

# **Human Rights: From Practice to Policy**

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## Acknowledgments

Over the span of a weekend in early October 2010, the University of Michigan's Ford School of Public Policy hosted an out-of-the-ordinary conference on human rights—bringing nearly a dozen distinguished practitioners into conversation with leading scholars who have studied the human rights movement. The conference was constructed as a research workshop, with presentations by practitioners supplying data for discussion and analysis by academic participants. Sessions were arranged to concentrate interactions among the participants themselves, rather than address remarks to an external audience. The conference was innovative in two significant ways: its retrospective focus provided practitioners a rare opportunity to reflect on past work and achievements, and the meeting joined practitioners and scholars in a single conversation about the nature and significance of that work.

To encourage candor and free exchange, conference discussions were considered off the record. Subsequently, participants have agreed to put their redacted remarks on the record, and through this report we are pleased to share them with a wider audience. Naturally, the remarks contained in the report reflect the personal views and experiences of their authors and do not represent the views of the organizations with which they are affiliated, either presently or in the past.

Many people have contributed to publication of this first report, and we are grateful to all of them. First, we wish to thank all of the participants in the October 2010 meeting for joining us in Michigan and for contributing to this important conversation about the role of the human rights movement in creating what have become core norms and methodologies of human rights research and advocacy. We thank them for their willingness to share their personal reflections, thoughts and experiences with their colleagues and a new generation of human rights scholars and practitioners. These participants included: Christopher Avery, Ann Marie Clark, Stephanie Farrior, Curt Goering, Michael McClintock, Julie Mertus, David Petrusek, Margo Picken, Nigel Rodley, Kenneth Roth, Kathryn Sikkink, Eric Stover, Wilder Tayler and José (Pepé) Zalaquett.

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-- Carrie Booth Walling and Susan Waltz

## Chapter 1

### Introduction

Carrie Booth Walling and Susan Waltz

International human rights organizations are widely recognized for their advocacy work, but the contributions they have made to the development of international human rights norms and standards are not equally well understood and appreciated. As scholar-practitioners ourselves, we have sought to bridge this gap by opening a conversation between academics and practitioners about decisions and dynamics that have shaped the work of the human rights movement over the past several decades.

The idea for this conference emerged from informal discussions as we worked together to design a module introducing University of Michigan undergraduate students to the study of human rights. Through our conversations, we discovered that while we generally agreed on the core content of human rights norms and how they have been applied in practice, we had different understandings of the process and rate of human rights change and the level of consensus within the human rights movement. We believe that some of these differences can be accounted for by the time and place of our entry into human rights debates. Though we had arrived at a similar place intellectually, we had followed substantially different paths. For Susan Waltz, the journey began more than 35 years ago. She joined Amnesty International (AI) and began working on human rights in 1977, after a year of dissertation research in Tunisia had sensitized her to concerns about political repression and reprisals. Carrie Walling's introduction to human rights ideas came fifteen years later. She was first exposed to the idea of human rights in the university classroom. Human rights provided her a framework for understanding mass rape, ethnic cleansing, and genocide in Bosnia-Herzegovina and Rwanda in the 1990s. For Carrie, international human rights law and international humanitarian law were natural complements and she was unfamiliar with the debate from a previous decade against their intertwining. In graduate school, she was

able to pursue a formal course of human rights study at the University of Minnesota and focus on an emerging human rights norm as the subject of her doctoral dissertation. By contrast, Susan learned about the concept of human rights through her engagement with Amnesty International. At the time, the concept of human rights was barely acknowledged within the field of political science, and specialized university courses lay several years in the future. As we compared notes, we recognized that norms now taken for granted had not necessarily developed smoothly—and that norms once contested are now taken for granted. We also realized that some of the concerns that divided the human rights movement in the past were unproblematic for a new generation of practitioners and scholars.

As faculty in the field of public policy we are sensitive to the importance of linking theory and practice, and we have frequently regretted the lack of meaningful cooperation between human rights scholars and practitioners on questions of common concern. The impending fiftieth anniversary of Amnesty International prompted us to try to bridge this gap by capturing some of the untold history of the development of human rights standards. In addition to generating new data about the human rights movement, we believed that an exchange among scholars and practitioners could advance discussions about how to cooperatively address contemporary human rights problems and how best to measure the effectiveness of human rights advocacy.

In planning the October 2010 conference, one of our principal motivations was to enlarge the scope of scholarly discussion about the contribution made by practitioners to the construction of human rights norms. Over the past two decades scholars have increasingly acknowledged the role of non-governmental organizations as interest groups in the realm of international politics, and the influence human rights groups have exercised in promoting international human rights standards is now taken for granted. Yet in many cases, human rights groups also deserve credit for initiating and constructing those very same standards.

In the late 1990s, scholars began to explore the ways in which the international human rights movement helped develop international political norms and trace their impact on policy. Heuristic frameworks

of norm development, issue advocacy and social networking have received considerable attention among scholars. Consequently, and by contrast to an earlier era in the study of international relations, today we have a much more robust understanding of the contributions of these actors –and non-state actors in general—to international political processes. What we do not understand very well are the largely *internal* processes through which organizations like Amnesty International, Human Rights Watch (HRW), the International Commission of Jurists (ICJ), and the Lawyers Committee for Human Rights/Human Rights First have come to develop and disseminate new concepts and approaches to human rights problems. These processes have generally taken place out of public view, but they have served as crucibles for emergent international norms. Scholars have explored, for example, the processes by which torture became the subject of an international advocacy campaign, and then an international treaty. Less well known and understood are the internal processes by which human rights groups developed a concern about the practice of torture –and from that concern built definitions and understandings that have shaped our approach to this problem for some 35 years. With this conference we sought to draw attention to this lacuna, and begin to fill it.

A second and equally compelling motivation for the conference was simply to preserve some of this history for the next generation of human rights activists and scholars who will take interest in it. We were mindful at the outset that many of the standards taken for granted today were conceived as researchers, lawyers, and human rights defenders looked for ways to make their advocacy efforts more successful. For the most part, however, the history is privately held and not well known or appreciated.

We organized the conference around three broad questions:

- how the *content* of human rights norms has evolved;
- how the *application* of human rights norms has expanded from states to include non-state actors;
- how fact-finding and advocacy methods have developed and changed, partly in response to emerging technologies.

Participant presentations and the ensuing discussions of these questions are reported in Chapters 2-4. Due to the conversational nature of the sessions, however, discussions quite naturally veered into related but

different directions. We have preserved the evolutionary character of these conversations so that readers can appreciate the dynamic and interactive character of the conference. Presentations and subsequent conversations did not proceed in a linear manner, and at several points throughout the dialogue participants directly commented on each other's reflections and even corroborated or elaborated on one another's points. The flow of conversation was facilitated by the fact that most of the practitioners knew each other well, had direct experience of work within the international human rights organizations, and were familiar with large parts of the history being shared. Many had previously been colleagues and about half of the practitioners had worked for at least two major human rights organizations. The formal presentations and subsequent discussions led naturally to an exchange about topics that had not been covered in the conference, including other milestones achieved by the human rights movement as well as topics that merit further exploration. That exchange is relayed in Chapter 5. The closing chapter identifies themes that emerged across conference panels and further examines the conceptual content of human rights, the defining characteristics of the human rights movement and the tools of human rights change.

As the conference presentations and discussions unfolded, we learned much about the concerns and dynamics that drove human rights NGOs (non-governmental organizations) to advocate for the creation of additional human rights norms and standards. Several themes developed across issue areas, and readers may find it useful to reflect on them as they review the insights offered in each subject-specific chapter.

The first and most explicit theme centered on human rights organizations' approach to the development of human rights norms and standards, including treaties in the area of human rights and international humanitarian law. It may surprise some to learn that human rights organizations did not start out with intentions to involve themselves in the work of building normative standards or legal instruments. In many cases, perhaps most cases, they were drawn into that enterprise as an extension of their advocacy work on a particular issue. The driving question for human rights organizations has been how to make their advocacy *effective*. Sometimes that has involved

lobbying for norm development, but not always. In many cases, efforts and initiatives to develop norms and standards followed years of active campaigning on an issue. That was true, for example, with the 1984 Convention Against Torture and the 2006 Convention for the Protection of all Persons from Enforced Disappearances. During our conference, the role of law frequently arose as a topic of discussion. Several practitioners suggested that the practical value of legal standards is over-rated by non-practitioners, but at the same time they acknowledged that human rights standards frequently serve as a useful advocacy tool in what scholars have called the politics of accountability. Readers will find several interesting dialogues related to the role and value of international law scattered throughout the report, including commentary on the practice of developing standards and setting up mechanisms within the UN as a means of responding to specific situations.

A second theme concerns the subject matter of human rights and the emergence of new issues on the human rights agenda. One aspect of this theme revolved around who determines what should be considered a human rights issue, and what is required to place an issue on the human rights agenda. As recounted by practitioners, the development of human rights norms has not been a linear or uncontested process. For example, there has been a range of views about the applicability of human rights norms to a variety of non-state actors, such as corporations and spouses who commit violence against their partners in domestic contexts. Likewise, there has been debate within the human rights community about the relevance of international humanitarian law, including the Geneva Conventions. In the 1960s Amnesty International rapidly eclipsed the International Federation of Human Rights as the largest human rights organization, and until Human Rights Watch emerged in the 1970s, new concerns were frequently identified and elaborated through processes largely internal to AI. In the absence of both legal tradition and academic scholarship, such questions as whether to include degrading treatment in a definition of torture, or how to conceptualize and define the practice of enforced disappearances were typically broached in conferences organized and populated by constituents of the human rights movement, including the International Commission of Jurists, Amnesty International and others. By contrast, in recent times new conceptual work has commonly been

advanced at the margins of the human rights movement, in academic settings and think tanks or within smaller domestic human rights groups, to be taken up by international human rights organizations after it has already gained purchase among kindred groups. Such, for example, has been the trajectory of human rights work on economic and cultural rights, corporate accountability and women's rights.

A second aspect related to discussions about the subject matter of human rights concerns the elasticity of the term *human rights* and the boundaries of membership in the human rights movement. Practitioners acknowledged that an increasing tendency to frame new social problems as human rights issues is flattering to the human rights movement, but they also noted the attendant challenges. An uncritical expansion of the human rights framework risks diluting the power of the human rights concept and eroding the cohesion of existing norms. In the contemporary era, who decides what constitutes a human rights violation and whether the human rights framework is most effective for alleviating an identified harm? Historically, the human rights movement mobilized to address concrete, often discrete, human wrongs. Early human rights advocates were deliberate and purposeful actors, but they did not anticipate that they were creating what would become a powerful social movement with global reach. They initially sought like-minded allies among labor unions, churches, family groups, and local social justice organizations. Today the network has expanded to include organizations traditionally considered beyond the bounds of the human rights domain, including environmental groups and development organizations. Conference participants engaged in a lively discussion about phases in the human rights movement's development, comparing the current expansion to earlier periods of growth and consolidation. New partnerships are certainly an asset as the human rights movement seeks in order to address the full spectrum of human rights concerns across the world. At the same time they will likely alter in some way the culture and the defining work of the larger human rights organizations.

In addition to these primary themes, we want to call readers' attention to four additional findings, in hopes that they will receive further exploration by scholars and other students of the human rights movement. The first of these relates to the importance of organizational dynamics in shaping decisions about the subject and

nature of advocacy work. In some cases, human rights organizations made path dependent choices about focus and strategies based on research efforts and organizational mandate. This is arguably clearest in regards to Amnesty International, where for some 40 years a prisoner-focused mandate guided the organization's priorities and its orientation to human rights problems. AI's concern with the rights of prisoners incarcerated for the non-violent expression of their opinions and beliefs led the organization to pioneer work on a number of issues, including torture, the death penalty, disappearances, and political killings. That same focus, however, drew the organization away from abuses that did not directly affect prison populations, such as socio-economic deprivation and war crimes. There are some important differences in the way that organizations arrived at decisions about the focus of their work and the positions they adopted. Notably, Amnesty's democratic political culture played an important role in developing that organization's positions and priorities. Amnesty's internal political procedures and dynamics have changed somewhat over time, but it remains the case that both the national structures (and the members who are those structures' chief stakeholders) *and* professional staff at the International Secretariat have significant input into decisions about the organization's direction. Participants in this conference frequently referred to Amnesty's "ICM" (International Council Meetings) and "IEC,"\* both elected bodies comprised primarily of volunteer members. Changes to Amnesty's focus and positions, thus, were subject to internal processes that involved discussions and consultations that at times were protracted and controversial. Human Rights Watch, and most other human rights organizations, were not organized in this way and thus had somewhat more liberty in defining their mission and methods. Unconstrained by a prisoner mandate, thus, they were able to build on AI's path breaking work on issues noted above, and at the same time were able to take the human rights paradigm in some new directions. Human Rights Watch, for example, pioneered work on violations of international humanitarian law and the use of landmines as a human rights problem.

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\* International Council Meeting, a parliamentary body comprised of delegates from national structures, meeting annually or bi-annually, and International Executive Committee, the organization's nine-member governing board.

A second finding relates to the impact of contextual factors on the agendas of human rights organizations. From their earliest days, human rights organizations monitored political situations around the world and they responded to political events and trends as a matter of course. Less obvious, perhaps, is the fact that such events prompted widespread discussions within the human rights community and among their allies. Through such discussions, human rights advocates constructed shared understandings and developed a common lens through which to view world events. In addition to the Cold War politics that permeated United Nations dealings across four decades, specific events such as the 1973 Chilean coup and the death of Steve Biko in 1977 served as important touchstones for the human rights movement. More recent events have included the Rwandan genocide, the 1995 hanging of Ken Saro-Wiwa in Nigeria, and the abuse of detainees by the United States in the war on terror. In the early days, partners in conversation with the human rights movement around these events tended to be diplomatic contacts from friendly countries and other non-governmental organizations, especially church organizations and labor unions. That dynamic continues but in recent years it has been expanded to include interactions with an epistemic community comprised of scholars and public intellectuals as well as a growing number of community-based organizations.

Thirdly, the discussions at this conference raised interesting questions about the meaning and methods of “success” as perceived by human rights practitioners. Practitioners spoke openly about the inherent difficulties of observing success and about their disappointments with measures taken to address serious human rights situations. In general, they were more comfortable talking about efforts than effects. Success for some was reflected in impact; for others it could only be measured in terms of effort or process. “Naming and shaming” remains a primary strategy in the toolkit of human rights practitioners, but this technique has perhaps been emphasized in the scholarly literature to the neglect of an equally potent approach, *persuasion*. Whether in the UN context or in dialogue with national governments, human rights groups have used moral suasion as a key component of their lobbying efforts to gain support for initiatives and to build alliances. Shaming may be an effective strategy for addressing (and isolating) human rights offenders,

but persuasion is a preferable tactic for winning allies. The strategy may differ with context but the desired outcome is unchanging—the fuller realization of human rights. As one participant observed, these two strategies combined account for virtually all of the advocacy work undertaken by human rights organizations.

Finally, readers will find comments on the methodology of human rights research threaded throughout this report. Individual testimony has long held a place of privilege in human rights reporting. Amnesty International’s initial campaign was launched on behalf of “prisoners of conscience” around the world, and the organization’s original research methodology was developed around the production of case files that would be used in advocacy work. That methodology reflected a victim-centered approach, with researchers documenting specific violations of human rights and continuing threats. Human rights research continues to rely on victim and survivor testimony at its core but it has continuously incorporated new tools of corroboration, from documentary evidence to forensic science. Over the years, these practices have led to greater interaction with victim’s families, growing awareness of the needs of survivors and increased attention to the memory of victims. Victim-centered research has also sensitized human rights organizations to a wider array of abuse than the narrow issues on which they focused attention in the early years of the human rights movement. Yet increasing demands on the human rights movement—including moves toward professionalization and the development of new research technologies like satellite imagery—has the potential to create distance between defenders and survivors. In our conversations, practitioners emphasized the tight link between advocacy and human rights research, which has led to different emphases, concepts, and focal points over time. For example, concerns about political balance and impartiality have led human rights organizations to exercise care in ensuring that abuses on all sides of a conflict or geo-political struggles are covered in their reports. In view of the strategic and victim-centered nature of human rights investigations, practitioners also expressed reservations about recent scholarly use of their annual reports to build quantitative measures of human rights performance or to assess the advocacy strategies of the human rights organizations themselves. They expressed concern that scholars using their work in this way may not understand that human rights organizations do not strive for uniform,

worldwide coverage and much of their advocacy work takes place through quiet, behind-the-scenes initiatives that do not begin (or end) with published reports or press releases.

We hope that readers will both enjoy and grapple seriously with the rich collection of perspectives and experiences contained in this report. We are pleased to have the opportunity to present them to a broader audience. The report is intended to prompt further conversations among and between practitioners and scholars and to stimulate future research—by the participants themselves and by others who wish to “share the story” and advance the principles of human rights.

## Chapter 2

### **Emergence of New Human Rights Concerns**

In the first session, participants were asked to reflect on the internal processes through which new human rights norms were developed. Specifically, we were interested in understanding how the substantive content of human rights has evolved over time and how the role and importance of human rights NGOs (non-governmental organizations) have similarly expanded. Panelists described how torture, disappearances, economic, social and cultural rights and international humanitarian law became issues of concern for the international human rights movement. They also reflected on how the relationship between international human rights organizations and United Nations (UN) bodies developed. The panelists included: Nigel Rodley, José (Pepé) Zalaquett, Margo Picken, David Petrasek, and Kenneth Roth. The session was moderated by Susan Waltz.

#### **Torture**

Presentation by Nigel Rodley

Amnesty International's (AI) work on torture started off as a special campaign in 1973, not as an integral part of the organization's mandate. Amnesty at the time wasn't thinking, "What are the main policy challenges for the human rights movement?" It wasn't even really thinking about the main policy challenges for Amnesty International. It was thinking about how it could make its work more effective. AI became aware of torture because prisoners of conscience or other political prisoners were being tortured. The practice was so pervasive that eventually it became obvious that the issue needed to be addressed.

The worldwide report on torture we produced in 1973 generated a lot of publicity, and more followed when the United Nations Educational, Scientific, and Cultural Organization (UNESCO) withdrew its facility the week before the international conference against torture that was

scheduled for December of that year. They couldn't have done us a better service in that sense, as we made the front page of *Le Figaro* and *Le Monde*, which is something normally reserved for major wars. All of a sudden the torture issue was big and Amnesty's association with it was big. My recollection, though, is that AI's Secretariat saw torture as somewhat of a side issue. It was important and we were certainly glad we had drawn attention to it, but torture wasn't actually in AI's Statute as a separate issue or, at any rate, we didn't feel we had the resources to maintain a permanent campaign on the issue as such, as opposed to continuing group work on behalf of individuals, a technique that didn't seem properly adapted for victims of torture. The organization's main focus was on politicals (prisoners of conscience or other individuals arrested or otherwise targeted for their political activities), but the torture issue was not limited to politicals. Yet we'd already decided at AI's International Council Meeting (ICM) that year that the death penalty was going to be an issue regardless of the status of people affected, and perhaps it was not clear that we were prepared to take up another such issue.

There was an internal debate about next steps. My recollection is that AI's International Executive Committee (IEC) met to consider follow-up to the campaign. Some senior staff proposed to hand the work over to an organization that might really run with it, but the IEC overruled that position and decided to set up AI's own permanent campaign against torture. In that way, the torture campaign served as the precursor of AI's Campaign Department.

#### *Origins of the Idea of a Convention Against Torture*

As I recall, the idea for a Convention Against Torture was one of the recommendations of the 1973 Conference Against Torture. But this wasn't an initiative pushed by Amnesty. We had certainly been very keen on the Declaration Against Torture but we weren't particularly seeking a treaty. The Swedish Government, however, decided they wanted to pursue a treaty, and obviously once they decided to go that direction, we had to run with them! There are always reasons to be cautious about going the treaty route, and we weren't enthusiastic about it. In fact, our hesitations were such that even once we decided to advocate for the treaty, we wanted it to be debated in the UN's crime

sector (as the Declaration against Torture had been), not in the human rights sector. Human rights diplomats actually used to be a problem, whereas the crime people were more comfortable addressing torture. As a matter of law, torture is prohibited—not just internationally, but nationally, in virtually all countries. So as a matter of doctrine, state officials from a law enforcement or administration of justice background working on crime issues were comfortable with the idea of an anti-torture initiative. The Swedes didn't want that, however—and I think that's probably because they were going to be on the Commission on Human Rights and they wanted to steer the process.

In the end, the Convention emerged with certain real achievements and certain real limitations. The achievements obviously included the quasi-universal jurisdiction clauses of the treaty and the provision of an automatic right to do an inquiry into a country's human rights situation and even seek to visit a country. These were significant steps. (We didn't have comparable provisions in the International Covenant on Civil and Political Rights, for example.) Let's face it, without that convention we wouldn't have had the Pinochet case. And for those of us who watched that case develop, it was exactly what we had in mind for the universal provisions, even if they haven't been used as much as we would have liked.

*Main Points of Discussion, Concern and Debate on the Torture Convention, within AI*

Amnesty's internal discussion took place within an IEC sub-committee on international organizations. Within that group, first of all there was agreement on the principles Amnesty should endorse including universal jurisdiction (or at least the principle of trial or extradition). We also wanted torture to be declared a crime under international law. We wanted to avoid the exclusion of corporal punishment from a definition of torture. And we wanted decent implementation machinery. That's my recollection. (And you'll find something better than my recollection in the chapter "Outlawing Torture" in the 2008 volume by Meg Satterthwaite and her associates [*Human Rights Advocacy Stories*]. Jayne Huckerby did a tremendous amount work in the AI archives for that article.) Those essentially were the issues that Amnesty saw as the main principles to be fought for.

There was also discussion within the International Secretariat (IS) and IEC about the extent to which Amnesty should be involved in drafting text for the treaty. We took the position that we should stick to principles rather than compose text. That wasn't a very difficult principle to work with, especially so far as the organization's representatives in their personal capacity were able to propose text as necessary. Certainly I've always found in any drafting exercise, whether on torture or anything else, it's always much better if you can make sure that any text being discussed already has what you want in it. The function of the NGOs is then to defend what's there rather than to be perceived in the radical role of trying to get new and difficult material in. Falling short of that, it's better to find a government willing to make a proposal rather than doing it as an organization if you can avoid it.

Negotiating the Torture Convention was a complicated exercise, and yes, there were difficulties. One of them concerned the extent to which the Convention would deal not only with torture but also other cruel, inhuman and degrading treatment or punishment. That was a tough one. I think in retrospect that we got it wrong, and that we should have tried to go the route of the Inter-American Convention on Human Rights, with just the definition of torture and nothing else at all. But that is being wise after the event. The text was mandated to deal with both torture and cruel, inhuman and degrading treatment. We did have the unfortunate precedent set by the European Court of Human Rights that torture was worse than inhuman treatment, putting torture out there almost beyond reach and certainly not covering the interrogation techniques the British used in Northern Ireland. And so we wanted to make sure that sort of stuff didn't fall out from under the Convention. The Brits, of course, were very anxious to do the opposite. We weren't terribly successful there.

