murray v. United Kingdom*[144] has been the only case concerning photographs that has been dealt with before the Court. Mrs. Murray found her house in Northern Ireland invaded by a number of soldiers who suspected her of being involved in terrorist activity. She was not photographed until later (without her knowledge and without her consent) at an army centre, which was certainly not a public place. Consequently, the Court found that the taking of the photographs

[140] Naismith, S. H., op. cit., p. 151.
[141] Application No. 15225/89, decision of November 30, 1992, report of May 19, 1994, judgment of January 31, 1995, Series No. 305-B.
[142] Naismith, S. H., op. cit., p. 155.
[143] Mendel, T., op. cit., p. 7.
[144] Application No. 14310/88, report of February 17, 1993, judgment (1995) 19 E.H.R.R. 193.

constituted an interference with her right to respect for her private life, although it found in its final decision that no violation of Article 8 had taken place.[145]

A further important criterion refers to the question of *who* is taking the photographs. Paragraph 2 of Article 8 clearly states that there shall be no interference by a *public authority*, and even if surveillance may also be carried out by private organisations like the media, it is evident that neither journalists nor photographers fall under the term public authority.[146] This raises the difficult question to what extent human rights instruments are applicable on a horizontal level, and to what extent positive obligations may be imposed on the state. As case law shows, the Court has been largely reluctant in this context. Toby Mendel remarks that the Court would be even more cautious where such an obligation would limit other rights, "perhaps particularly freedom of expression".[147]

Also the *use* made of unauthorised photographs has been relevant to the question of whether a violation has taken place. When rejecting complaints concerning photographs, the Commission has taken into account the fact that their use was legitimate and limited, and has placed particular emphasis on whether the photographs were made available to the general public.[148] As stated before, there has not yet been a case before the Court where an individual claimed that his or her right to privacy had been infringed upon by the publication of a photograph in a newspaper. For this reason the Court has not yet had to deal with the difficult balance between the two articles.

To conclude this chapter on the legal perspective of photography, it can be said that it is a difficult undertaking to constrain photography into legal definitions, in particular when vague terms like human dignity, public interest, and privacy are at stake.

> "Judicial interpretations of current law, with their reliance on legal case precedent, fail to clearly resolve the media image controversy. Images have both personal and property aspects. What is needed in the legal discourse is a theoretical framework which can provide guidance for the allocation of economic value while ensuring the integrity of the person, a scale capable

[145] Naismith, S. H., op. cit., p. 152.
[146] Idem, p. 157.
[147] Mendel, T., op. cit., p. 5.
[148] Naismith, S. H., op. cit., p. 154.

> of differentiating between the use of personal images (implicating privacy concerns and fame issues) and fungible images (triggering ownership claims)."[149]

As I noted at the beginning of this chapter, nevertheless the moral rights of the victims must be taken into consideration. The last chapter will therefore deal with "soft law" provisions and examine whether ethical guidelines are more appropriate for dealing with victims of human rights violations. Another field of investigation will be the role photography can play in promoting positive portrayals of groups such as women, ethnic minorities, indigenous peoples, and the like. For this purpose I will elaborate on the problem of visual stereotypes in our media.

[149] Viera, J. D., *Images as property*, in Gross, L., Katz, J. S., Ruby, J. (eds.), op. cit., p. 159.

CHAPTER IV. ”Ethical photography”? Searching for alternatives

How is human dignity treated in soft law provisions? Are such provisions sufficient for the daily working circumstances of photographers and news editors? In order to answer these questions, I will take a closer look at different existing declarations, made by the UNESCO and other organisations. Considering the example of the Code of Ethics of the American National Press Photographers Association, I will point to the shortcomings that emerge as soon as such a code has to be applied to a concrete situation in reality.

The question arises, what would be best way of reducing unethical images if codes of ethics are not the remedy for protecting victims of suffering either? What can be done in order to show certain marginalised groups such as ethnic minorities, refugees, and asylum seekers, to name only a few, not as victims of their condition but in a more positive manner? The suffering of people must be clearly acknowledged but it should never be disregarded that they deserve also our respect and understanding for their respective situation.

Is it possible to change negative stereotypes and prejudices that exist in every society through a different kind of photography? And what would such photographs, which, with due caution, I will call “ethically legitimate” look like? Although the terms “ethics” and “morality” are often used as semiotically interchangeable, here ethics shall rather be understood as “the reflection upon morality”.[150] Furthermore, it has to be borne in mind that the understanding of ethics differs throughout the world. What would not be considered a problem when showing it to a western audience, could possibly violate ethical rules in a Muslim country or among indigenous peoples who have other “codes of ethics”. Yet, it should not be forgotten that although ethics may be relative, dignity and human rights are *universal* matters.

This last chapter will open the way for more reflections upon “ethical photography”. Yet, it must be clear that the broadness and complexity of this topic make it impossible to give definite answers. By giving examples of concrete steps towards a direction ethically more legitimate, all I can do is show *possible* answers. Before I develop them in more detail, I will examine whether soft law provisions

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[150] Clarke, P. B., Linzey, A. (eds.), *Dictionary of ethics, theology and society*, London, New York, Routledge, 1996, p. 307.

contain a more encompassing understanding of human dignity that could be applied in order to prevent the "victimisation" of human suffering.

IV. 1. Human dignity in soft law:

One of the institutions that has most dealt with the issue of mass media and ethics on a global level is the UNESCO. In 1978, it adopted the *Mass Media Declaration*, or in its full title, the *Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War*. Article III expresses the responsibility of the mass media *"to ensure the respect of the rights and dignity of all nations, all peoples and all individuals without distinction of race, sex, language, religion or nationality".* The principles of the Declaration were furthermore thought as a basis for drafting the media's own codes of ethics, as it is stated in Article VIII:

> Professional organizations, and people who participate in the professional training of journalists and other agents of the mass media and who assist them in performing their functions in a responsible manner should attach special importance to the principles of this Declaration when drawing up and ensuring application of their codes of ethics.

Fifteen years later, the Parliamentary Assembly of the Council of Europe adopted *Resolution 1003 on the ethics of journalism* (1993), emphasising in a similar way the ethical responsibility of the media towards citizens and society. Besides the traditional journalistic principles of truthfulness and impartiality, also the right to information as a fundamental human right, the journalist's freedom of expression, and the individual's right to privacy are pointed out as rights that shall always be respected. Moreover, this resolution also accounts for "situations of conflict and cases of special protection" and names the *moral obligation* the media have in these circumstances:

> 33. In society, situations of tension and conflict sometimes arise under the pressure of factors such as terrorism, discrimination against minorities, xenophobia or war. In such circumstances the media have a *moral obligation* to defend democratic values: *respect for human dignity*, solving problems by peaceful, tolerant means, and consequently to oppose violence and the language of hatred and confrontation and to reject all discrimination based on culture, sex or religion. [emphasis added]

Although the mass media are obliged to respect human dignity also under soft law, doubts may easily raise the question whether dignity is treated correspondingly in a journalist's professional life, which is determined by time and competition pressure. This question can be answered by looking at the provisions that fall under the realm of "journalistic ethics".

After the Mass Media Declaration, the UNESCO drafted the *Principles of Professional Ethics in Journalism*, adopted in 1983, together with international journalistic organisations, unions and federations. The intention was to promote a set of ten principles that should be implemented autonomously by each professional organisation of journalism. Those principles are the following: I: the people's right to true information, II: the journalist's dedication to objective reality, III: the journalist's social responsibility, IV: the journalist's professional integrity, V: public access and participation, *VI: respect for privacy and human dignity*, VII: respect for public interest, VIII: respect for universal values and diversity of cultures, IX: elimination of war and other great evils confronting humanity, and X: promotion of a new international order in the field of information and communication. Principle VI: respect for privacy and human dignity reads the following:

> An integral part of the professional standards of the journalist is respect for *the right of the individual to privacy and human dignity*, in conformity with provisions of international and national law concerning protection of the rights and the reputation of others, prohibiting libel, calumny, slander and defamation.

The wording of this principle is based upon the usual legal terms in international law related to the right to privacy and freedom of expression. It is obvious that is does not embody an attempt to draw a line between what is ethically legitimate and what is going too far. As regards the term human dignity the same problem of a lack of definition appears, as we could see in the case of hard law. Again, it is left to one's own resources how dignity is interpreted. My previous assumption that soft law instruments would be easier to apply to the realm of ethics and photography turns out to be wrong. Moreover, there is a further shortcoming compared to hard law, which is the disadvantage of not being legally enforceable. These instruments can at best be guidelines, apt to shift awareness onto a political level. To conclude, human dignity may be a topic in soft law provisions as well, but even so, the latter are not more concrete when it comes to a possible protection of human beings who are suffering. I will now shift the focus from human dignity in soft law to codes of ethics and examine whether such codes are better and more elaborate tools.

IV. 2. Codes of ethics as more appropriate means?

What has become more and more widespread over recent years, especially in the field of the media, are so-called codes of ethics and self-regulatory mechanisms in the form of press councils. Every European country has a code of ethics for journalists adopted by the journalists' organisations or in some cases jointly with the publishers, and there are 20 functioning press councils in Europe.[151] Most complaints handled by press councils in Europe concern violations of the right to privacy. The advantage is that strengthening these mechanisms may allow the average citizen to claim his or her right to privacy without having to take legal recourse.[152] Journalistic codes of ethics and press councils regulate the ethical responsibility of the media at an additional level, but there is little agreement on how and by whom these codes should be enforced. Even in Europe they differ from country to country, and there are only few codes of ethics that come to the fore on an international level. Yet, besides all legitimate points of criticism, it constitutes at least a manner to make media workers ethically accountable in a transparent and public manner.[153]

What about a code of ethics for photographers? There is nothing like an internationally adopted instrument but in the following, I will give the example of a code of ethics that has a broad reach and that was explicitly drafted for the needs and obligations of photojournalists, namely the code of ethics of the most important organisation of photojournalists in the USA, the National Press Photographers Association (NPPA). In its own words, the NPPA "is dedicated to the advancement of photojournalism, its creation, editing and distribution, in all news media".[154] It "recognizes and acknowledges that photojournalists should at all times maintain the highest standards of ethical conduct in serving the public interest."[155] Every member in NPPA is required to endorse the association's code of ethics. I will quote this code in its full wording in order to give a deeper understanding of what such a code actually embodies:

> 1. The practice of photojournalism, both as a science and art, is worthy of the very best thought and effort of those who enter into it as a profession.

[151] Council of Europe (ed.), op. cit., p. 70.
[152] Idem, p. 68.
[153] Idem, p. 70.
[154] http://www.nppa.org
[155] Idem.

> 2. Photojournalism affords an opportunity to serve the public that is equaled by few other vocations and all members of the profession should strive by example and influence to maintain high standards of ethical conduct free of mercenary considerations of any kind.
> 3. It is the individual responsibility of every photojournalist all times to strive for pictures that report truthfully, honestly and objectively.
> 4. As journalists, we believe that credibility is our greatest asset. In documentary photojournalism, it is wrong to alter the content of a photograph in any way (electronically or in the darkroom) that deceives the public. We believe the guidelines for fair and accurate reporting should be the criteria for judging what may be done electronically to a photograph.
> 5. Business promotion in its many forms is essential but untrue statements of any nature are not worthy of a professional photojournalist and we severely condemn any such practice.
> 6. It is our duty to encourage and assist all members of our profession, individually and collectively, so that the quality of photojournalism may constantly be raised to higher standards.
> 7. It is the duty of every photojournalist to work to preserve all freedom-of-the-press rights recognized by law and to work to protect and expand freedom-of-access to all sources of news and visual information.
> 8. Our standards of business dealings, ambitions and relations shall have in them a note of sympathy for our common humanity and shall always require us to take into consideration our highest duties as members of society. In every situation in our business life, in every responsibility that comes before us, our chief thought shall be to fulfill that responsibility and discharge that duty so that when each of us is finished we shall have endeavored to lift the level of human ideals and achievement higher that we found it.
> 9. No Code of Ethics can prejudge every situation, thus common sense and good judgement are required in applying ethical principles.[156]

It appears at first sight that except for the last paragraph most of the others are rather general and vague, some even naive. It is difficult to recognise any possibility to apply it directly to a given situation of photographing victims of catastrophes on site. This “weakness” may be the prime reason why the more than 10.000 NPPA members are also encouraged to “reflect high standards of quality in their personal code of ethics”.[157] This wording signifies that besides the NPPA’s Code of Ethics, all photojournalists are supposed to obey also *their own* codes of ethics according to which

[156] National Press Photographers Association, *Code of ethics*, http://www.nppa.org/members/bylaws/default.htm
[157] Idem.

each individual has to decide what is ethically legitimate and what is not. It is highly interesting to look at the NPPA's enforcement mechanism: a Committee on Judiciary decides whether a member who did not follow the code will face the penalty of being expelled:

> The committee on judiciary shall investigate and hear charges made against members for violations of the code of ethics or other activities or actions detrimental to the best interests of the profession of press photography.[158]

The fact that complaints can only be made by members affirms the common point of criticism saying that codes of ethics serve in the first place its own members instead of possible victims. Such professional codes are said to be "notoriously conservative and self-serving" and most of their provisions "designed to protect the members of the profession rather than to protect clients or the public".[159] Due to the vagueness in its formulations, it has to be queried whether codes of ethics are enforceable at all.

IV. 3. The failure of codes of ethics:

In the context of a critical standpoint towards written and formally established codes of ethics, it is very informative to come back to the drafting of the universal Mass Media Declaration and to notice how independent media workers and news organisations reacted to the official endeavours in the frame of the UNESCO meetings. In 1981, leaders of independent news organisations gathered at the *Voices of Freedom Conference of Independent News Media*, in Talloires, France, and subsequently adopted the *Declaration of Talloires* which has been described as the "Magna Charta of the free press".[160] In contrast to many other documents, its preamble refers not only to journalists, reporters, editors, publishers and broadcasters but also to *photographers*. The conference and its declaration were directed towards the support of the free flow of information and opinion, for the abolition of censorship, and maybe most clearly, against rules inflicted from above:

> We believe the time has come within UNESCO and other intergovernmental bodies to abandon attempts to regulate news content and formulate rules for the press. (…) We believe

[158] http://nppa.org/members/bylaws/default.htm#_Toc2860715
[159] Gross, L., Katz, J. S., Ruby, J. (eds.), op. cit., p. xvii.
[160] Nordenstreng, K., *The Mass Media Declaration of UNESCO*, New Jersey, Ablex Publishing Corporation, 1984, p. 61.