### **The Emergence of “Disappearances” as a Normative Issue**

Presentation by José (Pepé) Zalaquett

“Disappearances” emerged as human right problem in the 1970s, in the height of the Cold War—and initially in Chile and Argentina. Eventually

we realized that Guatemala had engaged in similar practice in the 1960s, and other countries as well. In fact, Hitler's "Night and Fog" decree is a remote precedent of the practice. I claim the term "disappearance" was coined in Chile, because at one point those of us working for the Peace Committee (the ecumenical organization that preceded the Vicariate of Solidarity) noticed that we were no longer receiving information concerning the whereabouts of some prisoners we were representing. Colleagues from the Peace Committee's Information Department came to us and said, "There are 131 people who have disappeared." And we started using that term. We filed a massive habeas corpus for these 131 people, and the courts didn't know what to do about that. At that time the Chilean courts pretended they did justice and we pretended we asked for justice. We lost every one of thousands of legal cases. Given the judiciary's subservience to the military regime, the real product of our legal work was the cumulative impact of it in the long run and to "do something" for the victims, as their relatives desperately demanded.

In Chile, the systematic practice of "disappearances" lasted from 1973 to 1977, with about 1,300 people disappeared. That is in addition to the 2,000 people who were killed outright in extra-judicial executions. The practice of disappearances was also taken up in Argentina at a much larger scale and likewise lasted for four years, from 1976 to 1980.

What was the rationale for this practice? In both countries I believe the stance of the military rulers went more or less like this: "Our countries are sufficiently mature, and public opinion sufficiently sensitized, that we cannot afford a parade of coffins or firing squads. Yet, these people are internal enemies. The Cold War has moved into our backyard, and we are fighting an internal enemy. They are fighting a dirty war, and we have to fight back with a dirty war." That was the feeling among the military. In their view, the younger, the more intellectually prepared, and the more militant, the worse. Such opponents were seen as irredeemable. Yet, because society would not accept a "parade of coffins," the rulers felt they had to kill those deemed as dangerous opponents and bury them in secrecy, thinking that eventually their relatives would forget. Of course they had themselves forgotten to read Antigone... In fact, relatives *never* give up searching for their loved ones. And especially mothers.

Eventually the military authorities realized that their strategy was backfiring. International public opinion was so incensed that at one point both countries, Chile and Argentina ceased to resort systematically to disappearances.

*The Role of Amnesty International*

By the mid to late 1970s, the international community had become well aware of the practice of disappearances, and Amnesty International recognized that it had become widespread—across Latin America but also in places as distant as the Philippines. So in 1980 Amnesty International convened a meeting in Racine, Wisconsin, at the Johnson Foundation’s Wingspread Conference Center, attended by people from all over the world. Ann Blyberg of AI-USA organized the meeting. At that meeting we tried to hammer out the concept of disappearances and devise strategies to oppose it. Conceptually, we had to distinguish “disappearances” from behaviors that in some ways were similar and common: people gone missing—which happens in every society; men missing in action—which happens in every war; incommunicado detention; irregular incommunicado detention; and abduction. We also realized that enforced disappearance was a complex crime, involving several crimes that were always present and other crimes that one had every reason to believe had also been perpetrated. Disappearance, we observed, always involved the crimes of arbitrary detention or abduction, obstruction of justice, and cruel treatment for the families who didn’t know the whereabouts of their kin. The other crimes that were almost certainly involved included torture, killing, and illegal disposal of the bodies. Disappearance, just like other complex crimes such as apartheid or ethnic cleansing, presupposes a cluster of behaviors that are comprised within such elaborate criminal practice. You can identify killing, rape or other criminal components of the practice, but the overall crime is defined by a sense of purpose. The purpose of ethnic cleansing is self-evident; apartheid, of course, was implemented to enforce a regime of institutionalized racial discrimination. The practice of disappearance was devised to get rid of undesirables without leaving traces and without having to account for them. And of course it failed its purpose.

*From Campaign Efforts to International Treaties*

Amnesty International produced a book on disappearances, based on the proceedings of the Wingspread Seminar on Disappearances [published in 1981 by Amnesty International USA as *Disappearances: A Workbook*]. After that there was a lot of campaigning against the practice and much work aimed at creating normative standards to prevent disappearances. Through these efforts by the human rights movement, inter-governmental institutions (IGOs) were energized. In 1992 the UN General Assembly adopted a Declaration against enforced disappearances, and then developed a treaty. The UN Convention for the Protection of All Persons from Enforced Disappearances was approved in 2006, and the last time I checked it had nineteen ratifications out of twenty required to enter into force.

In the meantime, the Organization of American States (OAS) produced its own Convention in 1994, because this problem in Latin America was particularly acute. It was quickly ratified and entered into force in 1996. This Convention states the following, in substance: The crime of disappearances involves an abduction or arbitrary detention by State authorities acting themselves or vicariously through death squads or other groups, followed by an absence of acknowledgement or information about the whereabouts or fate of the victim, thereby depriving them of the protection of law. That's the concept. The OAS Convention also indicates that systematic disappearances is a crime against humanity, anticipating the definition of the 1998 Statute of Rome that so characterizes disappearances when they occur in a context of generalized or systematic attack against a civilian population and with knowledge of that attack. The conventions on enforced disappearance establish that this practice is not a political crime, thereby allowing for extradition. They also establish the right of States to institute extraterritorial jurisdiction, mainly to assert the right to prosecute these crimes even if they have not been committed in their territory—*if* the victim is a national of their country, the alleged perpetrator is a national of their country, or if an alleged perpetrator ended up landing in their country and they must either extradite or prosecute that person (*aut dedere aut judicare*).

Following all of these efforts and legal developments, in Chile and Argentina the issue of disappearances has been acknowledged and its criminal nature accepted by the whole society. And internationally, even for those people whose approach to human rights violations is that you have to “break eggs to make an omelet”—to use this tired and grotesque metaphor—the lesson is that this doesn’t pay, you will have the problem of the mothers marching, or whatever, for 30 years or more. So, they feel “It’s not worth it.”

In sum, in this field there has been a kind of victory in normative terms, in campaigning terms, in conceptual terms, and in terms of acknowledgement.

### **Dynamics between Human Rights Organizations and UN Bodies** Presentation by Margo Picken

The first UN General Assembly (UNGA) that I covered for Amnesty International was the thirtieth, in 1975. This was before Amnesty had established an office at the UN, which it did in 1977. The Vietnam War had ended with the fall of Saigon in April 1975; the Helsinki Final Acts were concluded in August 1975, marking US-USSR détente; and that followed closely on the Watergate scandal of 1974, bringing with it Nixon’s resignation, and of course, from a human rights angle, the 1973 coup in Chile was a landmark event for those concerned with human rights. This was the international context for the thirtieth General Assembly.

Amnesty’s priority in the General Assembly that fall was to secure adoption of the Declaration Against Torture. AI’s Secretary General, Martin Ennals, came from London in November and together we visited a large number of UN member missions, talking to them about getting the declaration through. And in fact, it did go through very easily with one minor amendment. Much more controversial was a proposal the US put forward to establish an expert group to study the nature and extent of torture and to discuss allegations with concerned governments. Amnesty felt strongly—as did some of the delegations that were taking the lead on the Declaration—that this initiative threatened to

derail the Declaration. It was a non-starter in 1975. Fortunately the US decided not to go ahead.

This was the General Assembly that adopted the well-known resolution equating Zionism with racism. That invited a resolution from the United States—Patrick Moynihan was US Ambassador at the time—calling for an amnesty for political prisoners. This, then, became a heated and major debate in the UNGA Third Committee, and all hell broke loose. Amnesty was terribly popular. I remember taking in copy after copy of AI’s annual report because all the delegations wanted AI’s annual report in order to criticize another country. Chile used our annual report to attack the Soviet Union, the Soviet Union used our annual report to attack...et cetera et cetera.

The years up until 1980 were really exciting. The human rights covenants came into force in 1976. The Human Rights Committee [i.e., the International Covenant on Civil and Political Rights treaty body] was established in 1977. We were very involved in its work. Actually the person who played a key role was Niall MacDermot, who was then Secretary General of the International Commission of Jurists. But Amnesty was always present at the Human Rights Committee sessions; we were always giving information to inform the Committee’s consideration of states party reports.

The Carter Administration was a mixed blessing for Amnesty. On the one hand, it took up Amnesty’s mandate as a centerpiece of US foreign policy, which meant that human rights and Amnesty’s concerns were given much more attention and had positive consequences. On the other hand, Amnesty was concerned that a superpower with multiple interests taking up its mandate could have negative consequences for its work especially in a Cold War context in which Amnesty had positioned itself as impartial and politically neutral.

*The Dynamic between Human Rights Organizations and the UN in the early years*

Actually, I don’t even think Amnesty thought about itself as a “human rights group” at the time. We worked very closely with church groups, with the World Council of Churches, for example, which was very

engaged at that time; and with the Quakers, who were very important, and also with the trade unions. And we worked with *all* the trade union confederations—The International Confederation of Free Trade Unions, the West; the World Federation of Trade Unions, the East, and the World Confederation of Labor, which was non-aligned. The environment for working on human rights during the Cold War was not easy, but some of the groups that were representing the Eastern bloc, as it were, like the World Peace Council or the Women’s International League for Peace and Freedom, were sometimes sympathetic to our concerns and could be very useful allies for Amnesty. They also had useful contacts for us, with governments from the East.

We interacted with multiple UN bodies, and with corresponding parts of the UN Secretariat where relations often depended on individual staff members. Our main contact was with the UN Human Rights Division, which was run by someone who was not very receptive, but the Carter Administration created *space* for sounder appointments and in 1977 Theo Van Boven was appointed. He was an extraordinary head of the Division, very open to non-governmental organizations and very keen to push the UN ahead on human rights. And that of course meant that our relationship with the Division changed. Sadly, then, the climate changed again when the Reagan Administration came in. Van Boven was dismissed—or resigned—early in 1982. His successor again was somebody rather gray who lacked Van Boven’s commitment. The landscape changed all the time, of course, depending on the larger picture, what was happening in the world. When the dictatorships in Portugal and Greece, for example, ended in the mid-1970s, delegates from those countries were passionate about human rights. I remember the Greek and Portuguese delegates—they were so active, so enthusiastic, and really supportive.

I want to agree strongly with Pepé’s observation that it is people who drive human rights. The non-governmental organizations, Amnesty included, have been absolutely crucial to the development of not only norms, but to initiating action on violations of human rights. Amnesty at the time began to supply the UN with information on countries and we were pushing the UN to act. After South Africa and Israel, Chile

was the first through the barriers at the UN, and then after Chile, slowly, we managed to get the UN machinery to work.

### **The Indivisibility of Rights and the Affirmation of ESC Rights**

Presentation by David Petrasek

Amnesty International, as you know, was not in the vanguard of work on Economic Social and Cultural (ESC) Rights. In this area, Amnesty was playing catch up. At the international level, other groups—Human Rights Watch (HRW) and the International Commission of Jurists (ICJ), for example—have done as much or more work in this area as Amnesty and in the case of the ICJ they have been a bit further ahead. It’s important to acknowledge that.

I’ll speak about those factors that influenced AI’s decision to work on ESC rights, both factors internal and external to the organization.

#### *Policy Considerations within Amnesty International*

First, there was the internal context—what was happening inside Amnesty. As you know, up until the late 80s, Amnesty had a prisoner-based mandate. There were some loose strands in AI’s work, but there was also an essential coherence around prisoner work. That began to change towards the end of the 1980s, and in the 1990s it began to change rather rapidly—through a process of the AI membership voting to add new areas of work to the mandate. We reached a point, I think, in about 1995 or 1996, where it was difficult to explain the intellectual coherence of the mandate. At the time, I held the position of “Mandate Adviser” within the International Secretariat, and in discussions within AI’s Standing Committee on the Mandate it became clear that there was no longer a principled or coherent explanation to say why we were working on one human rights issue but not another, beyond simply indicating that the membership had not (yet) voted to do so. In my view, this was *the* most important factor influencing AI’s move to ESC rights. Put simply, it had become very difficult to explain why we were moving forward in some areas and not others.

After the 1989 worldwide Human Rights Now! concert tour, Amnesty began speaking of itself as the “world’s largest human rights organization.” That messaging was embraced by the movement, yet it created a challenge and a contradiction. “If you’re the largest human rights organization, why aren’t you embracing all human rights?” I felt this contradiction very acutely following the 1995 ICM. It was clear that the process of incrementally adding human rights issues to the mandate would eventually lead to work on all rights. The AI sections and membership who were pushing change eventually saw the logic of making a leap to embrace all human rights, rather than waste time debating each new addition.

It is also important to recognize that during the period where this shift happened, Amnesty was led by a Secretary General from the Global South who had a strong interest in working on the full range of rights. Pierre Sane was very outspoken on the need for AI to begin work on the issue of economic, social and cultural rights. AI’s actual vote to take up the full spectrum of rights happened after Pierre left, but he had championed the process that led to that vote. His successor, Irene Khan, was also from the Global South and also had a very strong attachment to working on all rights. That, too, was important.

There was also a shift inside the International Secretariat, among the research staff. From the mid-90s there were many new researchers. In the 1980s, research teams had strongly resisted expansion of Amnesty’s mandate. The resistance wasn’t (usually) on intellectual grounds. Essentially, it was a workload issue and entirely understandable. But that shifted. From my work with researchers, by 1995-96 I saw that there were very good, young researchers who felt constrained by what the mandate permitted. They wanted to stretch out. So *inside* the International Secretariat itself a range of opinions was forming, and by 1997-98, there were as a strong movement within the Secretariat advocating work on the full range of rights.

AI’s work related to specific events also moved the organization in this direction. For example, in the context of work on the Bosnian civil war, 1992-94, AI researchers were newly permitted to take up some issues related to international humanitarian law. In that context, I remember press releases where we denounced the use of food as a weapon of war,

or starvation, or the destruction of schools. And the question arose: why would we work on food, health and education concerns in the context of war but not during peace? Intellectually, it was not coherent.

Externally, there were also several factors. Some academics criticized Amnesty's limited approach to human rights. Philip Alston, among others, was quite public in his criticism. My view, however, is that while such criticisms were recognized, they weren't a major factor in shaping Amnesty's policies. More important was the criticism from other international and national NGOs. The 1993 World Conference on Human Rights in Vienna *was* crucial because a lot of Amnesty people were exposed to it. They came away with a sense that Amnesty had fallen behind because everybody else was embracing universality and the indivisibility of rights. AI's banner in Vienna, raised high above the conference centre, said "All human rights for all"—indeed!

Mary Robinson's appointment as High Commissioner for Human Rights was also very important. Mary Robinson's very public and emphatic endorsement of economic and social rights in 1997 caused Amnesty to reflect on its position. And then, there was the 1998 "Battle of Seattle" protest against globalization—you have to remember the time!—and the Jubilee Campaign on debt that focused Oxfam and others on issues of global inequality. Rights language was being used in these contexts, in ways that we thought were sloppy and often incoherent. But the very fact that other NGOs were using human rights language forced us to think about the human rights angle and what we could contribute to the discussion. This broader NGO world was important as AI reflected on its limited mandate. Amnesty, of course, has a membership base, and its members were exposed to these developments—they saw it on their televisions. The youth groups, in particular, in many Amnesty sections seized on the issue—so the effect was amplified.

Finally, I will mention the role of AI sections regarding AI's decision to take up work on ESC rights. There was to some degree a North-South split as the debate progressed. It was somewhat messy and sometimes divisive. Interestingly, sections from northern Europe who had tended to champion mandate expansion in the 1980s tended to be the more conservative voices in the debate. But eventually everyone came on

board with the decision to move to work on “the full spectrum” of human rights.

### *Resistance and Obstacles to Taking Up ESC Rights*

With regard to resistance and obstacles to taking up ESC rights, I think there were three. First, there was an ideological opposition to working on these rights, that is, from those who doubted the validity or equal importance of these rights. That opposition existed but it was not a major concern inside Amnesty. Methodological concerns were a bigger problem -- could AI work on these rights in ways that were familiar and would have an impact? There were questions about the precise nature of the duties implied by these rights. These concerns persist and are real, and arguments about whether Amnesty was equipped to address them were significant, and remain so. The third set of reasons were perhaps more sociological in nature. Some people within Amnesty said, “Yes, yes, ESC rights are *rights*; yes, they’re important. But somehow working on these rights would ally us too closely to a political position or to social justice causes, in a way that will confuse our message.” The sense here was that ESC rights would lead Amnesty away from what it was really about as an organization. Whereas Amnesty had always underscored the importance of political impartiality, the fear was that to take up socio-economic rights would lead AI to take sides in political struggles and be forced to adjudicate between competing economic policies. For some within Amnesty, that seemed radically different than what we had done before. That concern persists, I think.

### *The Indivisibility of Rights*

As you know, I was involved in an advisory role in the design and launch of Amnesty’s current ‘Demand Dignity’ campaign. As conceived, the focus of that campaign would not be exclusively or even primarily on economic and social rights; the focus would be on the human rights of people in poverty—and the indivisibility of those rights. This in my view is the only way to advance the issue—not to allow the Cold War categorization of human rights to shape 21<sup>st</sup> century strategies for human rights campaigning. The current UN systems for protecting and enforcing rights work according to these outdated categories. Addressing this issue is the next great challenge. I think AI

itself is still struggling with the indivisibility issue. Some of those in the NGO world who have historically pushed the work on economic and social rights quite naturally want to carve out a separate area of work. If this is done without sufficient attention to issues of indivisibility, it might well prove a continuing obstacle to moving these rights forward. I see this dynamic within Amnesty, and moving beyond it is the next great challenge.

### **The Human Rights Movement and International Humanitarian Law**

Presentation by Kenneth Roth

International humanitarian law (IHL) has been around for well over a century, and the International Committee of the Red Cross was the treaty-designated body to deal with IHL issues. Although other human rights organizations did not use IHL as a basis for their advocacy work, very early in our history Human Rights Watch began to take it on.

I think the first human rights organization to refer to humanitarian law was actually a Salvadoran group. The context was the El Salvadoran war, in the 1980s. The San Salvador Archdiocese had a legal aid group known as *Socorro Jurídico*, which was severely criticized by both the Salvadoran and the US government for reporting only on government abuses. Of course human rights law, as we all know, addresses governments, not others. This presented a problem because it was very easy to portray *Socorro Jurídico* and others as biased. How can you have conflict abuses on both sides, but you're only reporting on one side? So the Archdiocese dissolved *Socorro Jurídico* and created *Tutela Legal*. *Tutela Legal* used humanitarian law to report not only on the Salvadoran government abuses but also on rebel abuses by the *Faribundo Martí Liberation Front (FMLF)*.

#### *How Human Rights Watch Came To Rely on International Humanitarian Law*

Human Rights Watch—at that point called Americas Watch—did the exact same thing. Beginning in 1982 or 1983, we began referring to common Article 3 of the 1949 Geneva Conventions. The 1949 Geneva

Conventions still mainly dealt with governmental abuses. But within Common Article 3 it imposed certain basic duties on rebel groups. We saw Common Article 3, the so-called convention-within-a-convention, as supplying an overarching, general principle. That, for us, solved the problem of perceived partiality. We could effectively say we were neutral and we were looking at the most serious IHL violations on both sides. That became our standard procedure. In any war around the world, Human Rights Watch always reports on the worst violations of both sides.

In the 1980s, in addition to El Salvador, the most immediate application was in Nicaragua, where we were looking at both Sandinista abuses and Contra abuses but it became the standard way we operated everywhere. Part of our motivation was the extraordinary harm done to civilians or non-combatants in the context of war. There is much death and violence that is difficult to address through a pure human rights approach, focusing exclusively on human rights law.

It's important to note that Human Rights Watch never faced the conceptual limitations experienced by Amnesty, which had started off with a focus on custodial abuses. Human Rights Watch was born through a group of publishers and writers who were concerned more broadly about the health of civil society and the extent of censorship. Obviously imprisonment played a role in those kinds of human rights violations, but from the start we were concerned with a whole range of non-custodial abuses as well. The fact that in war the killing instrument may have been an airplane meant that you couldn't easily apply the standard concepts of custodial abuse. You certainly couldn't characterize the act as an execution, and even assassination could be difficult. You had to look at concepts such as indiscriminate bombardment or disproportionate impact on civilians, and these were by definition non-custodial. That didn't pose a problem for us at Human Rights Watch because we didn't start off with a prisoner orientation to begin with.

Quite apart from the neutrality issue, we were also driven to IHL by the fact that human rights law didn't provide much guidance about what constituted legitimate forms of violence in time of war. And here I should stress that we were always very careful not to be a peace group.

We weren't against war per se. We never took up the issue of who is the aggressor, who is the defender, who was at fault for starting the war, who's in the right, who's in the wrong. We always did stay neutral on those issues. But, nonetheless, what does the right to life mean in the context of a war where you kill people? The International Covenant on Civil and Political Rights doesn't really provide an answer to that question. So we needed another body of law apart from human rights law. Now, this was not as radical as it might seem. If you think of the crowd control context, a similar issue arises. The human rights movement has become quite comfortable referring to police standards that impose certain duties on the police—in terms of when it is appropriate or not to resort to lethal force. These standards are not conventionally considered part of human rights law, yet they are not seen as problematic. One way to understand IHL is that it simply fleshes out the right to life in a war context, and imposes various duties that in essence are pretty simple. You need to distinguish combatant from non-combatant. You need to take all reasonable precautions to avoid harm to non-combatants. You need to refrain from using non-discriminate means or methods. And you need to ensure the impact on civilians is not disproportionate to the anticipated military advantage. It's a little more complicated than that, but those are the core concepts, which, frankly, are not all that difficult to apply.

In addition to the means and methods of warfare, a number of other issues arose in El Salvador. One question concerned the displacement of civilians as part of a counter-insurgency strategy. Was it appropriate for the Salvadoran army to be bombing villages as part of their counterinsurgency effort—draining the sea in order to get the fish? This strategy involved a deliberate effort to displace civilian supporters of the rebels so the Salvadoran army could go after the rebels who remained in the territory. There were also questions of targeting. Is it appropriate to aim at a civilian sympathizer of the rebels? Is it appropriate to aim at a political official who may have sided with the rebels? These questions turned on the definition of who is a combatant and who is not a combatant, which again, required examination of the full body of IHL.

And I should say here that Human Rights Watch always took a fairly flexible approach to interpreting IHL. Common Article 3 of the

Geneva Conventions supplies basic principles but doesn't provide all the answers. We would thus typically look to instruments like the first Additional Protocol to the Geneva Conventions, which technically applies only to international armed conflict but sets forth a number of principles that were widely accepted as customary international law. Basically, we applied those provisions to internal conflicts—recognizing that this wasn't technically right from a legal perspective but we weren't going to court. These were not legal arguments needed to convince a judge. Rather, we needed to refer to a set of norms that would persuade public opinion that certain military conduct was wrong. If we could do that successfully, it didn't matter whether the law technically applied or not. Very frequently we would use this broader principled approach to push the boundaries of the law, even where the law had not caught up.

In recent years, international tribunals have done the same thing that we were doing at an informal level in the 1980s. This has become a less radical proposition than it may have appeared in an earlier time, which I'll get to in a moment. It's the approach we used with the Landmines Convention and the Cluster Munitions Convention. It has been a very deliberate approach all the way along.

Now, one last reason we felt it was important to rely on international humanitarian law was that the traditional human rights law framework looked exclusively at how a government treated people within its own country. You needed IHL if you were going to look at how a government acted outside of its territory. This was less of an issue in the early- to mid-1980s than it became with the Panama invasion to get Noriega. It became even more important in the first Gulf War with the kind of military means that we saw deployed there. Human rights law didn't help you address that situation. We needed IHL if we were going to make arguments to address the United States and the other major Western militaries, which we thought was important to do.