> that the ultimate definition of a free press lies not in the actions of governments or international bodies, but rather in the professionalism, vigor and courage of individual journalists.
> (…)
> 9. We believe that the debate on news and information in modern society that has taken place in UNESCO and other international bodies should now be put to constructive purposes. We reaffirm our views on several specific questions that have arisen in the course of this debate, being convinced that: (…)
> *There can be no international code of journalistic ethics; the plurality of views makes this impossible.* Codes of journalistic ethics, if adopted within a country, should be formulated by the press itself and should be voluntary in their application. They cannot be formulated, imposed or monitored by governments without becoming an instrument of official control of the press and therefore a denial of press freedom.[161] [emphasis added]

This statement presents an answer to the question of enforceability I broached above. It is not only a clear negation of the possibility of a universal code of journalistic ethics but also strongly opposes the danger of censorship. The "plurality of views" as an obstacle to finding adaptive rules leads back to my earlier clarification of the responsibility of every individual working in this field. Probably the best solution for the dilemma of written codes of ethics and their respective application is the insight that there can't be any clear norms because a photograph is never objective and not understandable without its given context. It is important to acknowledge that ethical considerations are not something monolithic but that they are exposed to new challenges every day. When facing such challenges the decision-makers should constantly remember that they are acting on behalf of the subject and also on behalf of the *group* the subjects represents. Representation is always a matter of politics. That is why Gross, Katz and Ruby are of the opinion that ethics are less subjected to logical solutions but rather to political decisions.

> "Working ethics change constantly, not by application of unchanging standards to new situations but by the continual reinterpretation of standards and working practice in the light of new technical or organizational circumstances.
> In short, as a practical matter, the ethical problems of imagemaking have to be resolved politically rather than logically."[162]

[161] Idem, pp. 459-460.
[162] Gross, L., Katz, J. S., Ruby, J. (eds.), op. cit., p. xvii.

IV. 4. Representing the 'Other':

The importance of the political aspect inherent in all forms of representation, in particular in visual representations, cannot be overestimated. Journalistic ethics is, as a matter of fact, always related to choices of representation and to decisions of who is representing whom and in what manner. Unfortunately, too many times visual representations of marginalised groups like women, ethnic minorities, indigenous peoples, homosexuals, disabled persons, and for the western part of the world also persons living in developing countries, manifest themselves in stereotypes and affirm as a consequence common prejudices towards these groups. I want to remark that the border between 'Us' and 'Them' is not as clear-cut as it might give the impression when writing about it. The two groups are by no means homogenous but distinguish themselves on different complex levels. I am bearing this in mind when "generalising the generalisations" in form of stereotypes. There is no concordance among the different groups about how they want to portray the other side or how they want to be portrayed themselves. Stereotypes within self-representation is a fascinating topic, but going deeper into it would go beyond the scope of this thesis. I rather want to focus on the possibilities of avoiding negative stereotypes.

Stereotypes are a logical means of cognitive categorisations and distinction. The difference has to be made in the way how these distinctions become operative, because the step from the misuse of a "stereotypisation" to open discrimination is a small one. As it is so closely linked to discrimination, the problem of negative portrayal in the media deserves, in my eyes, greater attention in the human rights discourse.

Conflict sensitive journalism is a keyword in this context. It is a term for the teaching of how to avoid biased reporting, incautious terminology, and also discriminative stereotyping. It is nevertheless astonishing to observe that in most cases where workshops for media workers are held in post conflict zones, the importance of photographic reporting is not considered. One "excuse" for this lack might be that it is simply too difficult and complex to establish rules of ethically correct photography, but the more probable answer is that the awareness of how much weight the visualisation of the 'Other' carries, has not come to the fore yet. The Danish International Media Support (IMS) and the Institute for Media, Policy and Civil Society (IMPACS) have edited a

handbook of conflict sensitive journalism where stereotypes are considered an important factor for the dismantling of obstacles in order to reach "the other side":

> "The most important way is to remove stereotypes and assumptions from our news. Stereotypes always report what is different about the other side, such as race or religion or caste, as if it is important. Such reports give the assumption that the other side always acts in certain ways and never changes. Stereotypes blame the other side's religion, caste or culture for whatever happens. Such reports are often wrong and create prejudice and conflict."[163]

For my intention of dealing with the phenomenon of visual stereotypes and its consequences in the following part, I will shift the focus from victims of violations of their dignity to victims of stereotypisation, which can also be a violation of dignity but is not implied in such.

Especially in times of conflict but also under peaceful living conditions, it is of utmost importance how "the other side" is presented in the media. There is no doubt that the mass media carry a high burden of political and ethical responsibility. As I mentioned earlier, political leaderships often try to have as much influence as possible on the media, because visual representation clearly expresses the power relations between those who choose the representation and those who represent. In this context, it is noteworthy that even though one might believe that it was not difficult to agree to the UNESCO Mass Media Declaration, there was indeed a heated debate going on during the drafting process. A gap had opened not only between East and West due to the Cold War division, but in particular between developing countries and the westernised part of the world. Basically, this gap consisted in political controversies related to the differing opinions about the role of state control on the mass media.[164] Yet, the coverage of this political debate in *Time Magazine* also pointed to other complaints the developing countries were bringing forward:

> "The Third World's brief against the Western press contains two principal complaints:
> - Western coverage of developing nations is shot through with colonial stereotypes; just as Europe's cartel once painted the U.S. as a land of scalpings, lynchings and ax murders, the Western press allegedly sees the Third World as a slough of coups, corruption and natural catastrophes.

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[163] IMS, IMPACS (eds.), *Conflict sensitive journalism. A handbook by Ross Howard*, Denmark, 2003, p. 19.
[164] Nordenstreng, K., op. cit., pp. 96-97.

> - Western news organizations have so tight a strangle hold on international communications that the Third World simply cannot make itself heard, an imbalance that also purportedly perpetuates Western cultural dominations."[165]

These two complaints were legitimate during that period but when looking at the coverage of developing countries in our news, it seems that little has changed. In 1999, a research project was undertaken in Great Britain in order to review attitudes to international coverage within the British television industry. It resulted in the finding of a "marked imbalance in the way developing countries are portrayed, especially on news where coverage was generally limited to disasters, bizarre events, or visits by prominent westerners"[166]. Perhaps most interestingly, "(t)here seemed to be a strong appetite for seeing the ordinary everyday life of people in these countries, not just the unusual or exotic."[167] Therefore, in the recommendations to improve the coverage it was suggested to show also everyday life, where individuals should play a more active role in the stories: "If viewers can identify with people in the developing world in their ordinary everyday lives, it may be easier to relate to them in times of disaster, when they are more usually featured."[168] This possibility of identification is a decisive factor when it comes to the dismantling of negative stereotypes and prejudices to which I will come back.

When I gave the example of Alice Harris and missionary photography in general, I mentioned diverse reasons for the creation of stereotypes of the 'Other'. The problem of exploitation and the misuse of power relations are a dark chapter in the history of politics, religious missions, trade, culture, and sciences. In the field of visual anthropology, the awareness has risen during the last decades that many mistakes have been committed in the way western researchers have illustrated the exotic 'Other'. The anthropologist Kathleen Kuehnast even speaks of "visual imperialism":

> "Visual imperialism is the colonisation of the world mind through the use of selective imagery that acts as a representation of a dominant ideology or, as in many instances, a representation of truth. Discussion about dominant ideology in the mass media is an important contemporary concern where war, poverty, violence, and other gender, class and race struggles have become

[165] Time Magazine, *Third World vs. Fourth Estate - Showdown in Paris over a bid to curb the free flow of news,* November 20, 1978, cited in Nordenstreng, K., op. cit., pp. 404-407.
[166] Department for International Development (ed.), *Viewing the world. A study of British television coverage of developing countries*, summary, July 2000, p. 1, available at www.dfid.gov.uk
[167] Idem, p. 26.
[168] Idem, p. 17.

> an economic currency. (…) Visual imperialism is the subliminal message of cultural hierarchy where the condition of one culture over another culture is communicated by presenting what is natural, normal, and desired in culture through the dominant culture's set of racial or gender stereotypes, and what is unnatural, abnormal and undesired through the subordinate culture's set."[169]

Indeed, when looking at the imagery of "Third World news" on television or in the material of humanitarian organisations, the impression one gets is that every human being is suffering. The dichotomy of the 'Self' and the 'Other', 'Us' and 'Them, are separations that have determined our world view since centuries, however.

> "When it comes to the attitude to the 'other' in social consciousness, the basic structural model is the dichotomy 'Us-Them'. Indeed, this is the model in which every people or nation emerges and constructs itself – in uniting and simultaneously distinguishing itself from the neighbouring peoples. One hardly needs to say that initially 'Us' are the vehicle of the positive principle while 'Them' naturally are its antithesis, as gradually this evaluation of the 'others' can be nuanced and acquire new values etc. while the self-evaluation remains generally the same."[170]

The theme of representing differences and the 'Other' has found its practice to a large extent in stereotyping, which is not necessarily done deliberately, but can nevertheless lead to harmful consequences. Such portrayal has even been called "images that injure".[171] The decision of how to portray the 'Other' is not separable of image ethics.

> "In its innocent form, imagery that injures is the result of ignorance. As malicious enterprise, it is about the use of power. If not ignorance and not malice, it is the result of placing values such as visual impact or the public's right to know over the feelings of people as individuals and members of groups and it will cause injury. These value judgments may or may not be

[169] Kuehnast, K., *Visual imperialism and the export of prejudice: an exploration of ethnographic film*, in P. I. Crawford, D. Turton (eds.), *Film as ethnography*, Manchester, New York, Manchester University Press, 1992, pp. 184-185.
[170] Marushiakova, E., Popov, V., *The image of Gypsies in Bulgarian social consciousness*, in Human Rights Project (ed.), *Minorities in the media: realities and prejudices,* International Conference, Sofia, 25-26 October, 1997, p. 16.
[171] Cf. Lester, P. M. (ed.), *Images that injure: pictorial stereotypes in the media*, Westport, Praeger, 1996.

> ethically appropriate (…) but in all cases of social injury due to the depiction of people, ethics are at stake."[172]

IV. 5. The danger of stereotypes:

Stuart Hall defines stereotypes as "the reduction of people to a few, simple, essential characteristics, which are represented as fixed by Nature."[173] Although it might sound contradicting, it should be considered that stereotypes are not bad *per se*. In some circumstances they can be useful and practical and if we were more conscious about them, we would notice that we are surrounded by stereotypes in our everyday life, above all in the field of entertainment. Telling jokes, watching television, films, advertisements or theatre actors on a stage, reading books, cartoons, and caricatures are all activities where we accept stereotypes as a form of generalisation without a second thought.

> "The job of a sitcom is to make people laugh, and that is done by prejudices and stereotypes that are common to the culture. (…) In fact, the humor depends partly on the recognition that the stereotypes are stereotypes, that they are not universal truths. The jokes about Jews' obsession with wealth wouldn't be jokes if we believed that all Jews were so obsessed. Instead of laughing, we would nod knowingly."[174]

Besides the different forms of entertainment, also in the field of media, journalists work with stereotypes and even have to when selecting examples in order to illustrate a story.[175] How should they be able to give a visual illustration of an article concerning a nation's family policies if not by drawing on cultural codes of a stereotypical family? For our common western understanding, a typical family is white, belongs to the middle class and consists of a father, a mother and (two) children. Should the responsible editor get the idea of presenting a different illustration for a change that would also take, let's say, sexual minorities into consideration, probably the illustration of a gay couple would be ethically correct, but not immediately comprehensible for the readership. Travis Linn explains this dilemma by considering *credibility* as the decisive factor; a stereotype "is,

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[172] Colson, J. B., *Images that heal*, in P. M. Lester (ed.), op. cit, p. 220.
[173] Hall, S., *Representation. Cultural representations and signifying practices*, London, Sage, 1997, p. 257.
[174] Linn, T., *Media methods that lead to stereotypes*, in P. M. Lester (ed.), op. cit., p. 15.
[175] Idem, p. 16.

after all, an artefact of common belief."[176] To summarise, I want to put emphasis on the fact that stereotypes do not necessarily lead to prejudices. As long as they are presented in a context similar to the mute agreement of illusion between a film director and the audience, they can be accepted even from an ethical perspective.

Yet, a clear rejection has to be made when stereotypes lead to prejudices and discrimination. In this aspect the media come to the fore due to their obligation of informing the public in a truthful, impartial and non-discriminative manner. Stereotypes have to be criticised and fought against when the stereotyped version of representation becomes the norm and does not allow any distinguished variation any more.[177] Unfortunately, the media have rather contributed to the fixing of stereotypes instead of playing an advocatory role, particularly, when it comes to racial or cultural differences as news. The example I want to state at this point is that of the Roma people being represented as negative figures in eastern European news coverage. From 1996 to 1997, the *Balkan Neighbours Project* studied the media images of the ethnic minorities of Roma, Turks, Muslim Bulgarians and non-traditional religious groups in nine Bulgarian newspapers and magazines. The outcome was a proof of the prevailing negative stereotype of the Roma:

> "It is evident from the monitoring data that the Roma are the group which is being referred to in publications in a manner that is very typical and known to all of us. It is especially alarming when this is done with an insistence, a perseverance of repeating that Gypsies rape, steal, kill, commit crimes because this is nearly the only way for them to make their living. And this is the only one of the monitored groups which is rarely present as separate individuals in the press, i.e. the Roma are always present as a group, as a mass, as a set. Even in the reports which are neutral and which have been written by the journalists with the idea to say more of those people, to speak of their problems, to help them in any way, we face again the journalist in the ghetto describing in a heart-rendering manner the appalling misery, the terrible life conditions of these people – i.e. in some oblique way they bring their readers again to the prejudice that the Roma are unclean, that the conditions in theses ghettos are horrible, that there live people who lead a half-human life. This is not typical for any other group and its presence in the media. The reports of the Turkish and the Pomak (Muslim Bulgarians) villages

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[176] Idem, p. 16.
[177] Enteman, W. F., *Stereotyping, prejudice and discrimination*, in P. M. Lester (ed.), op. cit., p. 7.

> are reports where you can see individual faces, you can see different professions, even the photos are different."[178]

When I elaborated on the image of the refugee as a victim in the second chapter, I mentioned the strategy of showing the subject in a crowd or mass and not as an individual human being. This phenomenon can largely be observed when the media cover human suffering in the world. Humanitarian organisations have recognised this method, which makes identification difficult, and use a different way for fundraising purposes: it is rather the suffering individual gazing directly into the camera. Yet this builds a stereotype as well which contributes to the unbalanced and prejudiced notion we have of a Third World citizen. What would be necessary to make a fair portrayal possible, which on the one side corresponds to reality and on the other to the media's ethical responsibility? This difficult but crucial question has to be seen in the fine zone between distance and proximity towards the 'Other'.