In sum, these were the reasons that Human Rights Watch took up international humanitarian law. As I think many of you know, our decision to rely on humanitarian law was very controversial in the 1980s. There were in fact a variety of reactions from other parties, ranging from skepticism to hostility. Amnesty was skeptical; the Ford Foundation was quite hostile; the Lawyers Committee for Human

Rights was actively hostile. And just as a historical note, the Ford Foundation commissioned Pepé to write a paper about this. My sense was that the aim of this was to show this was a bad idea and to rein us in. I don't know, maybe not. I've gone back to review that paper, and it provides a great snapshot of the arguments, which can be inferred in editorial inserts from Amnesty and the Lawyers' Committee.

*Objections to Human Rights Groups Referring to IHL*

There were several arguments against human rights groups referring to international human rights law. First, there was the argument that the standards of IHL were too vague or too complicated to apply using the standard human rights methodology. My sense is that this argument was really about *campaigning*. I acknowledge that these are complicated issues to convey to a mass public. Not all of them, of course. The public does understand the idea of indiscriminate warfare and they understand what's wrong with targeting civilians. Some of the IHL topics are not that difficult. But there was a reluctance to build a case on complicated arguments if you're planning to use them for campaigning purposes. This was less of an issue for Human Rights Watch because we tended to operate much more through the press or through influential governments, rather than through membership. So the problem just didn't stand in our way.

Secondly, there were objections to the difficulty of fact-finding in a war context. I don't want to minimize those concerns, but here again, I think the methodological differences between Human Rights Watch and Amnesty took us in different directions regarding IHL. As you may know, HRW doesn't ask permission to go into places where we conduct investigations. We are perfectly comfortable sneaking in. We conduct investigations all the time without seeking permission. While it can be dangerous, it is not impossible. Despite the passions of war, despite conflicting accounts, it is possible to talk to eye-witnesses and you can figure out what happened. I think time has proven that fact-finding in the context of war is entirely doable. Back in the 80s, people weren't sure. Given Amnesty's policy of seeking advance permission to conduct research, they often had difficulties arriving on the scene if they didn't have governmental permission. The idea of trying to correspond by mail or telephone to try to figure out what had

happened must have made the problems of investigating abuses in a war situation seem insurmountable. At Human Rights Watch we overcame such problems by sneaking in.

Thirdly, the issue of reciprocal abuses came up. The concern was whether it was a good idea to report on rebel abuses because that might provide the government an excuse to say, “Well, if they’re committing violations, so can we.” That was a legitimate concern and it’s one that we get even today when Israel says, “What do you want us to do, when Hamas...?” But it’s an easy enough question to answer by resorting to the mantra that violations by one side don’t justify violations by the other. That is an idea the public understands. While this is an ongoing concern, it’s one that is surmountable.

There also was a concern--much more in the past than these days--about legitimizing rebel groups by addressing them. The question here was whether the application of IHL to a rebel group in and of itself constituted a political act, with the effect of raising the stature of the FMLN (Farabundo Martí National Liberation Front) or the Contras or whatever rebel group. Again, the Geneva Conventions are quite explicit that this is not the case and we often recite the relevant section of common Article 3. This has not turned out to be a major concern. We occasionally get criticism from governments that we are legitimizing rebel groups or that we are sympathizing with rebels by talking to them, but it’s easy to explain our rationale for doing so. In the first place, the law itself makes clear that’s not the case. And secondly, what would you want us to do, ignore the violations the rebels are committing? This criticism just doesn’t get that far.

There was a real concern about the vulnerability of local NGOs, that if HRW or the international movement took on rebel groups, it might obligate local NGOs to take on rebel abuses and endanger them. This was based on a conception of the local NGOs and the requirements for carrying out work in rebel territory. The belief was that the only way that NGOs could conduct an investigation in war zones was to portray themselves as rebel sympathizers or sympathizers at least with the population the rebel group was representing. It turns out that that’s not the case. It is perfectly possible to conduct an investigation by presenting yourself as neutral. Human Rights Watch does this all the

time and it is an accepted thing. Again, the idea that local NGOs would be endangered—either for not reporting on rebel abuses, allowing the government to portray them as politicized, or for reporting on rebel abuses and thereby making it harder for them to appear sympathetic to the affected population—it just didn't work out that way. Local NGOs today routinely report on both sides.

Finally, there was concern that international humanitarian law required a context of confidentiality reserved for the Red Cross. The irony of this argument is that where Red Cross confidentiality really matters is in the treatment of prisoners—and of course, Amnesty had no trouble dealing with prisoner issues. ICRCs confidentiality is irrelevant to the conduct of warfare. It is not as if it is confidential, for example, that an aerial bombardment has occurred. That kind of information is not shared by militaries anyway. In such cases, the only way to figure out what happened is to conduct an investigation. When HRW took up such issues, the International Committee of the Red Cross at first wasn't quite sure what we were doing. Very quickly, though, they became an extraordinarily close ally. They recognized that while institutional constraints meant that they couldn't be speaking out about these things, it was great that we could. To this day there is recognition that we have different roles to play.

### *The Impact of IHL on Advocacy Practices*

One final point about IHL, generally, concerns the ways in which the use of IHL has affected our advocacy work. Obviously, we still do advocacy in the traditional sense of dealing directly with the relevant governments, and we obviously build relations with relevant militaries. But what has been most interesting is that up until the time that human rights groups began taking on IHL, militaries loved the fact that this was a special domain. There were only a handful of people in the world who had any idea what this specialized body of law meant and it was very comfortable for militaries because military lawyers interpret IHL in a way that is deferential to the military. What began to change was the knowledge and understanding of the broad categories, such as indiscriminate warfare. Military lawyers had been perfectly comfortable interpreting landmines or cluster bombs as compatible with the prohibition against indiscriminate warfare. To challenge that

interpretation, it took human rights groups going to the press and building public recognition that a landmine sitting on the ground is completely dumb, with no idea who will step on it: that's an indiscriminate weapon. Likewise, a cluster bomb used in a populated area that spreads out hundreds of sub-munitions and is impossible to fix on a military target is by definition an indiscriminate weapon. The public grasped that very quickly. The military hated this intervention by human rights groups because suddenly they had lost their monopoly over the interpretation of humanitarian law. The military now had to deal with groups that had developed quite a bit of military expertise and which they used through the press to convince the public that the nice comfortable definitions propounded by the military lawyers were not justified. As a result, we now have a much more pluralistic environment in which these terms are interpreted. And that's all to the good in terms of defending human rights in warfare.

### **Discussion: Emergence of New Concerns**

Human rights scholars Ann Marie Clark, Julie Mertus and Kathryn Sikkink responded to the formal presentations made by the practitioners in Session I. Their questions and comments directed attention to collaborative relationships, normative considerations, and the means by which human rights organizations gauged. In reply, practitioners provided insights into the role and relevance of international law in human rights advocacy, reflections on organizational dynamics and the development of the UN human rights implementation machinery, and noted challenges that arise as efforts are made to develop work in new areas.

#### *Interplay Between Historical Context and Actions by Individuals*

Many of you spoke about the importance of political context—the Vietnam War, the Cold War and so forth. But you also spoke about the importance of people driving change. What is it that makes people able to bring about dramatic change at a particular moment in history? What was it that made the context receptive to your message? What made

your message resonate at a particular moment, allowing you to help create dramatic change in the world? (**Kathryn Sikkink**)

- **José (Pepé) Zalaquett:** I will address the question of how it happens that people bring about dramatic change. In most societies, even in the most dramatic of circumstances, most of the people tend to their own business. As we have seen going back even to Ancient Greece, that's always going to be the case. I would say that the active people are always going to be a minority, but they have power to expand their message or set the agenda or disseminate their opinions. The active people make a change through a multiplier effect. The multiplier effect happens when you work properly—the serious press will take your word as evidence and will disseminate your message. And that is how human rights groups gained influence.
- **Kenneth Roth:** To the question about what difference people make, let me offer two answers. The first has to do with how we work within the human rights movement. One way to conceptualize our work is that we mobilize information: in essence, we use resources to collect and mobilize information in a way that makes a difference. And one way to think about an organization like Amnesty or Human Rights Watch is that we have resources that allow people the luxury of becoming experts. And that is very much a people-business. It is remarkable how quickly one can become the world expert on something. Very few people have the luxury to spend all of their time, looking at human rights in, say, Equatorial Guinea. Once you master the relevant information and you're seen as an authority, you can very often move policy. That is one of the ways in which individual people make a difference.

The other element concerns individual staffers. People who make the biggest difference are the most single minded. I love people who are driven; something really bothers them and they're just going to keep working on it. Those are rare people, and they're a small minority of any staff. I think, for example, of Steve Goose when it comes to land mines or cluster munitions, or Jo Becker around child soldiers, or Reed Brody around the Hissein Habre prosecution. These are people who

are completely fixated, and when you get people like that, they get things done. There really is nothing like it. If one person armed with information has access to resources and wants to spend their life mobilizing allies and governments and pushing an issue forward, they can make an enormous difference. There are many examples like that.

- **Nigel Rodley:** How the moment matters—that’s a really interesting question. Torture, for example, was an issue that transcended the Cold War, at a time when everything else was dominated by that concern. Both sides of the Cold War could coalesce on their reaction to the problem of torture and their perception of possible solutions. This was especially true as the treaty was being negotiated. During discussions about cruel, inhuman and degrading punishment, I recall a moment when the Soviet representative was trying to mediate between Amnesty and the UK government! The association of Chile and torture was extremely important. It was important for Amnesty: the Chilean coup took place while Amnesty was holding its International Council Meeting (ICM) in 1973, and Sean McBride made sure that the ICM acted vigorously on the issue. And it was important in the UN. The resolutions on torture and Chile throughout the 70s—from ’73, ’74, ’75—were all virtually consecutive on each other. The two issues were being negotiated at the same time, and with each other in mind. In the same way, the death of Steve Biko under torture affected the atmosphere. And I’m sure that contributed to the fact that there were more cosponsors for the Torture Convention than there were cosponsors for the Declaration Against Torture.
- **Margo Picken:** Regarding Ken’s comments about El Salvador, *Tutela Legal*, etc.—I wanted to note that the context for discussions about political balance and impartiality was set by the arrival of the Reagan administration. The Administration basically supported the Central American governments and started attacking human rights groups, including Americas Watch, the Washington Office on Latin America, and Amnesty, by saying, “You’re not reporting in a

balanced way. You're just reporting on the government, you're not reporting on the terrorists or the rebel forces." It was a very tense time because many of these attacks were personalized. I remember that Joe Eldridge, Juan Mendez were under huge pressure. It was in that context that we had our discussions about balance, what did balance mean, what was truth, etc. And such discussions were taking place everywhere. **[Pepé Zalaquett interjects, "Just to complement that: the Left was also saying, 'You have to report on the Contras, too.' So it wasn't only one-sided." Ken Roth adds, "To take the commentary one step further, Americas Watch was launched in part because Jean Kirkpatrick came in as Reagan's ambassador to the UN with this extraordinary distinction between totalitarian and authoritarian governments. Helsinki Watch was mostly dealing with communist countries in the Soviet Bloc, and to show that we didn't buy into the double standard, Americas Watch was set up to deal with human rights problems coming from the right-wing governments in Latin America."]**

### *Networks and Allies*

All of you mentioned allies, but some of you spoke a little more specifically about them. For example, Margo mentioned the World Council of Churches, the Quakers, and labor groups as allies at the time, and Ken mentioned *Tutela Legal* as a local human rights group, and then also the International Committee of the Red Cross. I would like to hear from others about who you considered to be core network members. It doesn't have to be core network members within the human rights community. Who were your closest allies, whether among governments, in intergovernmental organizations, or other NGOs? (**Kathryn Sikkink**)

- **José (Pepé) Zalaquett:** To put the question of allies in context, the human rights movement developed first internationally, then locally, then regionally. That may not appear a logical progression, but reality is not usually logical, you know! Amnesty International and the International Commission of Jurists were among the first major international human rights organizations, and eventually Human Rights Watch joined them as a very important player. Local

organizations developed next, tracing the path of political repression. In Latin America, human rights groups emerged first in Brazil, in 1968, then in Chile in 1973, and so forth. In Central America, human rights groups developed in the late 70s because that's when the situation became more difficult there. These national groups were followed by intermediate, regional organizations, such as the Inter-American Institute of Human Rights, which were developed to coordinate or service groups on a regional basis. That has been the progression. For human rights organizations at all these levels, allies were always, first and foremost, informed public opinion. That's the reality. If you could find a way to appeal to opinion leaders, they would respond. The press would pick up on the views of opinion leaders, and the press is an extraordinary ally: they can disseminate your findings and influence politicians. And then in many countries, grassroots activists would also, as constituents, influence politicians. In this way, a "soft power movement" developed.

Many of you will remember a discussion in the aftermath of the Cold War, about whether we were living in a Hobbesian world or in a Kantian world. By building institutions [such as the International Criminal Court], were we moving toward Kant's idea of perpetual peace and the rule of law worldwide, or were we still in a Hobbesian realm where terms are dictated by the strongest? Obviously, it's not either-or, but a matter of degree. In the context of that debate, soft power—meaning pressure through persuasion or embarrassment—is stronger than it may seem because of the repercussions that follow its application. A country that fails to comply with certain human rights standards could see its bond rating downgraded by Moody's or some other risk assessment organization, for example. There are other consequences, such as shaming. When Austrians elected a semi-fascist prime minister, several European countries showed them a warning card. These things matter. But if you want to make international arrests against people who are still holding power, you need a different type of ally, someone (one or more countries) who is willing to commit blood and treasure [i.e., force] to the task. Despite what international lawyers (including

myself) may believe, international law as a whole must be considered soft law because it is not backed by force.

- **Margo Picken:** I was recently rereading the speech that Mümtaz Soysal made when Amnesty was awarded the Nobel Prize in 1977. It's interesting to look back. Amnesty at that time had 165,000 members in 107 countries, and 2,000 adoption groups. It was actually quite small, but its outreach in the world was, I think, very significant. Amnesty gave a lot of attention to building constituencies, its membership. Adoption groups were at the heart of Amnesty's work, and that was terribly important for creating a worldwide constituency for human rights. Amnesty's national sections would work with other forces in their societies, so that it wasn't only Amnesty getting involved in these issues. And of course the churches and trade unions we worked with had a worldwide membership, and they had people on the ground. What we were trying to do was build a following for human rights. At the UN, when the situation in Central America or Chile or Argentina arose on the agenda, there were also national groups who became very active. There was Jaime Barrios from *Chile Democrático*, and then for Uruguay Wilson Ferreira and Juan Ferreira, for Argentina Emilio Mignone. There was Jose Ramos Horta from FRETILIN for East Timor, Rafael Moreno for the FMLN in El Salvador, and Frank La Rue from Guatemala. They found a home in the Church Center near the UN and were very important in getting the message across. Some may have also had partisan political agendas, but it didn't matter so much because the main thing was that they were there speaking out against grave violations of human rights.

I also want to say that you find allies in unlikely places. Within the UN world, allies were drawn from the Secretariat or member state missions, or from NGOs, depending on whether they wanted to be involved and what they could contribute. I remember, for example, Ambassador Mansour Kikhia from Libya. Libya was ruled by Colonel Gadhafi, and the situation was not easy. Kikhia was one of four or five lawyers in Libya, and he personally felt very committed to human rights issues. The way he found to contribute was to spearhead a resolution

proclaiming the year of the disabled. He worked hard for that and got it through. This was in the latter part of the 70s; it was a personal commitment and a very genuine one. He left the government in the early 1980s and helped to organize the Arab Organization on Human Rights. And he had a very sad fate. In 1993, he was “disappeared” from a hotel in Cairo. This is just to say that there were unusual, unexpected alliances. We worked behind the scenes with Kikhia to help develop this initiative but obviously neither he nor we advertised this relationship.

- **Nigel Rodley:** On the question of allies, first of all, a general point: organizations tend to go through phases. One phase, in the early days, is to seek as many allies as possible because the organization feels weak. In another phase, the organization tends to stand aloof because it feels it needs to consolidate itself and establish its own separate identity. And then in a third state it's fairly relaxed about these things. During the time of the torture exercise [the early-mid 1980s], we were in that middle phase in which we tended to feel a need to stay aloof, certainly on country work. It would have been unthinkable in the mid-80s for Amnesty to have a joint country mission with the ICJ followed by a joint report— as we did in respect of Uruguay in the mid-70s. But, joint country work does happen again now. Standing aloof was basically a phase we went through.

But even in that middle phase we had allies. Two points. First of all, Amnesty didn't have a problem with cooperating with others on general issues, so on the general issue of torture, and then the Torture Convention, there simply wasn't a problem of cooperation with other organizations. We had an informal group on torture, which included of the Commission of the Churches on International Affairs (CCIA), the ICRC (International Committee of the Red Cross), the ICJ (International Commission of Jurists), and a very special Australian diplomat, the late Mike Landale. We met periodically to track what was happening with the Torture Convention, plan strategy and tactics and so on. But it was an informal arrangement and there were no official records,

especially since the ICRC wouldn't have been happy for it to be otherwise. Sweden and the Netherlands were obviously the lead governments on the torture issue. They had been from the time of the first resolution in 1973, which, I'm sure, happened as a result of Amnesty's campaign against torture. And then, of course, as Margo says, there were often just informal connections of people in the UN Secretariat, which could be extraordinarily important in terms of finding out what's going on and finding out how to change what's going on if that's what you need to do. And that was also true with diplomats as well.

- **David Petrasek:** I think Nigel's observation about organizational phases and allies is very insightful. When you're trying to establish yourself, the challenge is to get everyone on board. And then there's a period in the middle when you're recognized and defend the status quo, and then you get more relaxed. I think that's a very good description of Amnesty's experience. Just as an anecdote, in the 1980s Amnesty described itself as working on prisoners, with a disclaimer that it was "not a prisoners' rights organization." Similarly, it said it worked on refugees, but was "not a refugee rights organization." The language was negative, and it's telling. By contrast, you see a quite relaxed attitude toward allies now.

Amnesty's presence in the Global South has had an impact on the organization, though its presence there is not pervasive by any means. In an era of globalization, AI wanted to ally with groups that were working on issues that it felt ill equipped to address, and on which it was constrained by its mandate. It was no longer satisfactory to limit AI's partners in, say, New Delhi, to a group that called itself something like the Lawyers for Human Rights, with funding from the Ford Foundation. Such partnerships were fine, and easy: AI had been doing that for twenty years. But what about this group called the Assembly of the Poor, which was demanding an end to forced evictions and could convene a million people? To work with them represented real change. I'm opening a big topic here, but inside Amnesty, this consideration was very powerful. Conversations like this took place in AI's

International Secretariat during the period I described in my presentation, when I was regularly meeting with researchers or advocacy people who had returned to the Secretariat after three or four weeks in the field. They wanted to be working with these new groups. They argued that it was no longer good enough to depend on our traditional relationships with—for lack of a better word—people who looked and acted like AI and used a familiar methodology. This was a new dynamic, and it affected AI's approach to alliances.

*Amnesty International and Human Rights Watch*

It was interesting to hear a lot about Amnesty and about Human Rights Watch, but we didn't hear about their interactions with each other. Perhaps you could speak to that. **(Julie Mertus)**

- **Kenneth Roth:** Interactions between Human Rights Watch and Amnesty is a big topic, so let me just start the conversation here. Human Rights Watch grew up when Amnesty was completely established: Amnesty was the big kid on the block. We were always very conscious of the fact that it made no sense to replicate Amnesty. Amnesty had a massive membership; we never sought such a membership. It's expensive to build a membership and it wouldn't have been efficient for us—it just made no sense for us to pursue that route. Over the years, we have seen ourselves as a complement to Amnesty. It's a big movement and there are different ways of getting things done. At this point, I think that there is a very healthy, complementary relationship between the two organizations. We regularly exchange information and do things jointly. Our funding is quite different, which is really healthy. Human Rights Watch gets very little from small contributions, and Amnesty gets relatively little from large contributions. So we have somewhat different target audiences. We can discuss this more, but as a kind of summary of the relationship, while we're both very much pushing in the same direction, we have somewhat different methodologies and different focuses that make, in my view, a very effective one-two punch. Relations over the last several years have been

quite good. The only real competition, I think, is in the press, and even there, the competition is not significant because we tend to be cited for different things.

- **Nigel Rodley:** I don't have much to add to the comments about AI and Human Rights Watch, except perhaps to say that early on AI was reasonably comfortable with the complementarity that Ken was referring to. It was also comfortable in the sense that it saw—or at least some of us in AI—saw Human Rights Watch as having most influence in Washington, which is where it was probably needed. The presence of HRW in the US allowed us to maintain a slightly less focused, broader, international perspective. At the same time, Amnesty did feel that it was in competition for media coverage. As a result, a lot of things changed at Amnesty, not least because of that competition and the sense that it was failing in that area or that it couldn't react fast enough.
- **Michael McClintock:** I was the Amnesty researcher on Central America and half of South America from '78 to the mid-80s, and I interacted all the time with the Human Rights Watch, the Americas Watch people. I would be on the doorstep ringing the bell of the Colombian Human Rights Commission contact, and there's Jamie Fellner. And I would occasionally compare notes with her and others in New York and London. But there was also some institutional level of interaction. I met Aryeh Neier periodically, including in Quito, where he had called a meeting of NGOs to compare notes on what we were all doing. There were people from about ten countries, and it was one of the best little meetings I've ever been to. I recall another similar meeting in San José, Costa Rica, about division of labor and the different way we did things. At the researcher level, the fact that Americas Watch was doing reports about every six months on violations of the laws of war by both sides in El Salvador complemented the work we were doing at Amnesty, where each researcher had multiple country assignments. At the time I was worried about 200 prisoners of conscience in Peru as part of my brief. I couldn't work full time on El Salvador, and HRW's

humanitarian law work there was really necessary. I think we had a very good relationship regarding work on Latin America. It was tremendously constructive, and it helped me and others develop the Amnesty work on extrajudicial executions and conflict situations.

- **Curt Goering:** I think the relationship between Amnesty and Human Rights Watch has progressively evolved. There have been times when research staff in AI's Secretariat on a particular country have coordinated with Human Rights Watch research staff to discuss each others' work plan to avoid duplicating efforts and to try to see if any gaps could be covered. There could be further improvement, but over time there's been an effort to better coordinate work, thinking through our particular roles and value that each brings to the issue. That doesn't happen systematically enough and sometimes how well it works depends a bit on personality. Speaking more broadly, the main human rights organizations—and some smaller ones—are also trying to define more deliberately areas where each of us can cooperate together and add value. In the U.S., we now have a human rights leadership coalition, comprising the major human rights organizations in the US. Members identify issues around which we can jointly advocate or on which, we can collectively push the Administration or another government. We look for issues that would benefit from a common approach, such as high-level meetings with the Secretary of State or the National Security Advisor. We try to have quarterly meetings in order to identify those opportunities and to discuss strategy.