IV. 6. Distance and proximity – the suggestion of "proper distance":

I agree with Roger Silverstone, who thinks that only a separation between 'self' and 'other' ensures the possibility of respect and responsibility for the 'Other'.[179] Yet, as I said before, the dominant narratives of Western media tend to refuse this acknowledgement of cultural differences. Silverstone notices that the images we perceive are rather polarised: the 'Other' is either drawn so close to us as to be indistinguishable from ourselves, or the opposite, the unfamiliar is pushed beyond strangeness, going beyond our understanding. But according to him, what we need is to recognise cultural similarities *and* differences:

> "Both a personal and a political response to human wrongs and human rights depends on our ability to recognise and acknowledge that those who suffer, as well as those who perpetrate suffering, are human beings who are like us as well as human beings who are not like us. Their similarity enables us to know them, and to judge them. Their difference requires us to recognise that there are things we may never understand about them."[180]

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[178] Angelova, K., *The minorities in the media*, in Human Rights Project (ed.), *Minorities in the media: realities and prejudices,* International Conference 25-26 October 1997, Sofia, pp. 25-26.
[179] Silverstone, R., *Mediation and communication,* p. 28, text at http://www.lse.ac.uk/collections/media@lse/whosWho/rogerSilverstone.htm
[180] Silverstone, R., *Mediating catastrophe: September 11 and the crisis of the other,* p. 9, text at http://www.lse.ac.uk/collections/media@lse/whosWho/rogerSilverstone.htm

He suggests that distance has to be seen as a *moral category* in order to regulate the portrayals of the 'Other'. For his idea of a "correct, distinctive and ethically appropriate" distance, he uses the term *"proper distance"*, which is

> "the critical notion that implies and involves a search for enough knowledge and understanding of the other person or the other culture to enable responsibility and care, as well as to enable the kind of action that, informed by that understanding, is in turn enabling. We need to be close, but no too close, distant but not too distant."[181]

Also Carlo Ginzburg relates his notion of human compassion to the matter of distance. He argues that distance, if pushed to an extreme, "can generate a total lack of compassion for our fellow humans"[182], but he goes further than Silverstone, relating compassion also to a time dimension. This gets understandable when we apply it to photographs and compare our compassion for people suffering a hundred years ago with those suffering at present time in our newspapers. To reiterate, the crucial question is where we have to draw the line for breaking through indifference and compassion fatigue without going too far disrespecting a victim's "right to be left alone".

Among the possible answers that have to be given with due caution, "proper distance" is definitely one of the aspects to draw ethically legitimate images. Another is showing the subject as an individual rather than a mute mass when the objective is the promotion of understanding for the individual's situation. I will quote Willard Enteman as one out of the many who propose a separation between the individual and the undifferentiated mass:

> "Instead of stereotyping people, we should be celebrating them in all their individuality and diversity. The pictorial message should be looking for what is remarkable, what is noteworthy, what is singular about the subjects, not what makes them representative of some preconceived image. The pictorial message should extend the vision of the viewer; it should not confine or constrain that vision."[183]

[181] Silverstone, R., *Regulation, media literacy and media civics,* p. 10., text at http://www.lse.ac.uk/collections/media@lse/whosWho/rogerSilverstone.htm
[182] Ginzburg, C., *Killing a Chinese Mandarin: the moral implications of distance*, in O. Hufton (ed.), *Historical change and human rights. The Amnesty Lectures 1994*, New York, BasicBooks, 1995, p. 68.
[183] Enteman, W. F., op. cit., p. 14.

Regardless of the difficulty, if not impossibility of giving concrete advice as to the way in which to depict a human being who is suffering, the awareness alone that one can easily fall into the trap of stereotyping and affirming common prejudices can help to avoid them in future. Raising people's awareness and educating them in ethics are tasks that lie still ahead of us.

IV. 7. Alternatives to stereotyping: some examples

In order to apply some of these thoughts to a concrete example, I want to discuss a folder with the title "Refugees" edited by the United Nations High Commissioner for Refugees (UNHCR). The full size picture on the front page is a black African woman in colourful clothes, carrying something heavy on her head and looking down with her forehead in wrinkles. (See illustration no. 3 in the appendix). We do not learn from the caption *"Women: on their way to justice?"* in what circumstances she finds herself, whether she is actually a refugee herself or whether the photograph was chosen because it fitted a visual criterion. Regardless of our feelings, whether we feel pity or not, the impression we have is that her life must be hard due to the serious expression on her face. It is an image we have seen a hundred times.

Inside the folder another picture is to be seen, much smaller, covering about the third of a page. (See illustration no. 4 in the appendix). It shows a group of around fifteen black African women dressed in cloths playing volleyball. The women in the foreground are involved in the game, throwing the ball over the net, while they are surrounded by others watching, some of them smiling. The caption says: *"Somali refugees making a break to play volleyball"*. Without considering the further text that is written beneath the picture, the viewer remains surprised because this image shows black African women as people 'like us', doing sport and having fun. The reader of this folder is more easily touched emotionally when looking at this picture than at the other, because it shows something unexpected. Probably thoughts like 'Oh, they play volleyball as well!' will come to his or her mind. Taking the context of refugees into consideration, it is clear that the life of a refugee it is not fun all day long. Yet, this second image is striking because it reveals a side of the exotic 'Other', the Somali woman, which is usually not visible in the media.

Another example of a different visualisation of victims is a report of the Danish Red Cross Asylum Department that was published after the government had decided in 1999 to evacuate refugees from

Kosovo that had been living in Denmark. While writing the report, the organisation discussed what kind of photographs should be integrated. Finally, it was decided to portray refugees who were sent back home by airplane. They were photographed at the airport with their knowledge and their consent. The portraits of their faces were printed in black-and-white, one picture per page with a tag printed beneath, telling the person's name, age, profession, and the place where he or she was coming from. Annette Haugaard, press officer of the Asylum Department comments the reasons for this decision:

> "The idea was to say 'Refugees are all kind of persons, old persons, babies, well-educated, farmers, everything' and that's the idea about bringing those portraits. We decided to take just portraits of the face because then you focus on the person and not on 'is this a rich man's clothes?' or all those kinds of things that make people more stereotyped."[184]

The interview with her revealed that at least in the Asylum Department of the Danish Red Cross, the awareness of the problem of stereotyping is constantly present. She also explained the danger of exaggerating and of not drawing a truthful depiction of reality:

> "Discussions about the text, discussions about the picture are also within an organisation a discussion about the 'other' kind of stereotypes. It's pretty easy to start making only 'lucky' pictures, because what you often see in public magazines and newspapers are stereotypes of this starving African kid and things like that. The whole discussion about refugees, like are they victims or are they pretty strong persons, is needed to be discussed when it comes to *both*, the text and the picture. It's difficult when you are representing an organisation, whether it is the Danish Red Cross or something else, and you want to tell about your work. Do you also want to tell about when you do something wrong, when you fail? Taking pictures is also telling a story. So, are we only going to visit families and take happy pictures of them or do we decide to take a picture of the white wall and the man just looking into that wall being depressed? And you have to decide. I don't agree to the idea that you don't decide, that you just go out there and then take pictures of what you see. Because you *decide* what you see."[185]

[184] Interview with Annette Haugaard, press officer of the Danish Red Cross Asylum Department, Copenhagen, June 17, 2003

[185] Interview with Annette Haugaard.

Henrik Saxgren has a similar opinion concerning the responsibility of the photographer on site. According to him, the reasons why there are so many stereotyped images in the news are mainly lack of time and lack of financial resources. He thinks that it is the *personal project* of a photographer that will make it possible to change common stereotypes because of the intensive occupation with one topic like a specific group of persons. At this point I want to draw the parallel to the difference between press photography and documentary photography. Documentary photography or the photographer's personal project, as Saxgren calls it, are forms of photography that can be deliberately employed with the intention of changing stereotypes and prejudices. In his eyes, it will be personal projects that will influence the mass media and not vice versa:

> "There is not going to be one correct answer, there will be a lot of discussions going on, on many levels. The most important thing is always to try to fight the *commercial argument* because this is very often the reason to the clichés, to the stereotypes. There are economical reasons of the newspaper to send out a team to cover a conflict. That is how many days they will pay the expenses, what they expect them to bring home – sometimes they decide that before they reach to see. Stereotypes are of course coming from people who have too little time to create their own opinion. And in that sense the personal project is very, very important because it is the personal project that changes the way of looking at a problem of the commercial media. (…) When you succeed, you give a map to the other media to look at a problem. But don't ever expect the big media to come up with a big shift."[186]

Changing stereotypes means creating a personal opinion, instead of repeating images that are recognisable at a first glance when the photographer arrives at the location. Informing oneself about the political circumstances and the specific situation of the person who is suffering is an important step towards this direction. Very often, the obstacle for personal photographic projects is the problem of financing. That is why eventually the mass media will have to obey the guidelines that are derived from different bodies like the UN in order to fight discrimination. J. B. Colson speaks of employing "images that heal":

> "*Informed communicators with positive ethical motivations* are needed if we are to replace stereotypes in significant numbers with images that heal. The victims of stereotypes need to do what they can on their part of the process by calling stereotypes to task and supporting

[186] Interview with Henrik Saxgren.

> efforts in their behalf. But, because most of the power is in the hands of image makers and those who finance them, *they* have the responsibility of producing media that recognizes the diversity and complexity of human experience."[187] [emphasis added]

There exists another consideration concerning alternative representation I haven't mentioned until now and that is the claim of self-representation.

IV. 8. Self-representation as an alternative: "Postcards from Paradise"

The idea of bringing modern technology to the exploited (backward) 'Others' and giving them cameras, is something that has been realised in the field of visual anthropology. Nonetheless, despite its possibly good intention, this kind of visual self-representation as the solution to intruding into other peoples' lives has not remained undisputed. The main counterargument is that at the moment when indigenous peoples or ethnic minorities are given cameras they are not equal participants but rather continue following our orders and ideas.[188] Ricardo Dorantes, who is working for a Mexican nongovernmental organisation which assists and teaches indigenous communities how to use video technology to make their own films, explains that in a society that is based on communitarian values, it is often not appreciated by the indigenous themselves when individual persons are "selected" and provided with cameras.[189]

This criticism is legitimate when persons are concerned who are not familiar with new technologies and have different values and forms of self-representation. Nevertheless, on a more balanced level there are also positive examples of self-representation. One of them is a project recently realised by the Danish Red Cross together with the Danish photographer Anders Clausen. The initial idea was to organise photography workshops for asylum seekers in Denmark. Disposable cameras were distributed to the different asylum centres in the country and the only specification for the voluntary participants was to take pictures of their own lives. When the pictures were sent back it became clear to the organisers of the project that no workshops were needed. The first impression Clausen had when he saw the pictures, was: "I will never ever be able to do real documentary again as I did

[187] Colson, J. B., op. cit., p. 220.
[188] Cf. Faris, J., *Anthropological transparency: film, representation and politics*, in P. I. Crawford, D. Turton, (eds.), op. cit., pp. 171-182.
[189] Personal conversation with Ricardo Dorantes, Ojo de Agua Comunicación, in Bad Boll, Germany, May 20, 2003.

before because I am just a tourist in other people's lives."[190] The project received the name "Postcards from Paradise", resulting in a touring exhibition and a photo book. It is a mixture of styles and contents; some photographs are self-portraits, some are descriptions of the new living conditions, both showing how an individual tries to tackle the experience of being a refugee, and there are others which don't show it at all. I want to point to one photograph in particular because it stands out on both counts, the artistic realisation as well as the textual description: Obeid Hazratmir visualised his illegal escape from Afghanistan by putting up a locker in a beautiful landscape and squeezing himself into it. (See illustration no. 5 in the appendix). The nice surroundings together with the sunshine seem absurd in comparison to the serious context. The caption tells: *"The Escape: This is my escape from Afghanistan. We are fleeing by train and lie hiding in a narrow space between the floor of the train and the wheels. After twenty minutes I have a heart attack. A man gives me an apple to calm me down and I eat it."*[191] With this picture, the viewer gets a vivid impression of who this refugee is. And even if it is only a small detail of the flight, the unusual context of the apple is something the viewer/ reader will remember when reading the newspaper the following day.

Maybe this is in the sense of philosopher Richard Rorty when he argues "that the emergence of the human rights culture seems to owe nothing to increased moral knowledge and everything to hearing sad and sentimental stories".[192] He pleads for concentrating our energy on what he calls *"sentimental education"*: "The sort of education sufficiently acquaints people of different kinds with one another so that they are less tempted to think of those different from themselves as only quasi-human. The goal of this manipulation of sentiment is to expand the reference of the terms 'our kind of people' and 'people like us'. (…) You do this by manipulating their sentiments in such a way that they imagine themselves in the shoes of the despised and oppressed."[193] He goes on:

> "It is not "the moral educator's task anymore to answer the rational egotist's question 'Why should I be moral?' but rather to answer the much more frequently posed question 'Why should I care about a stranger, a person who is no kin to me, a person whose habits I find disgusting?' The traditional answer to the latter question is 'Because kinship and custom are

[190] Interview with Annette Haugaard.
[191] Clausen, A., Danish Red Cross (eds.), *Postcards from paradise. Refugees in Denmark took photographs of their time in limbo*, Copenhagen, Spark, 2003.
[192] Rorty, R., *Human rights, rationality, and sentimentality*, in S. Shute, S. Hurley (eds.), *On human rights. The Oxford Amnesty lectures 1993*, New York, BasicBooks, 1993, p. 118.

> morally irrelevant, irrelevant to the obligations imposed by the recognition of membership in the same species'. This has never been very convincing, (…). A better sort of answer is the sort of long, sad, sentimental story which begins 'Because this is what it is like to be in her situation – to be far from home, among strangers', or 'Because she might become your daughter-in-law', or 'Because her mother would grieve for her'."[194]

Photography is the perfect tool for telling these sad and sentimental stories. When the 'Other' is not a stranger anymore but a person that can be identified with, cultural differences as well as human similarities will be accepted more easily and discrimination is less likely to occur.

IV. 9. Final remarks:

Due to the general problem of defending ethics and human rights on a universal level, it is not possible to conclude the different topics broached in this thesis in a definitive manner. But it can be said for sure that photography is a medium which appeals to our emotions immediately and facilitates therefore compassion. Without doubt is it a very apt means to bring the lives of others closer to us and influence the perceptions we have about them. Press photography as being a part of our mass media, in particular has the task of making human catastrophes comprehensible. The visual factor should be given at least as much importance as the textual embedding when reporting about victims. Yet, this must be done respecting the moral rights of the victims. We have to acknowledge the 'Other', but we also have to remember that victims of human rights violations are worthy of respect without alienating them from our shared sense of humanity.

I tried to show that hard law and soft law are tools that can definitely help to avoid overstepping ethical limits but they do not suffice. The border line between what is ethically legitimate and what constitutes a violation of a person's dignity has also to be drawn by the individual media worker. This task can be supported by raising the awareness and by starting a discussion about the purpose and the manner of ethically legitimate photography.

In this context it was my intention to open the discussion about what can be done in the future in order to avoid a further commercialisation and objectification of victims. In my opinion, a

[193] Idem, pp. 122 + 127.
[194] Idem, p. 133.

stereotyped version of human suffering affirms prejudices, which in turn easily lead to discrimination. Discrimination and human dignity are terms that are closely related to the negation or enjoyment of human rights. Photography is a field which can contribute to the promotion of the human rights culture by spreading the awareness that the 'Other' can be like us and very different at the same time.