### *Norms, Law, and the International System*

One theme I found interesting in some of the presentations was the idea that you can begin with principles and apply them to develop law. Obviously, when we're talking about legal norms, a lot of expertise is required. That raises a question. My understanding is that, early on, Amnesty didn't conventionally admit in public that it had been involved in drafting norms, but that seems very different now. And previously, AI didn't make claims about its effectiveness on Urgent Action cases—

but now you can find such claims on the its international website. So I wonder, is this just a reflection of changing times—or has there been some real change in policy or approach? (**Ann Marie Clark**)

- **Margo Picken:** I think that Amnesty genuinely felt that there were multiple forces that were working together; and therefore, it properly did not want to say that we (Amnesty) were the ones who produced a result. It was so obvious that we weren't the sole actor, that we were only one of many forces. So Amnesty's approach wasn't secrecy or false humility; it was a reflection of what we considered to be the reality. [This comment prompted a brief exchange among several participants. **Ann Marie Clark:** *"So you're saying it was not really a political..."* **Nigel Rodley** responds, *"It was intellectual honesty. It was what we perceived to be intellectual honesty."* **Susan Waltz:** *"So, the question may be, 'Why is Amnesty today—perhaps—taking credit more openly?'"* **Ann Marie Clark** adds, *"Partly, but my impression was also that Amnesty in its publications was not always forthcoming about its level of involvement."* **Margo Picken:** *"In the drafting process?"* **Ann Marie Clark** replies, *"Yes."*] **Margo Picken** resumes: Nigel and I used to have some quarrels about this which we don't need to rehash, but in the drafting, too, there were many people who were involved. If Amnesty had said we were the ones, then others who were also making a very important contribution would have justifiably felt, well, why aren't we being acknowledged? There were many people involved in the effort, it wasn't just Amnesty. Amnesty obviously played an important role. Nigel, you might want to come in on this.
- **Nigel Rodley:** On the issue of AI's involvement in negotiations of the Torture Convention, we weren't being secretive about drafting or non-drafting. There was a general internal AI policy in the time we are talking about that staff weren't supposed to be involved in drafting treaty text. We just weren't supposed to do it. So when we did do it, it was either in an individual capacity or as an exception to the rule. And there were indeed some exceptions, as for example when the ICJ and Amnesty jointly proposed text for Article 16 of the

Torture Convention. Amnesty in that case had to do it because otherwise it wouldn't have gone forward, as Niall MacDermot (ICJ) didn't want to do it on his own. But as I indicated before, sometimes even if one had a text that could be a solution, putting it forward directly wasn't necessarily the most effective way of achieving the objective. The most effective way of achieving the objective would be to get somebody else to do it, perhaps somebody with a vote! If your objective is to make things happen, who puts forward a text is purely a tactical question. It's unlikely that you can trace a particular text to a particular NGO or a particular individual. The record won't really reflect any participant's real contribution, be it an NGO, be it a government, or whatever.

*Normative Development and the Importance of International Law*

Another question concerns intentions about building norms and law. I'm interested in your thoughts on a current debate about the effect of treaties and what they signal to domestic activists. Are international NGOs primarily focused on the international public? Or are norms developed with domestic publics in mind, boosting the expectation that their work will matter? What do you think the international community can do and how much it can do? **(Ann Marie Clark)**

- **Kenneth Roth:** My experience has been that non-lawyers have an excessive regard for the law when it comes to the human rights movement. So let me speak as a lawyer here for a moment, to say that the way I define our movement is that we tend to operate in places where the judicial system isn't working. That's not an absolute position, because sometimes human rights groups do file lawsuits. But—to use a domestic analogy—when the local equivalent of the ACLU can get involved and is able to sue perpetrators, we tend not to get involved. Human Rights Watch—and the human rights movement as a whole—tends to work where the courts are not working. That, of course, doesn't exempt any country from our scrutiny. In the United States, the courts aren't effective around prison conditions, immigration issues, or gay and lesbian rights, and they have been very weak on

counterterrorism. There is always a range of issues for which you can't rely on the courts. But insofar as you can rely on the courts, we tend not to get involved; that's just a division of labor. So, in general, the way we work is to generate pressure on the political branches of government rather than making legal arguments to the judicial branches of government. The law can play a useful role in guiding public opinion because public opinion tends to give deference to the law. But law is not sufficient. For example, Alberto Gonzalez was able to call some of the provisions of the Third Geneva Convention on the treatment of prisoners of war quaint, and few defended the convention in its totality because some of its provisions do seem overly technical. So, simply having provisions in the law is not sufficient for human rights protection.

On the other hand, the failure of law doesn't preclude us from action, either, if we can convince the public through appeals to principle or just to their sense of right and wrong about the wrongfulness of certain governmental conduct. We can generate pressure on governments even if the law isn't with us, or if the law is not developed. So, in a sense what really matters is, can you shame the government by exposing its conduct? And if you can, you can move the government regardless of the law. The law's not irrelevant to that, but the law does not define the limits to our activity.

- **David Petrsek:** I agree with almost everything that's been said about the role of law. I would just add that for advocates, international law should be considered as a tool. You're against torture not because there's a convention against torture but because you're against torture, and you use international law to advance that. That's the right way to approach international advocacy and international law. But there's a tendency within the international human rights movement, occasionally—because we're worried about proposals for new standards, or about people reinterpreting them—to get confused and start defending the rules for their own sake. And so the message is confused. For example, some of the provisions of the International Covenant on Civil and Political Rights are badly worded. The list of non-derogable rights is inadequate. We've

used the Human Rights Committee [i.e, the ICCPR treaty body] to expand through interpretation the list of non-derogable rights. We weren't bothered about the fact that the list was what it was: now we've moved that forward. But when we come to economic and social rights, we get stuck. We all talk about progressive realization and maximum available resources, but those words were drafted in the 1950s. If that doesn't work for us as a concept, we should work to redefine that as well. International law is a tool: it is not near as sacrosanct as we claim, nor should we be adverse to working to redefine it so that it better suits the task at hand.

- **Michael McClintock:** Standard setting isn't only about treaties. Pepé mentioned the Wingspread Conference in 1980 on "disappearances." That conference brought together the NGO world and the Amnesty world to develop the conceptual basis for work on "disappearances." That sort of think-tank/brainstorming meeting has played a really important role in the development of the larger architecture of human rights protection. It wasn't just the Wingspread Conference. In 1982 there was a major conference in the Netherlands on EJE's (*extrajudicial executions*, also known as *political killings*), which again brought together the brains of what we now call the human rights movement. Such meetings led to some very practical developments, including the Minnesota Protocol on investigating suspicious deaths, which was David Weissbrodt's baby and adopted by all of us. It took a long time to develop the Minnesota Protocol, but that has now become a nuts and bolts tool and is used by NGOs, governments, and the U.N. Before that, Amnesty was working on multiple tracks, as were other organizations. There was the Stockholm Conference in 1977 on the death penalty. That meeting actually had a workshop, a side meeting, on extrajudicial executions—a term that Amnesty had first used in a 1976 report on Guatemala. But the Stockholm Conference also led to things like the 1984 ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty. That document established practical guidelines and included investigative elements. And then there was the Second Optional Protocol to the ICCPR,

on abolition of the death penalty. Though it didn't come through until 1989, it was an extension of the long, slow, steady push on the death penalty, which Amnesty, the Quakers, and many others have been part of. So, I agree we don't want to be too proud of ourselves, but I think there is a bit of false humility because there has been steady progress. Underlying it all—in work on “disappearances,” on torture, on the death penalty, on EJE, and on refugee protection—has been massive action at the grassroots by NGOs, by the Amnesty organization, and by human rights professionals, which deals with case work and with public information.

- **Stephanie Farrior:** It's notable that some non-treaty standards were developed not through the UN human rights mechanisms, but through the UN Congress on the Prevention of Crime and Treatment of Offenders. For a time that was a very important forum for legitimizing human rights standards in the administration of justice, producing such instruments as the Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles on the Independence of the Judiciary. Eventually, though, that forum became less open to developing human rights principles. When proposed standards went through the General Assembly's Sixth Committee instead of the Third Committee, as happened, for example, with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, we faced different challenges. Many Sixth Committee members were diplomats not versed in the situations faced by the disappeared, for whose protection many of the principles were being developed. We needed to help educate those not familiar with essential matters being addressed by the Body of Principles such as the reasons for setting out certain criminal procedures regarding incommunicado detention and habeas corpus or *amparo*.

*The Relationship between Human Rights Practice, Normative Development, and United Nations Implementation Machinery*

- **Nigel Rodley:** Another consideration is evolution or revolution in the development of standards and

implementation machinery. Margo made the very interesting point about Amnesty being wary of the American resolution at the UN in 1975. To put this in perspective, Amnesty wasn't itself trying to develop standards on torture; it was satisfied with Article 5 of the Universal Declaration of Human Rights. What it really wanted was *implementation*. That was what we had called for in Amnesty's campaign against torture. At the time, if we had had to make a choice between a standard-setting instrument like the Declaration Against Torture or a mechanism for investigating torture, we'd certainly have gone for the investigation mechanism. But we didn't pursue this idea because we understood that it really wasn't going anywhere at that time. The world wasn't yet ready for it. In 1975, the world was only ready to start its *first* investigation of torture, in relation to the specific situation in Chile. The thematic human rights mechanisms [i.e., thematic working groups and rapporteurs] didn't yet exist. The torture issue thus started with standard setting. Implementation followed, with the position of Special Rapporteur on Torture being set up in 1985 a year after the Torture Convention was adopted (1984).

Jump five years from 1975 to 1980, and with the issue of disappearances the sequence is reversed. Work on disappearances started with the working group, i.e., with implementation. The normative, standard-setting instruments—the declaration, the convention—come later, for two reasons. First, because the issue of disappearances brought all the normative difficulties that Pepé mentioned in his presentation. But secondly, disappearances had potential to be a real breakthrough issue in terms of human rights practice, so there was urgency about implementation. And so the first thematic mechanism was created, the Working Group on Disappearances. Of course once you have your first mechanism, others follow: the Special Rapporteur on Executions, the Special Rapporteur on Torture. All of a sudden, what was an ad-hoc development begins to look like the seed of a system, and with the system comes a totally new set of expectations. Implementation now appeared much more viable, and reversed the traditional routine of standard setting first and implementation coming later (if ever, if you're lucky).

- **Margo Picken:** Yes, it's interesting how some of the mechanisms really get set up. Some of you may recall that the UN Working Group on Human Disappearances was set up to avoid dealing with Argentina as a country-specific issue. I think that's interesting. It often happens that developments that turn out to be good are initiated for bad reasons. [**Nigel Rodley** responds, "*Like the ICTY, the ICTR, and then the ICC. Sure, same thing.*" **Pepé Zalaquett** adds, "*Margo, would you remember that the avoidance of dealing with Argentina was due to the fact that the Soviet Union was friendly with the Argentine government?*" **Margo Picken** replies, "*Precisely.*" **Pepé Zalaquett** continues, "*They received grain from them. And by the way, the Argentinean Communist Party—which was very pro-Soviet—wasn't the greatest opponent to the Argentine military government either.*" ] **Margo Picken** resumes: Exactly. And this is at a time when Argentina was being held to account by the Carter administration, which was effectively saying they were not going to tolerate the generals. Then ironically, the Soviet Union came in and supported Argentina in full. So, there can be odd twists to some of these developments.

Unfortunately, I'm not sure about the effectiveness of thematic mechanisms. Certainly my experience in Cambodia was mixed. (The UN mandate in Cambodia was one of the strongest ever given to a UN human rights operation with an in-country office and a visiting Special Representative of the Secretary-General for human rights in Cambodia). Special rapporteurs would send confidential cables to the government on a particular case but they were often not in full enough command of the known facts and they didn't really follow up properly. And so I felt sometimes that the special rapporteur mechanism risked contributing to impunity. It's a very mixed bag, and how it works out depends a lot on who the rapporteur is and the support he or she has. They have global mandates but are totally under-resourced in terms of the assistance the secretariat is able to provide. They can sometimes undermine what we're trying to do.

- **Stephanie Farrow:** On the normative issue of accountability, a momentous step was the trial of the torturers in Greece. I still

have on my shelf Amnesty's 1975 report, *Torture in Greece: The First Torturers' Trial*. I was living in Greece soon after the junta fell. It was an amazing, vibrant time. You could feel freedom in the air; it was palpable. The idea that the previous regime would in fact face trial, in that country, at a time when many were still worried about the colonels taking over again was extraordinary. And the threat was real: in fact, I was in Syntagma Square that February in 1975 when the colonels tried to take over again; it was touch and go for a few days before the attempted coup failed. This makes the fact that the torturers were tried an even more historic event in moving toward accountability for torture.

*The Torture Convention and Provisions for Universal Jurisdiction*

I would appreciate hearing more about provisions for universal jurisdiction in the Torture Convention. Where did that idea come from, how did it find its way into the draft convention, and how did it manage to stay in the convention? (Kathryn Sikkink)

- **Nigel Rodley:** The concept of universal jurisdiction almost certainly came from the International Association of Penal Law, and Cherif Bassiouni. And I think before that, it emerged in the 1973 Amnesty International conference, which called for making torture a crime under international law. Conference participants had the idea in mind that the notion of crime under international law carried with it provisions of universal jurisdiction. Just where that came from in the conference, though, I don't quite recall. I'm not sure whether it was in one of the papers prepared for the conference, or whether it was a participant who brought it forward—I just don't recall. But the next step was a meeting of the International Association of Penal Law that took place in Syracuse just before the Swedes introduced their draft to the UN Commission on Human Rights. The Association came up with *a* draft, not *the* draft as Cherif Bassiouni sometimes recalls. And the draft that came out of that meeting—which was probably proposed to the meeting by Cherif and his colleagues—did contain quasi-universal—try or extradite—provisions in it. My hunch is that it

was the participation of the then-Swedish Attorney General in that meeting that probably led to the Swedish draft incorporating the notion of universal jurisdiction (as the Swedish draft was otherwise based on the 1975 Declaration Against Torture). I can't demonstrate that, but it's my hunch. Certainly the idea that there should be universal jurisdiction over certain kinds of violations of human rights wasn't absolutely new. It existed in the Apartheid Convention, but that was not a very critical convention, unfortunately, and to some extent it was discredited. On the other hand, the notion was growing of trial or extradite as an issue in hostage taking conventions and things like that. And indeed, it was the language from the hostage taking convention that was imported into the Swedish draft.

Nevertheless, it isn't automatic that we think of individual criminal responsibility for violations of human rights, and it's not for all violations of human rights that we think of individual criminal responsibility. When exactly was the moment at which the thought came to somebody that torture is one of those human rights in respect of which it is appropriate to establish individual criminal responsibility at all, never mind the universal jurisdiction part—of that I'm not sure, and it might be worth trying to research.

[**Ken Roth** interjects, “*So this is where we should return to IHL, because the concept of universal jurisdiction was already included there.*” **Nigel Rodley**: “*Yes, it's true that it was there in IHL.*” Then **Pepé Zalaquett** adds, “*And furthermore, IHL is the only proper universal jurisdiction. The other forms contained the Torture Conventions—*”] **Nigel Rodley** resumes: I'm using shorthand. That's why I say trial or extradition, quasi-universal jurisdiction, just so as not to bore people with the different kinds of alleged universal jurisdiction. So, yes—it's true that there was an international humanitarian law dimension. And of course, the idea of war crimes was integral to the notion of international humanitarian law.

*Further Comments on Human Rights Law and International Humanitarian Law*

- **David Petrasek:** I'd like to make an observation from the presentations this morning on international humanitarian law (IHL). I think it bears on the question of the impact of human rights on the world. Ken, you noted that Additional Protocol I of the Geneva Conventions, adopted in 1977, set standards on means and methods of warfare (not covered in any detail the original 1949 Conventions), and the human rights movement was able to pick that up. But it is interesting to note that the proposal to modernize the rules of war in this way came not from the ICRC. It came from human rights groups, and notably the International Commission of Jurists. In fact, the ICRC fought the idea for two years, in the 1960s. At the time, leading up to and following from the 1968 World Conference on Human Rights, Amnesty was working with the ICJ to *demand*, because of Vietnam, that these conventions resuscitate the Hague rules from 1907 and *do* something with them. The ICRC initially fought the initiative because they thought it could open the Geneva Conventions and things could end up worse. (All the classic arguments about why you shouldn't change an international treaty.) It was the ICJ, really—Sean MacBride and I guess later Niall MacDermot—who argued tenaciously. Amnesty was a bit player, I think, but within AI there were ICM resolutions in relation to this. In the end, the ICRC called an international conference as a kind of containment strategy, and because it feared the debate moving forward in the UN Commission on Human Rights. That conference then led to the development of the rules that are now in the Additional Protocols, which are very inadequate in all kinds of ways, as we know. But, twenty years later, the story is fascinating, though I don't know what I draw from it. But it is a little addition to the story.
- **Nigel Rodley:** I'd like to add just a slight nuance since it's come up, regarding Amnesty's own experience of international humanitarian law: Amnesty had at least one experience very early on, possibly at the time of the 1973 Middle Eastern War, when it actually issued a report on violations of international

humanitarian law by Syria and Israel. It wasn't a happy exercise precisely because it allowed the violations of each side to detract from the violations of the other. It didn't work terribly well. And in 1982 before his year in Amnesty's legal office, we did also commission David Weissbrodt to do a study on AI and international humanitarian law. That study first of all identified the overlaps and the discrepancies. And second of all, it basically set Amnesty on the road to invoking humanitarian law when it seemed appropriate. But still, Amnesty was going to be primarily addressing governments rather than armed opposition groups that hadn't reached the level of parties to a non-international armed conflict.

- **Eric Stover:** I was very interested in Ken Roth's remarks about the slowness or reluctance of some human rights organizations—namely, Amnesty International and the Lawyers Committee for Human Rights (now Human Rights First)—to engage with international humanitarian law at the onset of the Balkan wars in the early 1990s. At that time, I was Executive Director of Physicians for Human Rights (PHR) and it was only natural for us to become involved in investigations of alleged war crimes, especially because of the need for forensic investigations of mass graves. The most immediate mission of medical and forensic experts is to try to draw factual conclusions no matter what the circumstances are. Whether the evidence leads to a war crime or other cause is irrelevant. For this reason, it is important to have medical and forensic professionals integrated into any investigation of alleged war crimes or violations of human rights that entail killings, torture, or other forms of physical and psychological mistreatment.

### *Conceptualizing and Recognizing Success*

What does success mean for the human rights movement? How do you measure success when it comes to human rights issues? Is it, an affirmative act (something changes based on what you do), a negative act (a government refrains from undertaking some activity), or a normative development such as a new treaty or change to an existing treaty? How would you characterize success? (**Julie Mertus**)

- **José (Pepé) Zalaquett:** A few short comments on how to measure human rights success. I remember that we used to say, “If you are thinking of establishing a link between your input and a concrete output, you are in the wrong business.” You throw an arrow into the air, and it falls to the ground you don’t know where. Success is measured by the number of arrows you throw up in the air. It is most rare for governments to acknowledge that they are stopping a repressive practice or releasing a person because of the pressure of human rights groups. Success is measured by the amount of pressure or mobilization that is generated, not so much by traceable results. The results come about eventually, but in most of the cases you cannot establish a direct line between your work and the results.
- **Kenneth Roth:** I agree with Pepé here. Ultimately, success is obviously changing behavior on the ground. But in terms of trying to evaluate or assess projects as they’re progressing, that’s too distant a goal. That’s the ultimate goal, but you need a measure before that. So we actually don’t use the term *success* because how can you say it’s a success if the torture (or other abuse) is continuing? So instead of success we talk about impact. And the impact, as Pepé suggested, is our success in putting pressure on the relevant actor. We know from experience that there is a degree of rationality to human rights violations. Every government is tempted to violate human rights because it’s a way of getting rid of pesky opposition or shutting down a troublesome newspaper, for example. The role of the human rights movement is to increase the cost of human rights violations. To the degree that government leaders are rational, they will at some point decide that it’s just not worth it. The way you raise cost is by putting pressure on the government. And you do that by shaming them in the press, by dealing with powerful allied governments that condition aid or diplomatic visits, or you can do that by threatening prosecution with international tribunals. There are various ways you can increase the costs. Thus I measure impact by our success in applying pressure. It won’t necessarily lead to

the change in governmental behavior, but historically we know over time it tends to. That's the way I judge the success of a project that's underway at Human Rights Watch.

- **Nigel Rodley:** I agree with both Ken and Pepé in respect to the issues of success. The measure of success depends on the goal, and anyway you can't prove the result is due to your efforts even if you get it. Some number crunchers are doing interesting work trying to develop correlations between NGO and/or IGO initiatives and results. But I think they are having a pretty hard time. I also happen to be of the Zhou Enlai school of history. When he was asked how successful he thought the French Revolution had been, he said, "It is too early to tell."
- **David Petrasek:** With regard to the issue of success, as far as what has been said about individual cases and particular campaigns, I won't add to what's been said. But I do think that we need to be able to judge the 50-year history of the human rights movement against a vision of what an international legal regime that offers protection would look like. I don't think we have that vision. It was fascinating to talk about disappearances and torture because for both of those issues you start from defining the norms. If something is abhorrent and wrong, you get agreement on that, and then you begin monitoring, with a special rapporteur. One step further, and you get prevention. (For example, the Convention Against Torture included a number of preventive aspects, including secondary responsibilities for other governments and universal jurisdiction.) And then you get to punishment, such as the International Criminal Court. And then finally we get to protection, or at least a proximate protection where you're actually in a country, as with the committee that Wilder sits on, the Committee on the Optional Protocol to the Convention Against Torture. That Committee can actually go to a country and through its presence can possibly change something because it's on the ground. Prohibition, monitoring, prevention, punishment and now protection—these are all the different things we've been advancing, but we don't, in my

view, have a sense of the whole. Should the effort be on all of these fronts or should we now be focusing on in-country protection? If so, why on earth do we need a world court for human rights, as is currently being proposed by many advocates? We don't have a shared sense of the future of the human rights regime. For example, do we have enough special rapporteurs, or should we all be focusing on more proximate forms of protection? Should we think of mechanisms like Wilder's committee as the next generation of success? We need to be looking at this whole picture.

- **Margo Picken:** I would like to follow on David's remarks just to say that I do think it's important for us to be more strategic when it comes to what we want and can obtain from the UN. And I don't think it's something that can be decided by a small group of people. There should be a much larger discussion about how we go forward. It shouldn't be a conversation within Amnesty or Human Rights Watch; it's a bigger thing.
- **Wilder Taylor:** With regard to success. I agree with what has been said: you measure the quality of what you are doing. But in the period we've been discussing, one thing we spent a lot of time doing, more or less successfully, was trying to put things on the international agenda. That was very important for us, and we considered it a true success when things went onto the agenda. And I will list the main topics: Impunity went onto the agenda; disappearances went onto the agenda; and human rights defenders went onto the agenda. When those issues went onto the agenda—the UN agenda, or to a lesser extent, the OAS agenda—two things could happen. Either you galvanized a public debate, or you started one. Usually it was the former: you galvanized power around a debate that had already begun. Putting something onto the agenda was a first sign, an embryonic expression, that something that was going to happen. The issue might take shape in a legal form sometime in the future, perhaps through a treaty or guidelines or something similar. Once the issue went onto the agenda, you set up a program and started building your strategy. Because there was a strategy. I think it was different in the 1970s. But in

the 1990s, we did strategize on a ten-year horizon. We said, “This is going to take ten years.” Usually it took fifteen. But that’s what we used to say, “Let’s get ready for the long ride.” I spent my seven and a half years at Amnesty putting things on the agenda! But that was also true at Human Rights Watch, where we did the same thing with the issue of child soldiers. All the coalitions—for example, the International Criminal Court coalition—worked exactly the same way. It required a huge amount of effort to place issues onto the agenda.