Appendix: photographs

Illustration no. 1:

Alice Harris, *Natives of the Nsongo District,* 1904

"With hands of two of their countrymen, Lingomo and Bolengo, murdered by rubber sentries in May 1904. The white men are John Harris and Edgar Stannard, missionaries with the Congo Balolo Mission at Baringa." (in E. D. Morel, *King Leopold's Rule in Africa*, London, Heinemann, 1904)

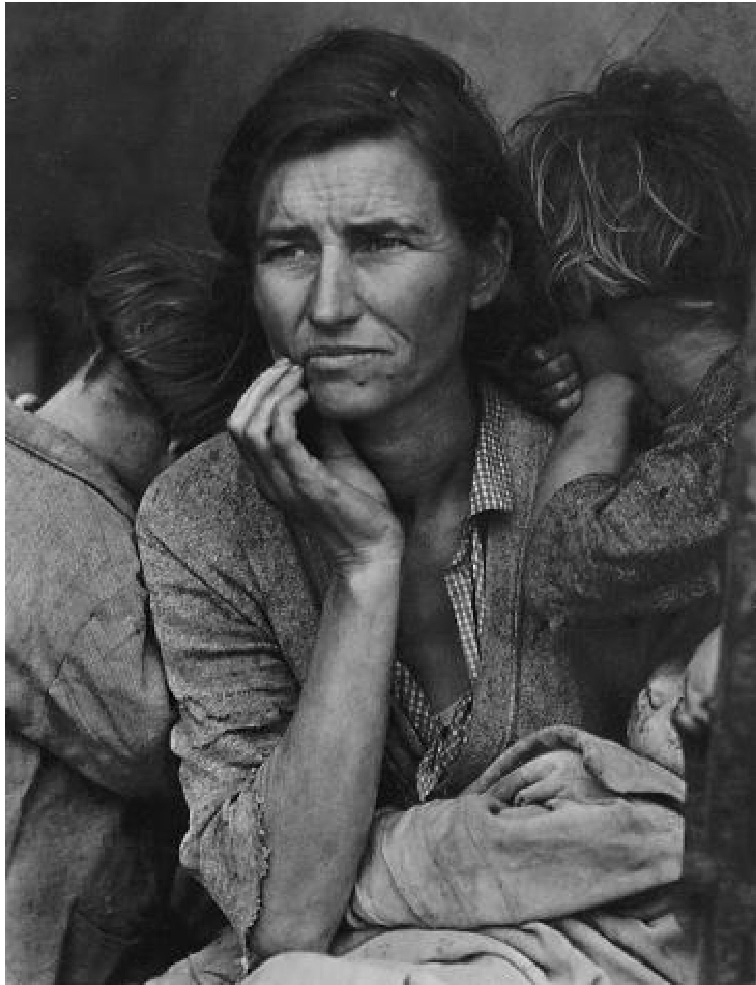

Illustration no. 2:

Dorothea Lange, *Migrant Mother,* Nipomo, California, 1936

Illustration no. 3:

UNHCR/ R. Chalasani, CS, TZA, 1996

Refugees; Women on their way to justice?

Illustration no. 4:

UNHCR/ R. Chalasani, CS, ETH, 1998

Somali refugees making a break to play volleyball

Illustration no. 5:

Obeid Hazratmir, *The Escape*, 2002/03

"This is my escape from Afghanistan. We are fleeing by train and lie hiding in a narrow space between the floor of the train and the wheels. After twenty minutes I have a heart attack. A man gives me an apple to calm me down and I eat it."

(in "Postcards from Paradise": Refugees in Denmark took photographs of their time in limbo)

Bibliography:

Books and articles:

Angelova, K., *The minorities in the media*, in Human Rights Project (ed.), *Minorities in the media: realities and prejudices,* International Conference, Sofia, 25-26 October, 1997

Article 19, *Starving in silence. A report on famine and censorship*, April 1990, text at www.article19.org/docimages/1022.html

Barnhurst, K., Nerone, J., *Civic picturing vs. realist photojournalism. The regime of illustrated news, 1856-1901,* in «Design Issues», vol. 16, no. 1, Massachusetts, Institute of Technology, 2000

Bigot, C., *Droit à l'information et protection de la vie privée*, in P. Tronquoy (ed.), *Les libertés publiques*, «Les cahiers français», no. 296, Paris, documentation Française, mai/ juin 2000

Boltanski, L., *Distant suffering. Morality, media and politics,* Cambridge, University Press, 1999

Bresson Ladegaard Knox, J., *Dignity and the essence of man,* in Centre for Ethics and Law (ed.), *Dignity, ethics and law. Bibliography*, Copenhagen, 1999

Brothers, C., *War and photography. A cultural history,* London, New York, Routledge, 1997

Caujolle, C., *Photography and its uses*, in E. Meijer, J. Swart (eds.), *The photographic memory: press photography – twelve insights,* London, Quiller Press for World Press Photo, 1988

Chapnik, H., *Truth needs no ally. Inside photojournalism*, Columbia, London, University of Missouri Press, 1994

Chomsky, N., *Media control. The spectacular achievements of propaganda*, 2nd ed., New York, Seven Stories Press, 1997

Clausen, A., Danish Red Cross (eds.), *Postcards from paradise. Refugees in Denmark took photographs of their time in limbo*, Copenhagen, Spark, 2003

Clayton, R., Tomlinson, H. (eds.), *The law of human rights*, vol. 1, London, Oxford University Press, 2000

Coleman, A. D., *Depth of field. Essays on photography, mass media, and lens culture,* Albuquerque, University of New Mexico Press, 1998

Colson, J. B., *Images that heal*, in P. M. Lester, (ed.), *Images that injure: pictorial stereotypes in the media*, Westport, Praeger, 1996

Council of Europe (ed.), *Media and democracy,* Strasbourg, Council of Europe Publishing, 1998

Department for International Development (ed.), *Viewing the world. A study of British television coverage of developing countries*, summary, July 2000, text at www.dfid.gov.uk

Domke, D., Perlmutter, D., Spratt, M., *The primes of our times? An examination of the 'power' of visual images,* in «Journalism», vol. 3, no. 2, London, Sage Publications, 2002

Dworkin, A., MacKinnon, C., *Pornography and civil rights: a new day for women's equality*, in C. Itzin (ed.), *Pornography. Women violence and civil liberties. A radical new view*, New York, Oxford University Press, 2001

Enteman, W. F., *Stereotyping, prejudice and discrimination*, in P. M. Lester (ed.), *Images that injure: pictorial stereotypes in the media*, Westport, Praeger, 1996

Faris, J., *Anthropological transparency: film, representation and politics*, in P. I. Crawford, D. Turton, (eds.), *Film as ethnography*, Manchester, New York, Manchester University Press, 1992

Flusser, V., *Für eine Philosophie der Fotografie,* Edition Flusser, Bd. 3, 9. Aufl., Göttingen, European Photography, 1999

Galtung, J., Vincent, R. C., *Global Glasnost. Toward a new world information and communication order?*, University of Hawaii, Manoa, Hampton Press Inc., 1992

Garrett, W. E., *Teacher without a lesson*, in E. Meijer, J. Swart (eds.), *The photographic memory: press photography – twelve insights,* London, Quiller Press for World Press Photo, 1988

Ginzburg, C., *Killing a Chinese Mandarin: the moral implications of distance*, in O. Hufton (ed.), *Historical change and human rights. The Amnesty Lectures 1994*, New York, BasicBooks, 1995

Gross, L., Katz, J. S., Ruby, J. (eds.), *Image ethics. The moral rights of subjects in photographs, film, and television,* New York, Oxford, Oxford University Press, 1988

Gruber, L. F., *Information for a Martian,* in E. Meijer, J. Swart (eds.), *The photographic memory: press photography – twelve insights,* London, Quiller Press for World Press Photo, 1988

Günter, R., *Fotografie als Waffe: zur Geschichte der sozialdokumentarischen Fotografie,* 1. Aufl., Hamburg, Berlin, VSA, 1977

Guerrin, M., *Photographie: un champ qui se rétrécit*, in P. Tronquoy (ed.), *Les libertés publiques*, «Les cahiers français», no. 296, Paris, documentation Française, mai/ juin 2000