*Expanding Into New Areas of Work*

- **Curt Goering:** I want to elaborate a bit on the question of indivisibility of human rights and the internal debate as Amnesty moved into that work. As David mentioned, this was not just a matter of Amnesty’s mandate, but also very much a question of relevancy. When Amnesty was a prisoner-oriented organization, we had a more or less formulaic approach to Amnesty’s work. We focused on certain civil and political violations and sought to apply our mandate to every country. Yet sometimes, even often, our mandate didn’t allow AI to address what many human rights activists in their own countries considered the most serious abuses. Often it appeared that Amnesty’s prisoner-focused work was less relevant than other issues to the human rights actors on the ground. Their views had to be factored in, too, especially as AI’s own role was changing as more rights groups formed in countries. The challenge for Amnesty as a major human rights organization was how to both continue its “traditional” work but make changes that would broaden its approach, taking into account thematic concerns and ESC rights that were important human rights issues in their own right and priorities for civil society partners but which may not be prisoner-related issues.
- **José (Pepé) Zalaquett:** In response to David’s presentation, I was worried to see AI get involved in issues over which it did not have mastery. It led some key commentators—such as Garton Ash and David Ignatieff—to question Amnesty’s authority. Amnesty’s accumulated capital of legitimacy was

such that a few cracks wouldn't bring the edifice tumbling down. But cracks appeared, and there is reason to be cautious, because with the passing of time credibility can be diminished. I still remember a situation when I went to South Africa, during the period of its transition to democracy. I don't know how Amnesty International came up with its position, which was that first you have to prosecute and convict, and only then can you consider a certain degree of amnesty. The South Africans couldn't understand such a ridiculous policy in practice, but they didn't raise their voice because this was Amnesty International speaking. Amnesty was ill equipped to make the change from opposing governments to proposing policy, which is the stance that was required after the Cold War. And because of that, it has been under severe strains to maintain the standing it once had.

- **Nigel Rodley:** I'm not sure that I would necessarily agree with Pepé that it was ridiculous for Amnesty to question a system of juridical impunity in South Africa, though, of all situations where amnesties for human rights crimes had at that time been enacted, South Africa comes closest to in fact having an impunity system that gives you accountability. Most of them gave impunity and non-accountability. At least the South African system provided for accountability before there was impunity, juridical impunity. This was after Pepé and I had left the IS, where we had disagreed vigorously at the time. I guess my position prevailed, but maybe we should rehash it at some other time.
- **Stephanie Farrior:** It was highly significant that the death penalty was identified as a human rights issue. When I joined Amnesty in 1977, AI's ICM had just decided to begin actively working against the death penalty—not just declaring itself opposed to capital punishment, but actively campaigning to abolish the death penalty. And what did the organization do? It sent out people to educate, and raise the awareness of, Amnesty members. AI-USA did lose a large number of members because Amnesty adopted that position on the death penalty. But Amnesty developed some excellent, very

accessible and instructive materials, and sent representatives to speak with many, many local groups about the human rights dimensions of the death penalty. If you have a movement, when do things really change? It's when the people, ultimately, begin to push. They have a vision and political will, and they push the envelope and push the agenda. Identifying the death penalty as a human rights issue, then laying the groundwork to have the movement, the membership, understand the issue and then take it on, really made a difference.



## Chapter 3

### Accountability Beyond States

During the second session, panelists discussed the process through which human rights practitioners began expanding the culpability for human rights violations beyond states to include responsibilities of non-state actors including rebel forces and corporations and extending state responsibility to include the failure to protect its citizens from private actors. The panelists included Wilder Tayler, Christopher Avery and Stephanie Farrow. The session was moderated by Carrie Booth Walling.

#### International Human Rights, Rebel Forces and Non-Government Entities

Presentation by Wilder Tayler

The treatment of non-governmental actors is a very complex subject and involves a mix of ethical, political, and legal dimensions. This discussion took place in the 1980s and 1990s, and it was almost contemporary with the discussion on impunity—though somewhat curiously, these two very passionate discussions within the human rights movement were largely unconnected. Amnesty International (AI) began using the term NGE (non-governmental entity) in the mid-1980s, and I have been asked whether this was the first explicit effort to apply international human rights law to groups or non-governmental actors. I think the question should instead be “was this the first attempt *to deal* with non-governmental groups or entities as a *human rights problem*?” This is an important modification because the question of whether international human rights *law* applies directly to non-governmental groups is a current and unsettled debate, and this was not the debate of the 1980s and 1990s. (The current debate mostly concerns armed groups.) The truth is that the most interesting part of the debate about the application of international law lies ahead of us, whereas the broader questions of whether and how to *deal with* the

human rights problems associated with non-governmental groups is something that we can examine

As I mentioned, there were both ethical and political dimensions to the question, and these dimensions were intertwined. By the late 1980s members of the human rights movement were becoming increasingly aware that they would be running a risk if they did not begin to deal with non-governmental entities—and that risk involved both ethical and political considerations. The work of human rights organizations, then as now, was typically focused on violations by the state. The risk in not dealing with NGEs was that we would give the impression that we did not sufficiently value the suffering of individuals who were victims of NGEs—that their suffering could evoke compassion, but it would not prompt us to take action. This was problematic—and arguably unethical—because it was inconsistent with a principle that had become rooted in many segments of the human rights movement at that time: the victim’s rights approach. The victim’s right approach placed the individual who had suffered at the center of concern and things then moved around that individual victim. The problem with our approach at the time was that, in reality, NGE victims were obviously not the center of concern, because no campaigning activities, for example, were taken on their cases. There was a genuine concern about this among Amnesty’s membership in its national sections, but the human rights movement as a whole—and Amnesty in particular—had been developing techniques to confront state terror and not acts by NGEs or terrorist groups. As a result, the focus, the leitmotif, of their work was human rights violations committed by the state. Looking back, this makes sense, even in relation to the victims. The vast majority of human rights violations—then and now—continue to be committed by state agents. This is important to remember, even while we engage in this important part of the debate.

Until the problem of NGEs came up for discussion within Amnesty International and Human Rights Watch (HRW) began investigating abuses in Central America, the human rights movement had been relatively quiet on the issue. Although Amnesty started using the term and developed some basic policies for commenting on abuse by NGEs in the early 1980s, reports on abuse by non-state actors were sporadic and reactive. This approach dominated the world of standard-setting as

well. During the late 1980s and early 1990s the idea that human rights law should apply to non-governmental entities never actually made it into human rights standards. This is still true today. For example, fairly recently, a provision of Article 2 of the 2007 Convention on Disappearances identified the issue of disappearances by non-governmental entities or private individuals as a matter of municipal (domestic) law [i.e., not international human rights law]. The article does not even use the word “disappearances”; it refers to “acts contemplated in Article 1...” and sends you back to the definition article. That language was agreed after a debate on this issue during which Russia, Turkey, Sri Lanka and Peru (the latter breaking ranks with other Latin American countries) pushed to make the convention not applicable to non-governmental entities. The NGOs (non-governmental organizations) were quite discreet on that discussion—they passively allowed it to take place without making major interventions. In fact, the NGOs were themselves divided on the issue. Organizations like Amnesty and ICJ (International Court of Justice) were on one side, reluctant to include NGEs, and Human Rights Watch was more open to discuss the idea. Together with Manfred Nowak, I would personally have liked to see a more generous provision on NGEs. (I was actually representing HRW on this at the time, and Nowak was serving as a UN expert on disappearances and acting as advisor to the UN Working Group drafting a treaty on Involuntary and Enforced Disappearances.) I thought the outcome was very restrictive.

This debate—which played out in negotiations over the 2007 UN Convention on Enforced Disappearances—started several years ago, and as is often the case, the dynamics were readily manifest within the UN. Thus, one important development on the question of NGE accountability for human rights was the adoption by the UN of a resolution in 1990: “Consequences of Acts of Violence Committed by Irregular Armed Groups and Drug Traffickers that Affect the Enjoyment of Human Rights.” There are a number of things to notice here. For one thing, the resolution avoids the term *human rights violations*, and instead uses the phrase *affect the enjoyment of* when speaking about human rights problems. The resolution also groups together armed opposition groups and drug traffickers in the same package. The sensibilities were rather different than today. Colombia, Peru (to a lesser extent), Sri Lanka, Turkey and India pushed for this. Afterwards,

the UN Special Rapporteurs were asked to bear in mind the adverse effect that acts of violence could have on “the enjoyment of human rights” as they carried out their mandates. At the time, most NGOs and Western states opposed the original wording of the resolution, which was more directly related to *human rights violations*, and the convoluted language is the result of compromise. It wasn’t until later that the concept of human rights violations by NGEs became accepted by some. It continues to be controversial, however.

Although I worked at HRW for several years, I will skip over the experience of HRW, as Ken has already spoken to this issue and my knowledge of the early debates is mainly from the archives and from talking to those who were on some of those early missions. First, however, I want to draw attention to some of the early arguments for and against applying human rights law to NGEs because they were reproduced later, in different stages of the debate. When Human Rights Watch started conducting missions in Central America, they were looking at the actions of non-governmental armed groups like the Contras and the FMLN (Farabundo Martí National Liberation Front), as well as the governments. At the time, some argued that attempts to hold non-state entities accountable to international law might dilute the claim that upholding human rights was primarily a responsibility of *states*. This same argument was later raised in the UN, and from that context, it appears to have been a genuine concern.

Secondly, there was also a pragmatic fear that research on NGEs would involve serious problems with security. In practice, however, those concerns seem to have been allayed by the practical experience of Human Rights Watch researchers. It is difficult to find reports better than those written by Human Rights Watch on Southern Lebanon and the Eastern Congo. And that research on NGEs caused some headaches, but without casualties.

Finally, there were concerns about the vagueness of IHL (international humanitarian law) standards. This was a concern in the initial debate about NGEs, and it is arguably even more important today because concerns about vagueness extend to states as well as NGEs. Obviously, when you apply international humanitarian law, you apply it to both sides, not just to non-governmental entities. I emphasize this point

because in recent years the West has begun to push the boundaries of IHL, arguing for broader scopes of targetability. This is particularly worrisome given the amount of killing that can already take place and is considered permissible within the bounds of IHL norms. I predict that the time will soon come when we in the human rights movement will have to reconsider how we use IHL. In that regard, I want to draw attention to the current debate over the definition of “direct participation in hostilities.” Attempts are being made to broaden the scope of lawful targets to include civilians or individuals who are not actually fighting or participating in hostilities. Such individuals could be targeted, and killed directly. In effect, the civilian standing next to a fighter (even one who is not participating in the battle) would be considered collateral damage. That is of great concern to us.

These, then, are the arguments and considerations raised in the discussion about applying human rights law to NGEs. I turn now to the experience of Amnesty International. Amnesty took a different path than Human Rights Watch with regard to NGEs. As a general approach to its work, Amnesty understood itself as working on individuals and basically holding governments accountable for very specific violations. That is not to say, however, that suffering by individual victims at the hands of non-governmental entities was not a matter of concern for Amnesty. It was a matter of concern; it was just not a matter of *equal* concern. Within Amnesty, the issue was further complicated by a distinction the organization made between NGEs and QGEs (quasi-governmental entities). (I still remember Claudio Cordone’s first efforts to explain the concepts to me!) Through the 1980s, AI did address QGEs—entities that held territory or had a certain degree of control over the population—but only in a discrete way. Amnesty’s classical techniques of mass mobilization and membership action, for example, were not used to pressure them. This changed in 1991, however, for a variety of reasons. In the first place, Amnesty at that time was undergoing a review of its mandate, which ultimately served as an instrument for changing Amnesty’s internal policy on NGEs. (Pepé—who served on the Mandate Review Committee—had an influence on this process.) It was during this mandate review that the distinction between NGEs and QGEs was eliminated. Amnesty formally decided to recognize that human rights suffering caused by acts against individuals in contravention of fundamental standards of

humane behavior that are perpetrated by political non-governmental entities would be a matter of concern for the organization, and thus could be worked on by Amnesty researchers and campaigners. At the same time, though, Amnesty's ICM decision stated that "AI should continue to regard human rights as individual rights in relation to government authority." The latter statement was a reaffirmation of the old orthodoxy in relation to human rights law. On balance, though, the decision extending from the 1991 mandate review opened the door for Amnesty to take specific actions related to NGE abuses.

The challenge then became to explain the policy change to the world outside Amnesty. Neither NGEs nor governments responded favorably to the shift. NGEs felt somewhat let down because Amnesty had for a long time worked on behalf of victims of government torture and killings who were sometimes associated with an NGE, and now Amnesty positioned itself to oppose the actions of these NGEs. More interesting was the reaction from armies. I remember that the armies, and the governments, of particularly Colombia and Sri Lanka disliked the policy because they understood it as providing an element of recognition for the NGEs, *who were their opponents and whom they saw as illegitimate insurgent groups*. It was very interesting that after years of receiving letters from governments complaining that Amnesty was not working on NGE human rights violations, when the organization actually started working on them we got a reaction against the policy by governments. They argued that Amnesty had elevated the status of organizations that they considered bandits, thugs, terrorists, and the like. From NGOs there was a mixed reaction that varied by location. In Sri Lanka, local human rights groups accepted Amnesty's new approach but did not adopt it for themselves, with the eventual exception of one NGO in Jaffna. In Colombia, civil society organizations mostly opposed Amnesty's shift in policy. This was a common position at the time in Latin America: except for organizations associated with the Catholic Church, which generally tended to take a broader view, people did not understand why Amnesty wanted to actively oppose abuses committed by NGEs.

The policy Amnesty adopted in the early 1990s, allowing it to address human rights violations by NGEs as well as governments, remains in

place today. I believe that it was a good move by the organization and one that has been relatively successful.

### **The Development of Arguments for the Accountability of Corporations for Human Rights Abuse**

Presentation by Christopher Avery

I am going to try to give a quick survey of what I will call the “business and human rights movement” and standard setting in that arena. Progress in this field has been somewhat messy. It has not been a linear process and the human rights movement has not always been in the driving seat. The business and human rights movement has been led by a series of events, personalities and coincidences. Nonetheless, the human rights movement has always kept the issue moving forward—driven by the hard work of committed people and the public outrage that has built up against abuses by corporations.

There is a tendency to regard business and human rights as a recent development, but its history goes back quite a ways. I’ll start with the emergence of the OECD (Organisation of Economic Co-Operation and Development) Guidelines for Multinational Enterprises in 1976. This move by Western governments reportedly was not the result of a push by the human rights movement but instead a reaction against the UN Conference on Trade and Development (UNCTAD), which was drafting a code of conduct for multinational corporations at that same time which made the West very nervous. At the time, there was talk of a new international economic order, criticism about the power of multinationals generally, criticism of the role of multinationals in Chile and in relation to sanctions-busting in Rhodesia, and criticism of the role of multinationals in South Africa. The move by the OECD to adopt these guidelines in 1976 was seen as a defensive move.

In 1977, an interesting document emerged: the ILO (International Labour Organization) Tripartite Declaration of Principles concerning Multinational Enterprises. Article 8 of this declaration states that governments, employers, and trade unions must respect the entire Universal Declaration of Human Rights and the International

Covenants. It was a declaration not just about labor rights, but about all human rights. This was consistent with the ILO's approach: that labor rights could not really be protected unless all human rights were protected.

Fundamental labor rights are articulated in the Universal Declaration and the two Covenants; if you look at the human rights movement historically, trade unions have always been part of that movement. Trade union and labor rights work focused on companies has been going on for many, many decades. So read broadly, the business and human rights movement goes very far back to the start of the trade union movement.

In the 1970s, 1980s, and early 1990s there was not an organized business and human rights movement. Efforts were ad-hoc but important, and tended to be around specific cases of companies generating outrage, for example: the role of multinationals in South Africa during the apartheid period; the involvement of United Fruit Company and the U.S. Central Intelligence Agency in the Guatemalan coup in 1954; the role of some multinationals in the Chilean coup in 1973; and the reported participation of local managers of Ford conspiring with Argentinean security forces to detain and torture trade union members in the 1970s. Tracy Ulltveit-Moe, former Latin America researcher at the International Secretariat of Amnesty International, recalled that Amnesty worked on a case in Guatemala in the late 1970s involving a Coca-Cola bottler alleged to have been complicit with Guatemala security forces and death squads in the killing of trade unionists. While Amnesty International was not at that time working programmatically on business and human rights per se, it may have directly approached Coca-Cola at that time.

These events were the prelude to the outrage that occurred in 1984 when the catastrophe at Union Carbide's Bhopal pesticide plant in India killed thousands. In 1996 a lawsuit was brought against UNOCAL (Union Oil Company of California) alleging that the company knew or should have known that human rights violations would result from its joint venture with the Burmese Government to build a pipeline that would be guarded by Burmese security forces. In 1999, massive protests took place when the World Trade Organization

(WTO) met in Seattle. Two important initiatives were undertaken soon thereafter: 1) development of the UN norms; and 2) the International Council on Human Rights Policy report, “Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies.”

*The Development of the UN Norms*

The “Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights” were drafted under the auspices of the United Nations. Many assume the idea of drafting the Norms came from David Weissbrodt, the member of the UN Sub-Commission on the Promotion and Protection of Human Rights who ended up leading the initiative. According to David Weissbrodt, the idea to draft the norms came from his Senegalese colleague on the Sub-Commission, El Hadji Guissé of Senegal. El Hadji Guissé contacted David Weissbrodt to suggest that their Sub-Commission working group address the issue of multinationals and human rights. David Weissbrodt suggested that the working group should draft some standards on the subject before undertaking other work relating to multinationals. El Hadji Guissé suggested that David Weissbrodt take the lead in the process of drafting the standards. David Weissbrodt started the drafting process in 1998, initially without much involvement of human rights NGOs. Over the years of drafting, however, more and more NGOs became interested and began participating in the discussions—along with business representatives, government representatives and others. The NGOs that participated extended beyond Amnesty International, Human Rights Watch and the International Commission of Jurists to include other NGOs not previously thought of as being part of the “human rights movement” at the United Nations: Oxfam; Christian Aid; Save the Children; Greenpeace and others. The “human rights movement” was broadening to include development and environmental organizations. The norms were approved by the UN Sub-Commission in 2003, and were considered but not adopted by the UN Human Rights Commission in 2004 as explained below.

*The “Beyond Voluntarism” Report*

During the same period that the norms were being developed, the International Council on Human Rights Policy was drafting a report called, “Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies.” David Petrasek and Nick Howen played a key role in the drafting of this report. According to Robert Archer, then the Council’s Director, of all the Council’s reports this one was among those that had the most impact in an enduring and explicit way because NGOs got hold of it and used it, and because the report addressed some of the complicated legal issues that had previously been holding NGOs back. The report opened the way for NGOs to push forward without fear that they would be fundamentally blocked by international law arguments. Also during this period, Human Rights Watch was drafting some excellent reports including one on Enron’s complicity in human rights violations in India and another on the complicity of oil companies in abuses in the Niger Delta. In 2003 Amnesty International produced an excellent report on human rights concerns relating to BP’s Baku–Tbilisi–Ceyhan pipeline project.

*The Establishment of a UN Special Representative on Business and Human Rights*

When the UN Sub-Commission’s “Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights” reached the Human Rights Commission in 2004, the Commission expressed its appreciation to the Sub-Commission, saying that the norms contained some useful elements and ideas for consideration, but the Commission did not adopt the norms. Instead, governments brokered an agreement to create a Special Representative of the UN Secretary General on Business and Human Rights. Professor John Ruggie was appointed to this post. Professor Ruggie’s focus has not been on “hard law” standard setting, rather on developing a framework and a set of guiding principles. Ruggie’s framework includes the following: 1) the state duty to protect human rights including by regulating companies; 2) the corporate duty to respect human rights; and 3) the victims’ right to remedies. From the outset Professor Ruggie emphasized that he was aiming for incremental and pragmatic progress

and not for hard standards; he declared the “draft norms” to be “fundamentally flawed.” Ruggie and his team have held a large number of consultations, issued a large number of studies, and solicited a great deal of written input during his mandate as Special Representative.

[Postscript: On 16 June 2011, the UN Human Rights Council endorsed Special Representative Ruggie’s “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework.” In the same resolution, the Council voted to establish a working group on business and human rights “consisting of five independent experts, of balanced geographical representation, for a period of three years, to be appointed by the Human Rights Council.”]

*Recent NGO Activity on Business and Human Rights*

While business and human rights work has progressed in many ways over the past five years (2005-2010), because Professor Ruggie has dominated the UN process during this period, NGO work on standard-setting on business and human rights has not been moving forward much at an international level. There has been notable NGO activity going on though. For example, at the national level Amnesty International UK is pushing for a new UK Commission for business, human rights, and the environment. Next week (7-10 October 2010) the international conference of national human rights institutions (meaning national human rights commissions or similar bodies) is meeting in Edinburgh under the theme “business and human rights.” The International Coordinating Committee of National Human Rights Institutions has set up a working group on business and human rights that is encouraging more of the national commissions to start looking at the private sector, using the work done on business and human rights by the South African, Kenyan, and Danish National Human Rights Institutions as examples. Further, some standard setting has been progressing during recent years. For example, the Swiss Government, the International Committee of the Red Cross and some NGOs have been moving standard-setting forward with regard to regulation of private military and security companies. The experts on UN human rights treaty bodies are asking more questions about the private sector when they reviewing periodic reports by governments. Some UN Special Rapporteurs have done interesting work relating to

business and human rights, including Paul Hunt, UN Special Rapporteur on the Right to Health, who issued guidelines for pharmaceutical companies in relation to access to medicines. Paul Hunt made a ground-breaking move when he went on a mission to a company—GlaxoSmithKline.

*The Future?*

1. In the long-term, the business and human rights movement will need to progress the standard setting on business and human rights.
2. Robert Archer suggests that the human rights movement needs to step back and have a more serious discussion on the relation between macro-economics and human rights. What should the role of business in society be? This extends beyond only condemning human rights abuses by business to a human rights discussion about the proper role of business in terms of taxation, employment, and education—a more holistic discussion.
3. We need to think about the question, “What is the human rights community?” The hundreds of NGOs across the world that our organization, Business and Human Rights Resource Centre, regularly hears from include among others: the International Rivers Network; Students and Scholars Against Corporate Misbehavior (Hong Kong); Friends of the Earth Nigeria; CEE Bank Watch (Eastern Europe); Oxfam; a new joint initiative by UNICEF, Save the Children, and the UN Global Compact on the subject of business and children; International Dalit Solidarity Network; the South African Human Rights Commission; and Treatment Action Campaign working in South Africa for access to medicines. A group like Treatment Action Campaign might not be thought of as part of the traditional human rights movement, but they are basing their work on the South African Bill of Rights, and the South African Bill of Rights is based on international human rights standards. NGOs like this are doing outstanding work and can be great allies in the international human rights movement.

The next couple of decades could be quite exciting in this field, but there are negative as well as positive signs. Starting with the negative, host state governments still have no great incentive to regulate multinational companies because they want inward investment. Home governments—where companies are headquartered—want their multinationals to go out to other regions and make money. As a result, they have no great incentive to regulate. Therefore while it is good that Special Representative Ruggie’s framework proclaims that the state’s duty is to protect, when neither the home nor host state has an incentive to protect it will be challenging to secure full respect for this duty. Not only do the home and host governments not have an interest in regulating, it is often the reverse—they have an interest in not regulating.

Another reason to be pessimistic is the argument, presented by Joel Bakan in *The Corporation*—that if companies take human rights and the environment as seriously as they should, and sacrificing profits in the process, they would end up violating their duty to shareholders under corporate law.

On the positive side, some companies want higher international human rights standards because it is in their own self interest. For example, some of the more professional private military and security companies are pleased that the Swiss Government and the International Committee of the Red Cross are taking the lead in developing standards to regulate their industry, because they are confident that they will meet the standards and that some of the “cowboy” firms in their sector may have difficulty doing so.

Another reason to be positive is that companies tend to be sensitive to human rights criticism, indeed even more sensitive to public criticism than governments. This creates significant leverage for the human rights movement.

Finally, over the past five years, NGOs in the global South have increasingly been turning their attention to the private sector. While most of them still focus on human rights abuses by government, they are now also addressing abuses by companies. This development is not

only changing things on the ground in those countries but is important for the international business and human rights movement.

### **The Due Diligence Standard, Private Actors and Domestic Violence**

Presentation by Stephanie Farrior

The providence of the due diligence standard is quite interesting. It entered the general consciousness of human rights activists in 1988 with the Inter-American Court's decision in *Velásquez Rodríguez*. It had apparently been mentioned previously in a 1979 report of an independent expert from Senegal regarding human rights in Chile. The substance of the standard had been described in the report of the UN Expert on the Question of the Fate of Missing and Disappeared Persons in Chile (Judge Abdoulaye Dieye of Senegal) back in 1979, in a section setting out the areas of state responsibility (UN Doc. A/34/583/Add.1 (1979), paras. 172-175).

Nonetheless, the due diligence argument really came onto the radar screen of the human rights movement in 1988. The *Velásquez Rodríguez* case was about a case of disappearance. It was unclear exactly who had disappeared Manfredo Velásquez. There was a pattern of disappearances by groups that were quasi-governmental entities with some state connection that was not conclusively affirmatively established in this case. The Court decided that the state's failure to prevent the disappearance, to investigate it, and to punish the perpetrators was a violation of the obligation in the Inter-American Convention to "ensure" the full exercise of rights and freedoms in the Convention, including the right to life. So, what did this duty on the part of states entail? The Court said states have a duty to organize the governmental apparatus, and in general all the structures through which public power is exercised, so that they are capable of judicially ensuring the free and full enjoyment of human rights.

#### *Due Diligence and Violence against Women*

This idea of a "duty to exercise due diligence to the full enjoyment of rights" was then picked up in a series of documents addressing violence

against women. The *Velásquez Rodríguez* decision was made in 1988. In 1992, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted. CEDAW did not actually mention violence against women or domestic violence. Nonetheless, violence against women was clearly covered by a range of provisions in the convention, as noted in CEDAW's General Recommendation 19. General Recommendation 19 explains that "States may also be held responsible for private acts"—and not just those perpetrated by state agents: "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." Four obligations in the General Recommendation were derived from the *Velásquez* judgment: prevent; investigate; punish; and provide compensation.

In 1993, the UN General Assembly adopted the Declaration on the Elimination of Violence against Women. The Declaration urges states to "exercise due diligence to prevent, investigate, and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons." Two years later in Beijing—in 1995—the Declaration and Platform for Action that emerged also used the due diligence standard,—setting out what the obligations of states are with respect to preventing, investigating, punishing and providing compensation for acts of violence against women, even if they are carried out by private individuals.

In 1993, in the lead up to the Vienna Conference there was a great concern about the potential for backsliding with respect to the universality of human rights. The justifications of culture, religion or tradition to defend human rights violations loomed very large ahead of the conference. As a result, women around the world organized. This period of time was a remarkable collective organizing era for women. Before the Conference they engaged in extensive planning and preparation work with the state delegations that would be voting on an outcome document, and also planned their own side events. This advance preparation and organizing had a significant impact on the outcome of the Conference. There was strong language in the resulting Declaration—language explicitly stating that religion, culture and

tradition could not be used to justify human rights violations, and certainly not violence against women. The due diligence standard was very much on their minds.

Yet women's rights activists and those who were actively looking to make the due diligence standard a practical reality faced opposition from within some human rights NGOs. Skeptics within the human rights movement argued that international law and human rights law in particular addressed state conduct—direct conduct and direct violations by state agents. Inaction by state agents, they argued, did not give rise to state responsibility. There was considerable inconsistency within the human rights movement with regard to policy on non-state actors. On the one hand, a developing avenue of work on economic non-state actors and human rights violations was gaining acceptance, but when it came to violence against women—it was not considered a human rights issue. The Beijing conference in 1995 helped move things forward.

#### *Amnesty International and the Due Diligence Standard*

In response to internal pressure from members of Amnesty International (AI), AI started examining more seriously the extent to which it should look at issues concerning women's human rights. In the lead-up to Amnesty's 1997 International Council Meeting we held an international conference looking at government inaction and what state responsibilities exist when it comes to human rights abuses by private actors. Among the people participating was a prominent member of one AI section who was dead-set against the very idea that an international legal obligation existed on the part of states to take action to address private violence, and that state responsibility could arise from absence of action. I was going to be presenting on due diligence at the conference and was alerted in advance to his views. At the conference I outlined over a century and a half of international arbitral decisions where the due diligence standard had been applied, holding states accountable for failing to prevent an act of violence against a private person by another private person. Arbitral awards had been given to the families of people whose murders had not been prevented, investigated or punished by the state. The existence of this longstanding jurisprudence helped move AI to adopt policies that

moved it forward to the place where the UN human rights bodies had already arrived.

An important part of the due diligence history comes from an arbitral decision that arose out of the US Civil War, the *Alabama* Claims Arbitration. The agreement between the US and the UK that established the arbitral tribunal was part of an effort to prevent more armed conflict between the two countries. Why? A ship that was built in the UK during the US Civil War called the *Alabama* was used to sink around 60 northern merchant ships as part of a plan to ruin the commerce of the North. It was very successful. The US argued that the UK either knew or should have known that the ship was being built in its territory. After the Civil War ended, the US complained to the UK that it should have done something about the *Alabama*, in essence, that the UK owed a duty to prevent activity by private actors in the UK that was aimed at conducting violent acts against other private actors so as to harm US interests. The Treaty of Washington was concluded in 1871 between the two states to settle a number of disputes including the *Alabama* Claims. Part of the Treaty of Washington established the rules for the arbitral tribunal to apply in determining whether the UK might bear responsibility as a state for failing to prevent private actors from carrying out violent acts that had a negative impact on the complaining state. The rules the parties agreed to included a due diligence standard. It said that a neutral state has an obligation to exercise due diligence to prevent, including other things, private actors from carrying out acts that were likely to bring about negative impact on one of the warring states. What the due diligence standard consisted of—the amount of diligence that was due—however, was a matter of some contestation. The decision ultimately reached was that the level of diligence due varied in relation to the risk—the likelihood of harm and the severity of the harm. This was the due diligence standard from the *Alabama* Claims. The US was awarded 15.5 million dollars, which the UK subsequently paid.

The longstanding arbitral jurisprudence was important because despite the language of due diligence in General Recommendation 19, the Declaration on Violence Against Women, and the Beijing Platform for Action, there was still disagreement within the human rights movement whether violence against women by non-state actors was a human

rights issue. To legitimize our claim we needed to show that the due diligence standard was not anything new. In a way this was ironic, because Amnesty had established its worldwide reputation by being at the forefront of establishing human rights standards. Now, it was behind the times.

At that same conference on government inaction, the researcher on Kenya from Amnesty who had recently visited refugee camps in Kenya described as absurd that AI would not work on behalf of women who were raped by private persons in the camp, such as other refugees, but it would work on behalf of women raped by state agents, such as a camp guard. It seemed untenable to argue that there could be no state responsibility in such a situation. The researcher spoke of doing “mandate gymnastics” simply to find ways to fit rapes of these refugees by private actors into the mandate of the organization and hence be able to address it.

*Implications of the Due Diligence Standard for Action against Domestic Violence*

As the due diligence standard was incorporated into human rights instruments, advocacy groups and UN bodies started examining how they could apply the due diligence standard in their work. The UN Special Rapporteur on Violence against Women incorporated the due diligence standard into her reports. Yakin Ertürk held a consultation each year in Asia with the Asia Pacific Women for Law and Development (APWLD); women’s rights activists from around the Asia Pacific region participated. In 2005, she decided that the focus would be on due diligence in addressing violence against women. I was invited to conduct a training session and workshop; we followed it with break-out sessions where the women discussed the areas of most concern in their work and how due diligence might be applied in their own advocacy. Marital rape was an issue that came up often, as was the lack of training of law enforcement and the judiciary on laws regarding domestic violence. Of the four areas of state responsibility—prevent, investigate, punish and provide compensation—perhaps the greatest interest among participants was in what steps states should take to prevent violence by private actors in the first place.

What are states supposed to do to meet their responsibility to exercise due diligence? State responsibility could be—as in the long line of arbitral claims cases—failing to act with respect to violence against a specific individual. The idea of failure to protect comes from the international law on responsibility for injuries to aliens, but it evolved to include broader, general human rights protection, not just injury to aliens. The standard could be used in the case of an individual murder or killing or attack, but the women at this workshop were particularly interested in prevention. It is fine to address beatings and killings after the fact, particularly in the domestic violence context, but the rate of domestic violence is so high in every culture, in every country, in every part of the world, and it has been for so long, that we need plans in place to prevent domestic violence in the first place.

The leading cause of death worldwide of women between the ages of 15 and 44 is domestic violence. Every day one hundred women are killed by domestic violence. So if we look at the larger picture of what states must do to address violence against women in addition to investigating, punishing and providing compensation it is also training and addressing the root causes of this violence.

It is significant that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) adopted in 1965 includes an article requiring states to take action aimed at the root causes of discrimination, through measures including “teaching, education, culture and information,” which is understood to include using the media. Article 7 recognizes the power of the media and of education in shaping views. There is a corresponding article in CEDAW, Article 5, which is also aimed at addressing the root causes of discrimination. I think that the due diligence standard can be and is being used by activists to argue that states really need to look at root causes and get serious about addressing why it is that domestic violence is so pervasive, why it continues without great change.

### Discussion: Accountability Beyond States

Following the practitioner presentations, human rights scholars Ann Marie Clark and Kathryn Sikkink raised important questions about the perceived similarity and differences between non-state actors; the necessity of law as a tool for dealing with the accountability of non-state actors in the area of human rights; and the benefits and obstacles of expanding the human rights framework. Their questions and the responses they generated from practitioners are detailed below.

#### *International Law and the Human Rights Responsibilities of Non-State Actors*

**Kathryn Sikkink:** I assume we put you on the same panel because we think you are dealing with a similar phenomenon—you all deal in some way with non-governmental entities. Yet after hearing you speak, it seems you are talking about different phenomena, made up of quite different coalitions, composed of different relationships, and evoking rather different responses by governments and NGOs. So if I could just summarize, it seemed to me that Wilder was saying that there were not many groups working on the question of NGEs, and the move to address NGE violations was even resisted by governments and multiple NGOs. On the other hand, the phenomenon of the corporate actor, as Chris points out, had many groups working on this issue, mainly from the left. The left has long wanted human rights to deal with corporations, so there is a long history there. Another example that could have been mentioned was the Nestle boycott. There was quite a lot of NGO activity and buy-in on this issue in the 70s and the 80s. Finally, women's groups have been very involved on the due diligence issue but human rights NGOs have been internally divided about whether or not this is a good move.

My question then is, are these similar phenomenon or do they only share a superficial similarity? They all involve non-governmental entities but are they actually quite different?

- **Wilder Taylor:** I agree that for these topics the commonality lies with normative considerations, rather than on the actual character of the entities. The three topics—NGEs, corporations, domestic violence—are completely different phenomena. And this is reflected in legal development in these

areas. With the NGEs, the legal approach was to borrow from an existing body of law that was applicable. There was not much need to develop law or set new standards. What was required instead, was political inspiration and a policy decision to start using a certain frame. For business and human rights, in contrast, there is clearly a legal vacuum. (Although some people do think that human rights law can be applied *in totum* to corporations, I see a vacuum.) There have been attempts to develop norms in this area—which Chris referred to in his presentation—but they were killed without much graciousness and in a way, set us back and left us without any normative instrument. And then with due diligence, the issue is to a large extent a matter of jurisprudential interpretation. I read *Velásquez* differently but I have no issue whatsoever with the 1993 UN Declaration. For domestic violence and due diligence, the challenge was actually a matter of coming up with the right reading of the law that is available to you, on the legal side. But basically, these were all phenomena beyond the law. There were different kinds of actors, different type of resistance, different evolutions and events. I think it was the emergence of certain groups with very heinous practices, like the Shining Path, that at some point triggered the realization that something needed to be done in response to NGEs at least.

- **Christopher Avery:** On one level I agree that NGOs on the political “Left” are part of the current business and human rights movement, and they certainly were in the 70s and 80s. But in many ways the business and human rights field has moved beyond a left/right division, because the issues at stake fundamentally are not left-right issues. Gender discrimination, racial discrimination, killings of civilians by private militaries and security companies, access to HIV-AIDS medicines, displacement of communities, pollution affecting human health, and the draining of the water table—these are real concerns and not just issues of the political Left. As a result, coalitions that are much more powerful than one part of the political spectrum are taking on these issues. So I agree with you about where it began but it has moved beyond that to

some extent. And even within the left there are debates about various approaches to business and human rights. Some in the left believe that all of the focus should be on the governmental duty to protect—they get nervous when human rights NGOs start calling directly on companies to be responsible for taking steps to address human rights, given that companies have no democratic accountability and are not transparent.

- **Stephanie Fariior:** One question is whether we are all dealing with similar issues when it comes to what activists should do, or are we talking about different kinds of phenomena? Well, I think it is both—different and not different. If we are just looking at the issue of state responsibility, I think there should be no difference. It strengthens the arguments of all if we can show how interlinked the concerns are. The right to life is the most important right, because all other rights follow from it. So if we use the right to life as a starting point, we can examine situations when a state does not act to protect its citizens against violations, when government *inaction* sends a message that impunity will be tolerated. That can apply to non-governmental groups responsible for disappearances, and it certainly is relevant to Chevron or its predecessor company. For the area of business and human rights—or appalling situations of environmental degradation caused by companies—one has to consider the responsibility of the company as well. But if we are talking about state responsibility, I think the approach is the same. We can and should take a rights-based approach, because what are at stake are the most fundamental rights of life, human dignity and security of the person.

The real difference—regarding women’s rights—is how it is perceived. Contrast it to racial discrimination. In that case, private action is written into Article 5 of the Convention on the Elimination of all Forms of Racial Discrimination. States are explicitly required to address violence by private actors. This was not a controversial provision of the treaty. In fact, the anti-slavery movement was arguably the first real human rights movement, and it was addressing private actors. This is not a new concept. But when the issue is women’s rights, all of a sudden it is seen as problematic. That shouldn’t be the case.

- **Kenneth Roth:** I think that the whole area of business and human rights epitomizes a domain where the law is not at all key to our output. We all know that the classic answer to the question, “Does human rights law apply to a private entity like a corporation?” is “No.” But that answer doesn’t really matter, because our arguments are based on the concept of complicity. If you can show that a corporation is complicit in a human rights violation by tolerating security forces that kill people, by tolerating private discrimination, by tolerating various forms of violence in the workplace—that is more than sufficient. When we put out a report linking a particular corporation to reprehensible conduct of that sort, or to using child labor, for example, it is so stigmatizing that the corporation tends to immediately respond. In fact, often we provide them a draft summary of our reports and on that basis they change their policies. When we subsequently put out the report, we identify what the problem was and what the corporation did in response and say that now we are going to monitor it. That’s a very effective approach, and it is all done without any law. Ten or fifteen years ago I used to hear the argument that corporate social responsibility is somehow a violation of the duty to maximize shareholder profit for corporations. Today, no one makes that argument anymore at a serious level because corporations have recognized that to be revealed as indifferent to these concerns, to be revealed as complicit in human rights violations, affects the bottom line in terms of brand name, corporate reputation, the ability to recruit new employees, employee morale, and the risk of shareholder lawsuits. Every enlightened corporate leader now at least mouth concern about these issues. Whether they implement that stated concern is a different matter, and that is where we have to focus.

What Human Rights Watch found is that after we do a series of reports on a certain industry, we have been able to then move the industry toward adopting voluntary standards. It is very difficult to develop global standards on corporate responsibility because the factors change so much from industry to industry. Human Rights Watch has been very involved in developing the so-called voluntary standards

around the extraction industry. More recently we have been involved in the global network initiative related to Internet companies operating in oppressive environments like China. We do this in collaboration with the companies. It involves a lot of negotiation, but ultimately, we get standards. The next challenge is to turn standards into binding law. What is interesting is that because the enforcement of voluntary standards depends to a certain degree on a company having visibility and a reputation to defend, a big brand name company is going to have to comply with voluntary standards because it can't risk the reputational costs of noncompliance. On the other hand, if you are some small, no-name company voluntary standards do not matter to you because the press is never going to focus on you, and the activists won't focus on you. This dynamic creates an unfair playing field, a competitive environment that favors the bad, small guys. As a result, some of the bigger corporations are now becoming interested in enforceable standards. A very similar pattern emerged from the anti-corruption effort. In that case, there was ultimately pressure to enforce standards so that certain companies that were never going to be scrutinized wouldn't enjoy a competitive advantage. So far none of these developments around corporate social responsibility have been dependent on the law. Everything has been done through informal norms and voluntary standards that have evolved after shaming processes.

- **David Petrusek:** I see the issue of dealing with different non-state actors slightly differently. We are steeped in a body of law developed in a particular context, and that context was the victory over fascism. The fear of an overbearing authoritarian state permeates the human rights standards, and we assimilate that. In the human rights movement, at least historically, you were inclined to orient yourself in this way: to think primarily about overbearing and over-powerful states. This understanding is pervasive within the Amnesty culture. You are immediately expected to relate to the world as divided into states and non-states. It's odd, but it also has made sense in light of the historical context and culture. But if in the

aftermath of some cataclysmic event we were to sit down again to draft new global human rights codes, I think many of these issues would be approached very differently. We are grappling with these questions about non-state actors because of the legacy of state-focused standards. I think this legacy explains the recent thinking about how to consider armed groups—we're saying they *should* be treated like brutal authoritarian states and the same rules should apply. The other two groups are very different. But fundamentally, I see this as a legacy issue.

- **José (Pepé) Zalaquett:** With regards to accountability beyond States, what corporations and other non-state actors in the domestic environment have in common is that they may have command or control of a given situation. From the perspective of penal law theory, they are in a position comparable to that of States. By extension, they can be considered to hold State-like responsibilities regarding human rights. The purpose of human rights is ultimately to protect people from those who have been entrusted with power to protect their rights, not to trump them. This is the theory. Now if that reasoning holds, why should we apply a different normative framework to each of them? The answer involves reality and politics. In the case of non-governmental fighting forces, NGEs, I believe that the reason to hold them accountable is that they wield a sovereign-like power. It's a *de facto* sovereign power rather than *de jure*—legal—power, but it's real enough that you cannot enter the zone, or the territory, or the population they control without facing bullets. In that sense, I believe that when it comes to organized crime, we need to consider that criminal organizations are waging a kind of war. I'm very conscious of what I'm saying here; I am treading into dangerous territory. Yet, those involved in organized crime are waging a kind of war and they are taking advantage of due process guarantees deliberately, to expand their power and get away with impunity. Without throwing the baby out with the bath water, one has to look for law enforcement possibilities that are as yet considered taboo. I am not advocating shooting people on sight or anything like that, but there is a problem to be addressed. Legal norms are not a suicide pact. If those norms

allow clever criminal groups to expand their control not only through the whole of a nation but internationally, and they can get away with that because they know how to exploit the interstices of normative systems, then we need to have to have a second look at that. This is in fact what happened with piracy. Since the seventeenth century or so, pirates have been considered enemies of mankind. As an enterprise, piracy was international, lucrative, profit seeking, violent, non-ideological and capable of threatening governments. The modern-day equivalent is the drug lord. Drug-traffickers can destabilize national governments; internationally, they seek profit and they are violent and non-ideological. Yet today our approach to fighting such practices is fragmented. When you deal with non-governmental entities that are pursuing what amounts to a guerrilla agenda, international humanitarian law applies. When you're dealing with drug traffic, domestic law enforcement still applies. This situation needs to be reviewed to some extent. With respect to corporations and the law, this is an entirely new area and we need to fashion standards from the ground up. And when we're dealing with domestic violence, we resort to the due diligence argument and—correctly—blame the state for not fulfilling its obligations. The state in such situations has positive obligations to prevent, to investigate if an offense is committed, to repair, to produce the truth, to punish, and so forth based on *Velásquez-Rodríguez*, etc.

So while these areas—armed insurgency, organized crimes, domestic violence—have in common that there are actors in positions of control who may harm others, much legal conceptualization and clarification is still required to address adequately the danger they may represent to communities and to people's rights.

- **Mike McClintock:** I wanted to point out that in the fine print of Amnesty's policy documents Amnesty's concept of non-governmental entity was limited to *political* NGEs, because the organization had questions and concerns about taking up criminal groups. Should criminal activity in general be considered a human rights issue? Obviously, governments should have due diligence in fighting crime against everyone.

This relates to Ken's point that in a country in which no one is safe, should you pursue the government for failure to protect? The concept of discrimination offers a way in, to address these concerns. Mexico City—and Mexico in general—has a whole new constellation of civil society groups that are essentially anti-crime groups, founded by charismatic and economically connected people who have lost a child or a husband or a wife to kidnapers. They are powerful and they have access to the president. They have not framed their work in human rights terms; nor have they taken a politically crude approach—"Kill them all"—as a way to stop the criminals. In fact, some of the human rights groups that are working on police reform, police accountability, civilian complaint systems, and the like, are beginning to work with these new anti-crime groups on a shared human rights agenda that includes fighting corruption in the security forces, improved training standards, and complaint systems. It is really a new phenomenon. The fear of crime has become a major Latin American phenomenon, and can be tremendously erosive to the human rights movement. So this idea of finding common ground with anti-crime groups is a new phenomenon and something to look at.

*Benefits and Obstacles of Expanding the Human Rights Framework*

**Ann Marie Clark:** My question emerges from listening to the presentations on this panel but also from the panel this morning. It seems that the human rights frame has been chosen by many kinds of activists and has been applied to fields not addressed by the human rights movement before. For example, recently I attended a conference where I heard environmentalists talking about environmental protection as a human right. On the other hand, reference has been made to the effectiveness of working on a human rights issue in venues where human rights is not as politicized and where the logic of human rights can be promoted in useful ways—for example, using the Crime Congress and other places to develop the Minnesota Protocol, as was mentioned this morning.

One of things I have learned from my comparative research with Kathryn Hochstetler and Elisabeth Jay Friedman on human rights groups, environmental groups and women's groups at UN Conferences

in the 1990s is that women's groups did not simply organize for the 1995 conference in Beijing, which was focused on women. They had started organizing for the 1995 conference much earlier, prior to the 1992 Earth Summit on environmental issues in Rio. This meant that they were already well organized by 1995, and although the women's conference in Beijing was highly politicized on certain topics, they were able to build incrementally on progress made in Rio and some of the other world conferences held in the early 1990s. We noticed that to some extent it was easier for women's groups to get movement on their issues at conferences other than the conference on women, because opposition was not as strongly organized at those conferences. This sort of organizing can be understood as a sort of political innovation, building on what has been learned about developing human rights standards. With that in mind, it might be interesting to think about not only examples of success in innovation but also what some of the obstacles are, including whether human rights is a good frame. How expandable is the human rights frame? How elastic is it? And how can some of those obstacles be overcome?