Hall, S., *Representation. Cultural representations and signifying practices*, London, Sage, 1997

Human Rights Project (ed.), *Minorities in the media: realities and prejudices,* International Conference, Sofia, 25-26 October, 1997

IMS, IMPACS (eds.), *Conflict sensitive journalism. A handbook by Ross Howard*, Denmark, 2003

International Council on Human Rights Policy (ed.), *Journalism, media and the challenge of human rights reporting*, Versoix, 2002

Jackson, M., *The politics of storytelling. Violence, transgression, and intersubjectivity,* University of Copenhagen, Museum Tusculanum Press, 2002

Kuehnast, K., *Visual imperialism and the export of prejudice: an exploration of ethnographic film*, in P. I. Crawford, D. Turton (eds.), *Film as ethnography*, Manchester, New York, Manchester University Press, 1992

Lester, P. M. (ed.), *Images that injure: pictorial stereotypes in the media*, Westport, Praeger, 1996

Linn, T., *Media methods that lead to stereotypes*, in P. M. Lester (ed.), *Images that injure: pictorial stereotypes in the media*, Westport, Praeger, 1996

Lyons, N. (ed.), *Photographers on photography. A critical anthology*, New Jersey, Prentice-Hall, 1966

Marushiakova, E., Popov, V., *The image of Gypsies in Bulgarian social consciousness*, in Human Rights Project (ed.), *Minorities in the media: realities and prejudices,* International Conference, Sofia, 25-26 October, 1997

McElroy, W., *Pornography*, in R. Kick (ed.), *Everything you know is wrong. The disinformation guide to secrets and lies*, New York, The Disinformation Company, 2002

Mendel, T., *The right of the public to know and freedom of entertainment: information seen from the consumer's angle*, Paper for the conference on Freedom of Expression and the Right to Privacy, Strasbourg, 23 September 1999, text at www.article19.org/docimages/630.htm

Naismith, S. H., *Photographs, privacy and freedom of expression*, in B. Emmerson (ed.), «European Human Rights Law Review», issue 2, London, Sweet & Maxwell, 1996

National Press Photographers Association, *Code of ethics*, text at www.nppa.org/members/bylaws/default.htm

Nordenstreng, K., *The Mass Media Declaration of UNESCO*, New Jersey, Ablex Publishing Corporation, 1984

O'Neill, M. J., *Developing preventive journalism*, in K. M. Cahill (ed.), *Preventive diplomacy: stopping wars before they start*, 2nd ed., New York, Routledge, 2000

Phillips, P., Project Censored (eds.), *Censored 2001. 25 years of censored news and the top censored stories of the year,* 25th anniversary edition, New York, Seven Stories Press, 2001

Prieur, C., *La réforme du droit à l'image*, in P. Tronquoy (ed.), *Les libertés publiques*, «Les cahiers français», no. 296, Paris, documentation Française, mai/ juin 2000

Rorty, R., *Human rights, rationality, and sentimentality*, in S. Shute, S. Hurley (eds.), *On human rights. The Oxford Amnesty lectures 1993*, New York, BasicBooks, 1993

Rosenblum, N., *Documentary photography: past and present*, in The Museum of Contemporary Photography (ed.), *Photography's multiple roles: art, document, market, science*, Chicago, 1998

Roskis, E., *Tant de clichés et si peu d'images…,* in «Le Monde Diplomatique», Janvier 2003

Silverstone, R., *Mediating catastrophe: September 11 and the crisis of the other,* text at www.lse.ac.uk/collections/media@lse/whosWho/rogerSilverstone.htm

Silverstone, R., *Mediation and communication,* text at www.lse.ac.uk/collections/media@lse/whosWho/rogerSilverstone.htm

Silverstone, R., *Regulation, media literacy and media civics*, text at www.lse.ac.uk/collections/media@lse/whosWho/rogerSilverstone.htm

Solomon-Godeau, A., *Photography at the dock. Essays on photographic history, institutions, and practices,* Minneapolis, University of Minnesota Press, 1991

Sontag, S., *On photography*, London, Penguin Books, 1977

Sontag, S., *War and photography*, in N. Owen (ed.), *Human rights, human wrongs. The Oxford Amnesty lectures 2001*, Oxford, University Press, 2002

Sontag, S., *Regarding the pain of others*, New York, Farrar, Straus and Giroux, 2003

Spiegelberg, H., *Human dignity: a challenge to contemporary philosophy*, in R. Gotesky, E. Laszlo (eds.), *Human dignity. This century and the next. An interdisciplinary inquiry into human rights, technology, war, and the ideal society*, New York, Gordon and Breach, Science Publishers, 1970

Statman, D., *Humiliation, dignity and self-respect*, in D. Kretzmer, E. Klein (eds.), *The concept of dignity in the human rights discourse*, The Hague, London, New York, Kluwer Law International, 2002

Taylor, J., *Problems in photojournalism: realism, the nature of news and the humanitarian narrative,* in «Journalism Studies», vol. 1, no. 1, Manchester, Metropolitan University, 2000

Taylor, L. (ed.), *Visualizing theory. Selected essays from V.A.R. 1990-1994,* London, New York, Routledge, 1994

Viera, J. D., *Images as property*, in Gross, L., Katz, J. S., Ruby, J. (eds.), *Image ethics. The moral rights of subjects in photographs, film, and television,* New York, Oxford, Oxford University Press, 1988

Watney, S., *Photography and AIDS*, in C. Squiers (ed.), *The critical image. Essays on contemporary photography*, Seattle, Bay Press, 1990

Reference Books:

Clarke, P. B., Linzey, A. (eds.), *Dictionary of ethics, theology and society*, London, New York, Routledge, 1996

Jones, B. E. (ed.), *The encyclopaedia of early photography*, London, Bishopsgate Press, 1981

Museum Ludwig Köln (ed.), *Photographie des 20. Jahrhunderts*, Köln, Benedikt Taschen Verlag, 1996

Legal Documents:

Charter of the United Nations (1946)

Universal Declaration of Human Rights (1948)

Vienna Declaration and Programme of Action (1993)

European Convention on Human Rights (1950)

Council of Europe, Resolution 1003 on the ethics of journalism (1993)

Council of Europe, Recommendation 1276 on the power of visual images (1995)

Council of Europe, Resolution 1165 on the right to privacy (1998)

UNESCO Principles of Professional Ethics in Journalism (1983)

UNESCO The Mass Media Declaration (1978)

Internet Sites:

American photography. A century of images,
http://www.pbs.org/ktca/americanphotography/features/social.html

http://www.legifrance.gouv.fr

http://www.nppa.org

Audiovisual Media:

Contacts. Henri Cartier-Bresson, video, Robert Delpire, La Sept Arte, KS Visions, CNP, France, 1994

James Nachtwey. War photographer, video, Christian Frei film productions, in assoc. with Swiss Nation Television and Swissimage, 2001

Interviews, Conversations and Lectures:

Annette Haugaard, press officer of the Danish Red Cross Asylum Department, Copenhagen, June 17, 2003

Henrik Saxgren, professional freelance photographer, Copenhagen, June 18, 2003

Jan Grarup, reportage photographer for the daily Danish newspaper *Politiken*, Copenhagen, May 13, 2003

Per Folkver, photo editor-in-chief of the daily Danish newspaper *Politiken*, Copenhagen, June 12, 2003

Ricardo Dorantes, Ojo de Agua Comunicación, Bad Boll, Germany, May 21, 2003

The Kodak and the king: what can photography tell us about the campaign against Leopold's rule in the Congo? Lecture held by Dr. Jack Thompson, Centre for African Studies, University of Copenhagen, May 6, 2003.