- **Wilder Taylor:** How expandable is the human rights frame? This is a wonderful question. I consider myself a progressive, but when it comes to expanding the interpretation of human rights law I try to be conservative on certain aspects. There is some purpose to legal frameworks. I don't think you need to return to the original motives of the drafters and follow the ways in which those original motives are reflected in the instrument. But I am a little concerned that if you put everything in the bag—ie., if you don't apply legal concepts carefully—you may end up banalizing norms that already have achieved a certain status. For example, there was a tendency some years ago to call even a single act of torture a crime against humanity, and there were efforts to insert such language into some resolutions at the UN, regional IGOs and in private meetings when final declarations were issued. Some of us were concerned, though, that putting everything under the umbrella of *crimes against humanity* actually banalizes the character of that concept by undermining the dimensions of massive and systematic acts that are part of the definition. If you erode the standard itself, in what sense have you expanded

human rights law? I think that when a new issue emerges, one should try framing it as a human rights issue and apply legal reasoning to see what arguments can be made. Alternatively, you can take the long, laborious, and tedious path of standard setting, which can easily take a couple of decades. It requires a tremendous investment in time and effort and money to expand universal standards, even by a little bit. Consider the resources applied to the Hissène Habré case—which is just a case, not even a standard-setting exercise. But even with all the costs in time and money, sometimes you have to decide to pursue new standards. You cannot always put an issue under an existing frame because you actually risk undermining the strength of that construct.

- **Christopher Avery:** Robert Archer, who until recently was Director of the International Council on Human Rights Policy, considers that one of the greatest successes over the past couple decades is the fact that environmental organizations, development organizations, health organizations, and others are adopting a human rights approach and adopting a human rights vocabulary. At the same time, the question arises as to whether this expansion could diminish or devalue human rights in the process, losing what makes human rights special and distinct. There is a tension here—the human rights movement’s greatest success is also the source of potential problems.
- **Stephanie Fariior:** The potential obstacles: a tension arises when the state can’t be trusted to oblige non-state actors to respect rights. One of the problems discussed in Amnesty’s 1997 international meeting on government inaction was raised by delegates from states whose governments were, to say the least, rather problematic. The delegates from these countries were concerned about calling upon the state to take action when they were fearful of government action in the first place. They were concerned about the human rights movement pursuing a strategy that depends on governments acting, governments that really can’t be trusted. There is a tension here. The long-term solution is to get the government to

behave properly in all contexts, of course, but in the meantime there is a problem with this aspect of the advocacy.

In terms of the real impact, the CEDAW Committee's General Recommendation 19 (1992) has made a measurable difference. Someone did a study comparing state reports to CEDAW prior to 1992 and reports afterwards. Before 1992, domestic violence was not mentioned at all. If you went around the world and asked women to identify one of the most serious concerns in their lives, you would hear about domestic violence but domestic violence was not mentioned in any of the state reports prior to 1992. After General Recommendation 19 came out, domestic violence started being reported more and more. Then, changes in laws were increasingly reported. And there was evidence of national and municipal action being taken. Simply putting domestic violence into the interpretation of the CEDAW convention, and a due diligence obligation to address this violence, has really made a difference.

We tend to focus on treaties, which are binding on the states that ratify them, but we need to recognize that the soft, non-treaty standards can bear significant weight. When the norms on business and human rights were being discussed and states were working their way through them, the business sector and corporations went to great lengths to organize their opposition. These were supposedly just words without teeth since they were not going to be a treaty, yet they instilled great fear in corporations because they articulated a standard that could potentially have real impact on the way they would be viewed and judged.

- **Kenneth Roth:** Everybody wants to call their cause a human right and that is a compliment to the movement but it is also a threat. I don't want to overstate the threat. I remember being jokingly admonished not to take on women's rights so as not to dilute the human rights "stigma." There were those who actively tried to discourage us from adopting a women's rights program. So we have to be careful about this idea of pollution because we can take it too far. But with regard to something like the environment, I don't know that there's a huge amount

of value-added to say we have a right to a clean environment rather than just saying we want a clean environment. There is such a strong environmental movement already. I tend to be more interested in figuring out if and where the human rights approach provides added value. I can see, for example, that efforts to suppress information about lethal forms of pollution, releasing lead into a water supply, or efforts to suppress domestic voices that want to talk about environmental issues can be approached as classic human rights concerns. I do think we have added value there. There is clear overlap, but to just add the concept of human right to a cause that already has a huge movement—it's not inherently objectionable, I just don't think it adds a whole lot. I do not feel any real pressure to push for the right to a clean environment because I just don't think the human rights frame helps there.

- **David Petrasek:** This problem of potential overuse of the human rights frame comes from the success of the human rights movement. When you are on top—and our idea is definitely on top—everyone wants a piece of it because there is momentum. Two contradictory problems arise. One, if you do not respond or you fail to show how your concept of global justice is relevant to things that are clearly unjust and requiring attention, the people who are eager to work on such issues might go somewhere else. Your idea could be displaced from its place at the top. On the other hand, if you respond to everyone, you face the risks that accompany unrealistic expectations: everything becomes a human rights problem and you deliver on nothing. And you risk being abandoned for that reason, too. I don't know how to manage that contradiction. There is clearly a breaking point. Every human misery is not a human rights issue. Where that breaking point is I don't know. But I also see the enormous pressure to stay on top. The choice would be to cede the global justice 'high ground' to some other idea, but frankly I don't see anything else that I'm willing to cede it to. We need to keep this movement powerful and vital and relevant. But I'm conscious of the risk of unrealistic expectations. I see this tension playing out in the way human rights groups are struggling today with how to

work on issues of poverty or global inequality or the environment or climate change.

- **Margo Picken:** On the crime congresses: Apart from what Mike said about the congresses and the Committee on Crime Prevention and Control—this part of the UN’s work was extraordinary in so far as it was rooted in non-governmental organizations with considerable expertise and knowledge that developed after World War I. Do you remember the International Penal Association? They were very different from normal UN bodies, reaching out to Ministries of Justice, police associations, prison directors etc. Unfortunately, in the 1980s and 1990s, that part of the UN became devoted to terrorism and drugs and so on, and the area of criminal justice and administration of justice was taken over, perhaps not nearly as well, by the Office of the High Commissioner for Human Rights. I generally avoid using the term “human rights organization.” I prefer to speak about “organizations working for human rights” because I think that better captures what is going on and makes my point.
- **Nigel Rodley:** Things can be good or bad without necessarily being human rights violations. The emphasis on the overbearing, overpowering state shouldn’t be surprising, because that is precisely what the human rights construct has been about. I don’t know what the narrative of human rights is other than protecting people from the overbearing power of the organized community, which is the modern nation state. I wouldn’t dream of arguing now—any more than I did when the ICCPR Human Rights Committee produced this General Comment 31, which espouses the notion of due diligence but in a very nuanced way—suggesting it is only what the state does negatively that counts. Of course, it’s accepted that for some purposes the state may have positive obligations and that for some purposes the notion of due diligence will help clarify what those positive obligations are. But one has to be careful not to let the notion expand with the result that it loses all meaning. The human rights violator will anyway be the state,

not the creep who does the battering. That is something to be remembered.

With corporations, I think Ken said it all: Who needs the term ‘human rights violator’? If corporations are doing crappy things, you denounce it; you go after them but you don’t dignify them by calling them human rights violators. There are two separate issues here. Should they be caught by the law? And should they be called human rights violators? One can agree with one and not the other. I have no objection—in fact on the contrary—to expanding the situation so that if they breach certain standards of the sort Chris Avery was talking about, then they incur legal liability—but as violators of international law, not as human rights violators. I am one of those who is worried about the loss of that basic narrative content of the notion of human rights. I mention that now because it was also part of the picture then. It wasn’t just a question of practical arguments. It was also a question of conceptual arguments as to what kinds of things ought to be called human rights violations.

One of the arguments against taking on NGEs that weren’t parties to an armed conflict concerned the distinction between political and nonpolitical NGEs. One of the reasons for maintaining AI’s original position was that there was no conceptual reason for considering torture or murder or kidnapping committed by organized non-political criminals simply as crimes outside our (human rights) mandate, while considering the same acts committed by organized criminals with political motivation as human rights violations. Amnesty’s eventual response to such questions was to only address political NGEs. That is okay in practice, but conceptually it doesn’t make sense to just work on political NGEs. There was a lot of back and forth about whether AI should consider crimes, and if it had to be organized crime. But there just wasn’t agreement. As a matter of history, one perception I had at the time was that within Amnesty’s Research Department there was a general reluctance to acknowledge the problem of abuses by armed opposition groups. That reluctance was perhaps one factor that edged Amnesty closer and closer toward the language of human rights violations for abuses by

non-governmental entities. Researchers were reluctant to report on what the FMLN was doing as part of the context of the Salvadoran war; they were reluctant in the Colombian context to talk about what the FARC were doing. They were always reluctant to talk about what the guerrilla movements were doing, which was arguably a necessary part of the context. Even at the individual level, they were reluctant to talk about the victims of those who were sentenced to death by means of capital punishment. I couldn't get the researchers on the United States to say what people facing the death sentence had been accused and convicted of doing. By refusing to talk about any of these concerns, one was alienating a whole load of potential readers and a whole load of potential stakeholders. And of course the result was that, as pressures to acknowledge them mounted, they failed to hold the line. They were trying to hold the line too far back, and as a result they couldn't hold it at all. I think it was a serious mistake. As a means of reaching people who might otherwise be alienated from the human rights notion, I would still like to see the human rights organizations show more empathy with the victims of people whose human rights violations we are worried about.

*Human Rights Watch's Approach to Women's Human Rights*

- **Kenneth Roth:** Human Rights Watch has actually adopted a slightly different approach to women's rights. We created what we called a women's rights project sometime around 1990—three years before Vienna and five years before Beijing. We did a lot of work on violence against women, but we did not use the due diligence approach because it proved too much. In a situation of lawlessness, if you criticize the government for not exercising due diligence to protect women but at the same time completely ignore the men—there is something that doesn't work about that argument. We aren't comfortable singling out one category of victims when another category is treated the same way. So instead of the due diligence argument, we use the approach of discriminatory non-enforcement of the law. We felt that got more to the heart of the matter, because with something like domestic violence the problem usually wasn't

non-enforcement of the law generally. Instead, it was non-enforcement of the law with respect to a certain category of victims. We felt it was a better conceptual fit for us to focus on that discriminatory aspect. I think we did this first in 1990 in Brazil and have used the argument elsewhere since then. There is nothing wrong with the due diligence argument: it is just that we have found that focusing on discriminatory non-enforcement of the law is a better conceptual fit.

*Questions on the Business and Human Rights Framework*

- **Curt Goering:** I have a question with respect to those businesses or corporations that have made public statements or taken public steps to hold themselves up to certain standards, whether it's the adoption of a code of conduct or a kind of pledge. Corporations that publicly make such commitments set themselves up for scrutiny and criticism if they fall short, whereas those who might actually be more complicit in worse practices but who don't make such commitments—or even refuse to make such commitments—may avoid that kind of scrutiny simply by virtue of not setting themselves up in that way. I'm wondering if you can comment on what the experience has been in that respect.
- **Margo Picken:** Chris, I wonder if later you could talk about the Center for Transnational Corporations, which existed in the 70s and which was dismantled under the Reagan administration. Did you feel the work of that center had potential and should it be looked at in order to take the discussion forward?



## Chapter 4

### **Human Rights Research Methodology and Advocacy Practices**

During the third session of the conference, participants were asked to reflect on existing standards for human rights research and advocacy practices and how they emerged as well as to address methodological innovations including the use of forensic evidence and the evolution of research standards for conflict zones. Our panelists discussed the ethical, legal, historical, methodological, and logistical issues associated with human rights fact-finding, reporting and advocacy. Panelists included Michael McClintock, Eric Stover and Curt Goering. The session was moderated by Sioban Harlow.

#### **The Standard Approach to Human Rights Research** Presentation by Michael McClintock

The 1970s and 1980s were years I was at Amnesty International (AI) at the Secretariat in London. Later I worked for Human Rights Watch, and then the Lawyers Committee for Human Rights, now known as Human Rights First. I was quite lucky to be in on the ground floor of creating a professional research department, the development of which was reflected in both staffing and budget. In 1970, the budget for Amnesty International overall was £28,000 British Pounds. By 1980, it was £2.5 million. And part of that budget growth reflected a shift from a secretariat with one paid staff member through most of the 60s—I think there were twelve by 1971—and a decision at about that time to create a research department with people who were paid, however modestly, and could spend full time working on Amnesty's mandate issues. The new researcher profile included essential language skills and in-depth knowledge of the countries to which researchers were assigned. The Research Department had fourteen full- and part-time

researchers by 1975; when I left, in 1994, there were some 40, and a total of 144 research staff.

I started soon after the coup in Chile, when the staff for Latin America was doubled (from one to two), in order to free up Roger Plant to work specifically on Chile. At that time, a structure was taking shape with five regional departments. The heads of each region served also as researchers and there was also a head of research. Part of that structure was, from the start, seen as a quality control structure. Most researchers had twelve to fifteen country assignments so a lot of priority setting was done at the head of region level. Our work went through a head of region and through a head of research. In the 1970s, our reports went also to the Secretary General of Amnesty and a member of the Executive Committee for review. We were pretty well supervised in terms of our product, but enormously overstretched.

The product itself was fairly clearly defined. In the 70s, Amnesty was a prisoner rights-oriented organization. Identifying prisoners of conscience—and how to win their release—was the top priority. These were people who should not be in jail—people who were detained because of their beliefs and their expression of those beliefs. Many countries had political prisoners who were non-violent and who fit this category. Our priority was to do case work—research on these individual cases of political prisoners and coordination of membership action on their behalf. To get started, this approach required getting in touch with people in the country you were covering. In 1972, for example, the person who became head of the Americas region spent four or five months traveling to 17 countries in the region meeting with organizations, institutions, church people, trade unions, and political actors. The researcher came back with a notebook full of addresses—there were no faxes or emails—and then wrote letters to follow-up. When I started, there was already a set of contacts. My job as a researcher was to add to these relationships, establishing personal relationships with organizations, institutions and people from a distance and on the ground with a view to producing certain AI research materials within a certain range of concerns—but, initially, focused on prisoners of conscience.

Among these were case materials for assignment to Amnesty groups to pursue action. To this end we prepared mimeographed background papers to guide and inform this work, while gradually covering more countries and issues in publications aimed at the general public and the news media. In 1973, for example, Amnesty produced an annual report that was approximately 42 pages long and aimed almost exclusively at the membership. By 1974-75 AI's annual report was a published volume covering approximately 60 countries. This demonstrated the development of our research department capacity, and a new strategy and capacity for public outreach. Over time, moreover, the focus broadened beyond prisoners of conscience. I was assigned some countries, like Peru in the 1970s, which had hundreds of prisoners of conscience, mostly trade unionists. In work on Central America, in contrast, I discovered that in some of my assigned countries there were no acknowledged political prisoners. Instead, there were "disappeared" prisoners and victims of state-sponsored murder. Those detained were commonly stabbed, strangled with a garrote, or shot and, if ever found, their bodies discovered in mass graves. The research that was required to document such human rights violations was a bit different than the approach to prisoners of conscience. But still, the Amnesty focus was on cases. This meant that we adapted our casework for prisoners of conscience to casework for "disappeared" prisoners. This was casework intended to mobilize Amnesty groups to deal with what we called "political killings" and what later became conceptualized as "extrajudicial executions."

### *Collecting and Documenting Evidence of Human Rights Violations*

Research in the 70s was often based on typing out a letter with carbon copies, putting a stamp on it, and sending it by post to places like Guatemala City, La Paz, or Lima and waiting a month or more to get a reply. When we wrote letters, particularly investigative ones, we had to be quite cautious, as the wrong message could endanger the recipients. A rule of thumb in some circumstances was to write as if you were writing to the recipient for the first time—as if it was the first overture that you had ever made to them even if you had known them for years. You did not want to incriminate the recipient. Also in the 1970s, the field mission to the country was an extraordinary thing and quite different from what it has become. Usually, it was a high-level

delegation that consisted of some carefully chosen luminaries who would accompany a researcher. These senior delegates would contribute to research and analysis as well as providing an entrée to high level meetings. They sometimes also distracted attention while researchers undertook more sensitive research. Field missions were exceptional, sometimes limited to yearly travel for no more than a week to a particular country. In the 70s, field research was a very formal thing—partly because we could not do it very often and also because access could be denied if the trip was not organized properly.

This contrasts today with a routine of field research founded upon a presumption of free access, regular travel to problem countries, the establishment of field outposts for a long term monitoring presence, and of course the vastly increased number and capacity of independent local human rights monitors.

The research gold standard in the 1970s, as now, was to get into the country and to talk to people. The nuts and bolts of the research enterprise were several. A starting point was to establish and sustain long-term relationships with local counterparts—essential intermediaries for face-to-face and other contact with the victims of human rights abuse. In the field we would conduct interviews, but also receive written materials setting out the personal stories of those seeking help. Often these took the form of letters, although many more formal testimonies were collected that were signed or with the fingerprints of those making statements.

Substantiation of written testimonies depended in part on close contact with local human rights groups, who could vouch for their authenticity, and, in a fraction of such cases, bring together researchers with victims in face to face meetings. Correlation of the facts from multiple sources and hundreds of similar cases provided a further back-stop, even when direct interviews were not possible.

The norm in my experience was to receive a letter, a standardized questionnaire, or a written testimony from relatives of a prisoner or other victim of abuse. NGOs we knew and trusted would receive letters or themselves transcribe the personal testimonies of local people describing human rights violations and provide us with copies. The

accounts might describe the case of a son or daughter who was kidnapped by the state, was killed, “disappeared,” or was in jail. We dealt with a large quantity of hand-written papers, sometimes authenticated by numerous signatures and the fingerprints of illiterate witnesses, and subsequently validated by interviews in the field.

In those early days, we developed a protocol we called Prisoner Data Questionnaires (PDQs) that was later adapted to deal with “disappearances.” They were typically used in the first instance not by Amnesty researchers but by their counterparts on the ground. For example, local human rights groups in Peru (many of them church-linked) used the questionnaire format almost from the inception of the new pattern of “disappearances” in the first weeks of 1983. Within four years I had a filing cabinet filled with something like 5,000 data questionnaires on “disappearances” in Peru—the basis also of an early computer data base at the International Secretariat. Similarly, the Sri Lanka researcher had access to data questionnaires on thousands of “disappeared” in Sri Lanka’s conflict with the JVP.

Increasingly we had the data we needed to make sense of complex situations. In the Peruvian case, I knew not just dates of birth but what color socks kids were wearing when they were dragged off by the army. We had incredible detail. We had school photos for young people and we had little school or ID photos clipped to most of the files. We were also able to identify some fundamental patterns from the data emerging from the totality of these cases.

Already in Peru in the early 1980s, for example, we could see that almost all of the some 5,000 cases reported over a period of four years occurred in just nine of Peru’s then-144 provinces. The nine provinces were all a part of an emergency zone headed by the military in Ayacucho. Our data showed that the phenomenon started within days after the creation of a new political-military command in Ayacucho, on 29 December 1982, and they were circumscribed to the territory under its control. As new provinces were added to the emergency zone, the same phenomenon of “disappearance” came to be reported there as well. This was information we discovered through review of what became a large data set. Accordingly, it allowed us to correlate changes

in patterns of human rights abuse with particular government structures, policies, and practices.

*Variation between Amnesty International and Human Rights Watch*

Amnesty International was not alone in doing international human rights research in the 1970s and 1980s. Human Rights Watch (HRW), from its beginnings in 1978, is perhaps AI's most notable counterpart in this area. How do they compare with regard to priorities, methodology, and standard-setting?

Amnesty was and is a membership organization, with membership structures establishing policy and setting priorities; and above all, in its first decades, AI undertook membership action on behalf of individual victims of human rights violations. AI priorities were expressed in large part through a membership-determined organizational mandate—a charter to focus upon very specific human rights issues, and only those issues. Although founded ultimately upon the Universal Declaration of Human Rights, AI's research and efforts to advance standard-setting focused upon the limited rights issues identified in its mandate.

Human Rights Watch in the 1980s, in contrast, had supporters but not members, was governed by an executive board, and brought about change not primarily through campaign action for individuals—casework in AI terms—but through in-depth monitoring, reporting, and public stigmatization of those responsible for human rights violations. Human Rights Watch also stood out in the 1980s for its pioneering work on situations of armed conflict—and most notably for its application of the standards of humanitarian law to human rights monitoring and reporting on such situations. Human Rights Watch's work was always framed firstly in terms of international law.

Despite the differences, all of us had certain principles in common, both in research methodology and public action for change. One was to consider the best interest of those at risk and suffering from human rights violations. There is an ethos to this research that is common to the human rights community. Human rights people don't tell a story just to tell a story—or to get a headline. There is a commitment to establish and state the facts—but always with the rider that how and

when information is made public depends upon the consequences this will have for victims of human rights violations. This goes beyond protecting sources. This is *applied* research with a view to an improvement in human rights.

A commitment to objectivity and impartiality is also a central tenet of research if human rights action is to be effective. With Human Rights Watch, this was demonstrated, for example, by scrupulously dealing with all sides in armed conflicts in accord with the same standards. With Amnesty, it was expressed through balance and evenhandedness in casework and situation reports, and sticking to a strict mandate. Both organizations understood from the start that getting the facts straight was essential; that credibility and impartiality were powerful tools in pressing for change; and that getting facts wrong and appearing biased could undercut their work across the board.

Human rights organizations also emphasize a direct interface with the victims and witnesses. This means getting into the field as much as we can, interviewing victims and their families, and establishing ongoing direct communications. There is also a shared commitment to engaging with authorities. At Amnesty we always tried to talk to the government at different levels. Our approach was to set out the facts and our conclusions and recommendations without emotive language and without politicizing. We all developed a strategic approach to research with a view to identifying problems of human rights and the practical ways these could be remedied.

### *The Relationship to International Law*

At Amnesty, we all worked within the framework of international law, but we were not satisfied with international law. When we believed it fell short, we tried to improve it. Using the facts that we had marshaled and the arguments that we had developed, we tried to promote a better framework of international law. We developed new areas of expertise as we moved beyond the prisoner of conscience focus alone. When dealing with fair trial issues we engaged top legal experts to observe trials. To address torture, we engaged medical expertise. With a focus on “disappearance” and suspicious deaths, refugee flows and mass

displacement, we became involved in the area of statistical analysis. This was later adapted to address labor rights.

At Amnesty we also worked on a conceptual framework for dealing with human rights in armed conflict. A part of this was to identify indicators showing state responsibility for actions that were concealed, notably in the treatment of detainees—in particular torture—and in “disappearances,” extrajudicial executions and other unlawful killings. The standards that we used were not only conventions and treaty law but also included principles about what is required to investigate torture and suspicious deaths—like the Istanbul Protocols to assess allegations of torture, for example. Standard setting included seeking authoritative guidance as to what research is required to address new concepts of human rights.

### **Forensic Evidence and Human Rights Reporting**

Presentation by Eric Stover

I was asked to talk about forensic evidence in human rights reporting but I will begin by first taking a somewhat different direction—namely, the importance of applying forensic investigations in the interests of families of the disappeared. Indeed, when we began our forensic investigations in Argentina in the mid-1980s our primary aim was to identify and return the remains of the disappeared to the families. While evidence was collected for the trial of the junta leaders, our primary focus was the families.

#### *The Search for the Disappeared in Argentina*

There were two categories of disappeared in Argentina. The first consisted of what the military labeled as the so-called “*subversivos*”—student activists, trade unionists, academics, journalists, and anyone suspected of having any association with leftist movements. Many of those who were abducted were taken to 365 secret detention centers, where they were tortured, and later executed and buried in individual and mass graves. And then there were the children. Some of them were born in detention to young mothers, who were later executed. The

babies were then given up for adoption, often to childless police or military families. In a few cases, military families took custody of very young children who were abducted along with their parents who were later killed.

The use of the forensic sciences to identify the disappeared did not begin because of any action by a group of human rights activists or scientists or lawyers. It all began because of the determination of the families themselves—women who wanted to know the truth about their missing loved ones and wouldn't be stopped by anything.

In early 1984, after Argentina's return to civilian rule, three members of the *Abuelas de Plaza de Mayo* came to the United States seeking help. Among their stops they came to see me at the American Association for the Advancement of Science (AAAS) where I directed the Science and Human Rights Program. I'll never forget the meeting. One of the women had a newspaper clipping from a newspaper in Mar del Plata which she pulled from her purse. The article referred to the use of HLA testing in cases of contested paternity in the United States. When she finished reading the article, she asked, "Can you help us?" Actually, I didn't know what to say as I knew very little about the forensic sciences, let alone human genetics. But I said I would try to help.

Through a string of phone calls I eventually tracked down a geneticist at the University of California, Berkeley. And later, at the request of the *Abuelas* and other Argentine human rights organizations and the newly formed Commission on the Disappeared, I assembled a forensic team and we traveled to Argentina. When the team arrived we found many well-intentioned judges had already begun exhumations in a manner that would hinder rather than help in the forensic identification of the remains. Family members of the disappeared were also being further victimized by the careless exhumation and handling of the remains. At the end of the trip, our team called for a moratorium on further exhumations until a proper team could be trained to do the work in a professional manner.

Within a matter of months, the forensic anthropologist Clyde Snow and I had returned to Argentina to begin a training program. We had thought some of the first trainees would be local forensic scientists but

found that a number of them had been complicit or turned a blind eye to abuses during the military rule. In fact, only one of wanted to work with us. As a result, we had to go to the medical school and the archaeology school at the University of Buenos Aires and enlist students.

One of the mottos in forensic work is that “You never leave any evidence—whether it be a small finger bone or a shred of clothing—behind in the grave.” But Snow and I also adopted a parallel approach: you *always* leave something behind. In every country we worked in we tried to leave a local forensic team behind. The Argentine forensic anthropology team is a great example of this approach as it not only continues to work in Argentina but also in 22 countries around the world. After their training, the young Argentine team set up offices in downtown Buenos Aires where they confronted several challenges and demands from a wide range of groups, including judges, police, press, NGOs, and, of course, the families of the disappeared. It was a difficult time for them—they often received death threats over the phone. The team even scripted a response to such calls: “Listen, sir, we don’t take death threats until after four pm in the afternoon.” Across the continent, the Guatemala team—trained later and again comprised of archeology and medical students—also received serious death threats and a few of them had to leave the country.

### *Training Local Forensic Teams*

During the late 1980s and 1990s, Snow and I traveled to several countries to investigate mass killings and continued—with the help of a team of forensic experts from all over the world—to train local teams. These efforts included Chile, Bolivia, Brazil, the Philippines, Honduras, El Salvador, Guatemala, Iraqi Kurdistan, the former Yugoslavia, and Rwanda. Eventually the younger scientists would take over this effort, and Snow and I and the other dinosaurs could leave the pack.

The exhumation process usually begins with a judge’s order. The primary object, of course, is to exhume the remains in a scientific and professional manner; to identify them, if possible; and to determine the cause and manner of death. It was quite common to find a single

gunshot wound to the head. In fact, from evidence in the grave you can often determine the *cause and manner* of death. For example, at one site in Iraqi Kurdistan we found blindfolds still wrapped around the skulls of student activists that had been executed by Saddam's troops.

In any investigation in any city in the world you are looking for three types of evidence: testimonial, documentary, and physical. What forensics adds to the process of investigation is physical evidence, the *corpus delicti*. The purpose for these exhumations was threefold. First it was to help the courts when we could, when they ordered the exhumations. Second was to create a historical record. The fact that the exhumations in Argentina and Guatemala and El Salvador still continue reminds us of the importance of social memory—that is, that the authoritarian governments that produced these killings should not be forgotten. Thirdly, and most importantly for all of us in Latin America at that time, was that the work was directed toward the families. The remains could be returned for proper burial. The reason this is so important is that families of the disappeared often live in a world of limbo between hope and denial. They hope the remains of their loved ones will be returned, but they deny the fact that they probably won't be. And so the reality of identifying remains and bringing them home is important. Burials and memorial services can be performed and these are social triggers that can help us move on with our lives, to leave the world of uncertainty and limbo.

After exhumation, the remains go to the lab. Here is a photo of Liliana Pereyera, whose remains were exhumed from an unidentified grave in the southern Argentine city of Mar del Plata in 1984 and later identified. Clyde Snow presented her case in the trial of the military junta. It was an important case because Liliana had given birth to a son in prison, who, according to witnesses, was given up for adoption to a childless military family. Afterwards, Liliana was taken away and executed. As such, her story connected to two categories of the disappeared.

Liliana's remains were identified principally on the basis of post-mortem X-rays of vertebra column, which had to be reconstructed in the lab, and chest X-rays she had taken during a routine medical examination years prior to her death. Liliana's case shows how the

forensic work can loop back around. Last fall, I received an email from one of the members of the Argentine Forensic Anthropology Team and a message from one of the *Abuelas de Plaza de Mayo*. The message was brief: “Eric you can’t believe this. We found [Liliana’s son,] Carlos. He’s thirty years old.” Carlos, it turned out, had been raised by a military family. Again, the application of the forensic sciences to human rights investigations began because of the families of the disappeared and a few brave judges who saw it as their moral duty to do what was right no matter the risk.

*Including Families in the Exhumation Process*

It is important for the families of the disappeared to see that young people from their own country are conducting the exhumations, even if outside experts may be advising. Families participate indirectly in the process. They bring photographs and show these to the team members. In turn, the team members will contact the family members to obtain pre-mortem evidence such as medical records and X-rays and family histories of disease, all of which helps with the identification process. In Guatemala, it is common that villagers help bring down the tools and sing hymns before the exhumation begins. In some cases, they will bring meals for the team.

In public health there is a well-established theory called *social control theory*. The idea is that when people—all of us—have control of our lives, we tend to have better health outcomes. You can go up and down the social scale and see evidence of it. What I started to see at the exhumation sites was that the families, through their presence, were actually benefiting from that engagement. That is hardly an empirical observation, but I believe in some cases their presence, their gestures toward the team, their need to find pre-mortem evidence was helpful. Of course, the situation was still difficult but they were relieved to be engaged, to finally find the truth about what had happened to their loved ones. In one Guatemalan village, families turned out to help carry (or walk in procession behind) the coffins of those who had been identified or remained unidentified to the cemetery. It didn’t matter if they weren’t biological family members; they did it for the community as a whole.

## **Human Rights Research in Conflict Zones and Military Forensics**

Presentation by Curt Goering

Amnesty International was initially involved mostly in non-conflict situations but in the last twenty years it has started to do research and analysis in conflict zones and war zones. We had to develop—as other human rights organizations did—systems within the organization to respond to the patterns of what was happening in the world and support that kind of work.

About twenty years ago, I was testifying in Congress before the Subcommittee on Human Rights and International Organizations. At the end of the hearing a Representative asked, “What’s the difference between Amnesty’s work in its usual human rights investigations and its work in times of war; and what do you do?” Basically, at that time my answer was—and Amnesty’s answer was—that the concerns were not that different. They related to torture and execution of prisoners of war, or possibly cases where prisoners of war were not released after a ceasefire or cessation of hostilities. Such cases could potentially be taken up by Amnesty for individual casework. But basically, that was it. As more and more human rights violations became apparent in the context of armed conflict and conflict zones, however, we had to develop our research and methodology to address those issues as well.

There were three kinds of issues that we had to address: logistical issues, methodological issues, and issues that I put in the legal, policy or military doctrine area. We began sending staff—researchers—into combat zones in the late 1980s. As the conflict work developed, it was not unusual for a staff member to be in contexts where there were active hostilities, or there was the possibility of an outbreak of hostilities at any time. Amnesty had to address fundamental issues related to safety and security of its staff. The risks in those situations included being caught between opposing forces, threats from things like improvised explosive devices (IEDs), the vehicle-borne IEDs, rocket or mortar attacks, mines, and unexploded ordinance. There were also, of course, the risks associated with the breakdown of law and order and questions

about where one is able to travel to gather information, how one gets there, and the presence of armed gangs, robbers, and criminal activity. All of these factors had to be taken into account.

### *Logistical Concerns*

The first thing I want to highlight for an organization like ours—and I'm sure this is true for Human Rights Watch and others as well—is the safety and security of staff. What level risk you expose your staff to and how management assesses risk—these are among the most important considerations. Different judgments can be made about what is too high a risk to accept. Sometimes Amnesty is not able to get in or does not try to get in because the situation is simply too risky. I would say that having been in Gaza most of the last year and having worked in a context where I was subject to the security and safety precautions of the UN, I would say that at least in Gaza, international NGOs sometimes had more flexibility to travel and operate in general than UN staff doing comparable human rights work. That was not always the case, however, and there were times when as UN staff we were able to negotiate with the Israelis or the local authorities, including Hamas authorities, in Gaza to gain access to certain places that NGOs would not have had access to, or could only do with high risk. We received security updates daily and there were times when the kidnapping risk for UN staff was deemed high and at those times we were subject to very stringent constraints on movement. On those days we could not travel outside Gaza city and had to be inside our apartment buildings by 7:30 in the evening.

There is also the issue of armed guards and moving around in armored vehicles. What does it mean for human rights organizations gathering data about potential human rights abuses to be accompanied by armed guards or moving in armored vehicles? In Gaza, we only moved around with armor-plated vehicles, but without armed guards. In Iraq, though, sometimes we had to use armed escorts, such as on the road leading to and from the airport or in and out of Baghdad during periods when movement there was extremely risky. It was the same in parts of Afghanistan, in the south—in Kandahar in particular, where movement was not advised without that kind of protection. It presents a dilemma

for human rights organizations to be moving around in that kind of way.

The safety issues of course affect how the work is carried out and how the day is planned. Some threats require movements to be unpredictable and routines often changed, especially if you're based in a location for a period of time and there's a likelihood of being tracked or watched. You need to mix up your schedule a little bit. You must not leave the place where you are staying to travel to your place of work or wherever else you are going at predictable times. You must take different routes in case someone is following to throw him or her off track. It becomes part of the routine to vary your routine. The places where you stay and where you eat become crucial logistical issues. These are just some of the logistical considerations.

*Methodological Demands Interlinked with Legal Policy and Military Doctrine*

Regarding methodological issues, many of the demands of research and information gathering in conflict zones is similar to the concerns faced in non-conflict zones. This includes the importance of getting accurate, first-hand and detailed data from eyewitnesses or survivors and crosschecking and corroborating information whenever possible, and gathering physical evidence. The differences, however, are also very profound. In conflict zones, information gathering often takes place in an insecure environment. Simple things can become complicated—like returning to a location several times in order to gather additional information, fill in information gaps and answer remaining questions after you have already been there a first time or second time. In conflict zones that can be impossible to do. And then there are questions about how to apply the standards. There are always questions about what is a human rights violation, or a violation of the laws of war. Who or what is a legitimate military target? How do governments select targets and determine they are legal? For example, in Gaza—as both Amnesty and Human Rights Watch have reported—in the opening moments of Operation Cast Lead, one of the places targeted by Israel was the awards ceremony of police cadets who were graduating at the time. A group of them was targeted and several dozen of them killed during the ceremony. The question arose—and this was something that we learned had been debated within the Israeli military prior to the attack—whether

or not the ceremony was a legitimate target. The targets were policemen, but it is questionable whether they should have been considered involved in active hostilities. The Israelis decided that they were legitimate targets. The police cadets were struck and many were killed. Organizations like Human Rights Watch and Amnesty took issue with that.

These are important and complicated questions. For example, a few years ago in Yemen a suspected Al Qaeda operative was targeted and killed in a drone attack. He had been traveling in a car with five or six others who were apparently civilians. Is that a legitimate military target, or is that an extrajudicial execution? In the former Yugoslavia, was it appropriate to target the television station—was that a civilian institution or was it a legitimate target if it was broadcasting propaganda? There are judgments to be made about what is a legitimate target. What is a reasonable and proportionate use of force or anticipated military advantage gained by virtue of selection of a particular target versus the collateral costs that might be incurred? There is also the question of what steps a government has taken to avoid civilian casualties. In Gaza, for example, the Israeli military dropped leaflets in certain areas before they bombed. They also made phone calls to many people in Gaza to warn them to leave. The problem with that was although people were notified that bombing was imminent there was no place for them to go because the borders were shut. There are no bomb shelters in Gaza and there was no place for them to flee, so knowledge of the approaching bombing created added anxiety. The Israelis justified their actions by saying, “Of course, we’ve given advanced warning, and people had a chance to move away.”

### *Policy Innovations*

Finally, let me make a brief comment on some of the innovations. As the work changes, the job description and skill-sets of staff must also change. When we recruit people whose briefs will include potential work in conflict areas, we expect them to be experienced and knowledgeable about working in such settings and the judgment to make sound decisions under great stress. Among other things, they also need a good understanding of international humanitarian law (IHL) and how to make determinations about how it is applied in conflict settings.

We also have started to bring on conflict researchers who might not have particular regional or country expertise, but have deep experience working in emergencies. This is something that other groups have done for some time. Amnesty is also doing this now because the demand for work in these kinds of environments is anticipated to continue.

We increasingly use military forensic experts: specialists who are trained to identify from the remnants certain kinds of weapons; who can examine blasts on buildings or bomb craters to determine the origin of the fire which can help determine what the military strategy might have been and whether there was a legitimate military purpose; persons who are experienced in trace evidence, DNA analysis, toxicology, and the like. Finally, we have also begun in the last couple of years to use remote sensing technology—using satellites to help provide powerful visual evidence to help corroborate the picture that is being painted from individual testimony. The satellite photographs cannot prove that war crimes took place, just as medical evidence cannot exactly prove that someone was tortured, but it can provide powerful corroborative documentation. In cases like the Sudan, Sri Lanka, and Lebanon after the 2006 events, that kind of information is available and can be particularly useful when it has been impossible to have staff on the ground. It is another way to get important data. I want to note that some of this work is being done collaboratively between Amnesty International and Human Rights Watch. The Sri Lanka satellite photos taken 5-10 May 2009, for example, provide compelling visual evidence of the army's launch of attacks against civilian zones. With that particular conflict, this was an indispensable component in forming a picture about what happened during that period.

### **Discussion: Human Rights Research Methodology and Advocacy Practices**

Human rights scholars Ann Marie Clark, Julie Mertus and Kathryn Sikkink were asked to react to the formal presentation of remarks by the human rights practitioners in session III. By identifying themes and asking questions our scholars prompted the other participants to reflect on related concepts, to clarify opinions, and comment on ongoing

debates in the academic study of human rights. What followed was an energetic discussion centered on how to measure the impact of the human rights movement, the effectiveness of human rights actors, and how to balance competing ethical concerns.

*The Impact of Human Rights Organizations on the World*

**Kathryn Sikkink:** I am pleased with our session on methodology because one of the biggest changes that has occurred as a result of the human rights movement is the development of trustworthy and systematic human rights information. It is hard in the present to appreciate how little systematic and trustworthy information was available only 30 years ago. Now we live in a world that is very dense with increasingly sophisticated types of information about human rights. Earlier I asked the question, “How do you change the world?” Perhaps the answer is not so complicated; just creating the kind of information that did not exist before and applying that information in the right way—to create pressure—can lead to impact. I’m not totally persuaded that this captures all of the impact of the human rights movement but the production and use of information has to be a big part of the equation.

**Julie Mertus:** I would just like to add to Kathryn’s comments that it is not only more information, there is a culture of participation developing. People think that they can participate in this information mobilization. And Ken, you said earlier that Human Rights Watch mobilizes information. It is not only that there is more information to mobilize now, but there are more people jumping in trying to be the manager of the information.

- **Wilder Tayler:** In case some of you don’t already know this, you can rent a drone. It’s true that over time, the amount of data and information available has increased but we still maintain the same limited ability to make judgment calls on the actual information we have. I think this is where we are not keeping up. Human rights organizations have on occasion made major blunders because of bombardment of information combined with the pressure to respond and draw conclusions very quickly.

**Kathryn Sikkink:** I'm not sure those of you who as practitioners actually *produce* human rights information are quite aware of how the information is now being used in academic research. Quantitative human rights research has become a current growth industry within social science academic research. In fact, some people in this room are doing that kind of research. Ann Marie Clark has done it, Kiyo Tsutsui has done it and I have done it, relying on others' quantitative skills. Some of it is very interesting, some of it is very important. But some of it may be a cause of some concern for you.

The issue is this: scholars are giving scores—human rights scores—for every country in the world for every year since 1979. They have developed these human rights scores by coding the Amnesty International annual reports and the State Department annual reports. Then they translate them into two scales: the political terror scale, which goes from 1-5, and the CIRI physical integrity scale, which is scored 0-8. Basically, a number is calculated for every country for every year from 1979 to the present. Once you have that numeric score, you plug it in as your dependent variable and you can do complicated, sophisticated statistical analysis to try to find out what factors worsen or improve human rights. The questions being asked include: Do human rights treaties make a difference for human rights? Does human rights treaty ratification make a difference? Scholars can make an argument using powerful data that in some cases treaty ratification does not make a difference or maybe human rights treaty ratification makes things worse. Does naming and shaming work?

There are scholars counting the number of press releases and urgent actions produced by human rights organizations and then using that information to evaluate whether they lead to improvements in human rights. Ann Marie Clark and I have written an article that argues that the increase in the quality and quantity of information about human rights violations in the world is good news for scholars and practitioners in this area, but for researchers it carries potential problems for the general validity of human rights measures. In particular, producing increasingly more information about a wider range of human rights violations may give the impression that a human rights situation is worsening, when actually we just know much more about human rights violations than we used to know. So, for example, the quantitative measures discussed above make it appear that the

human rights situation in Brazil today is worse than it was during the military government in the early 1980s. This is probably not the case. In the early 1980s, human rights organizations mainly reported on the death, disappearances, and torture of members of the political opposition. Today human rights organizations also are reporting on police use of deadly force in the shantytowns as a form of summary execution. Because the level of police violence is very high, it would seem that there are more violations of physical integrity rights in Brazil today than before. From a human rights perspective, it is a positive development that human rights organizations report and gather data on police violence. From the point of view of the validity of data over time, however, it may be erroneous to conclude that human rights violations have worsened in Brazil compared to the military dictatorship. Likewise, we now have so much more information about rape in warfare that might make it seem as if there is more rape today than in the past. However, it is likely that we are more aware and attentive to the problem of rape and thus are providing better documentation about rape, not that rape itself has increased.

So, what do you think about all of this? What do you think about the fact that you are not only producing good information but that it's being used in ways that is producing fascinating research but perhaps not in the way you intended for your information to be used?

- **Michael McClintock:** The availability of data, the increased information flow, the increased quality of information, and the multiple sources of data collection we now have all contribute to identifying problems and trends related to human rights. But I am not sure that on a global scale one set of data can be combined with another. Freedom House has been scoring political freedom since at least the 1960s using human rights indicators. Governments at the UN have been counting the number of pages in Amnesty International's annual report since Amnesty had an annual report. Israel counts the number of words and claims bias if there are more words/pages. I think the term "statistical artifact" is the term to describe many of these efforts—trying to measure international trends and developments using data prepared for some quite different purpose. The difficulties of assessing data from vastly different sources can be illustrated, for example, by the 1989 UN

Handbook on Social Indicators and subsequent updates from the United Nations' statistical office. This was sometimes quite useful, but the data provided was enormously uneven; insofar as it was based on government submissions to the U.N., the expression garbage in, garbage out applied. The statistics came from government agencies of vastly different quality and slant. So, it matters what we are measuring and the integrity with which measurement is undertaken.

Quantitative analysis is really valuable when you are looking at something like the enormous levels of violence in Guatemala in the 1980s or mass displacement in Kosovo over time in the 1990s. A study of displacement in Kosovo was one of the great introductions of really top, five-star, statistical expertise to a particular human rights and political question: Did the displacement precede or follow the bombing? Was displacement part of ethnic cleansing? The study involved Patrick Ball from the AAAS and Herb Spierer, a former Chair of the American Statistical Association Committee on Scientific Freedom and Human Rights. The findings of that kind of statistical research in assessing the aerial bombardment of the former Yugoslavia was particularly meaningful. Patrick Ball's AAAS handbook on large scale data projects for human rights, *Who Did What to Whom*, continues to be an essential tool for such work. The important point is that some statistical analysis has been done to great effect.

Regarding the question, "Are things worse now?" I think they are better. The level of information available now means that we know when a tree falls. We can see it from the satellite photo. We know when a mass grave is dug using ground sensors and satellite imagery. We know so much about the evil being done *today* that measuring historical change over time, with a view to truth-telling and justice for long-past abuses is no longer the only way forward. We missed the full story of the Cold War secret wars in Angola and the Congo—and many others. Things were terrible then but it took years to get the details, and many past horrors remain virtually unknown.

- **Curt Goering:** Some of these statistical studies—based on information that is publicly available—are almost by definition incomplete because researchers cannot know what has been done but is not in the public domain. For example, Amnesty’s reports do not always account for private discussions or interventions that might have been undertaken with governments or intergovernmental bodies. I think our organizations’ main objective is to be as effective as possible. If that means not putting something in the public domain but having a chance to achieve some tangible results by working quietly, then that is the route that would be attempted first. At best, studies that count the press releases or the urgent actions or the number of reports or the pages in the annual report produce a highly incomplete picture. With respect to some countries, it is probably quite a distorted picture. There are interesting statistical studies (and some are better than others) but even the best of them, I would say, are incomplete and do not establish a full record of what an organization has done in order to try to address a particular human rights problem. They have value, but are often not reliable indicators of true effectiveness.
- **Eric Stover:** There is a good and positive side to quantitative work. As I mentioned earlier, I am especially interested in the issue of social confirmation bias—that is, the basic human need to find evidence that validates our own beliefs and biases—and how it can distort human rights research and investigations. I would like to know what the people who take on these quantitative studies of human rights treaties are trying to achieve. What are they looking at and how is it defined? If their studies are rigorous and turn out to be critical of treaties, then I think the human rights communities should be open to criticism and learn from it. That is important. Critical review is a process common in the scientific and medical community. In science, you are peer reviewed. Every article you write is peer reviewed, and there is always a better than average chance that you are going to be criticized for something whether it is in your methodology or how you interpret your data. In the

forensic sciences, if you testify once in court and screw up, you may be forgiven; second time, you screw up, eyebrows are being raised; but do it a third time, and you won't be called back. So, you become used to being put on the hot plate.

Quantitative studies can also help us understand the needs and priorities of war-affected communities. At the Berkeley Human Rights Center we have a team that has conducted seven population-based surveys in ICC situation countries or other countries holding international trials over the past few years. Their objective is to find out what communities think about justice, the impact of the courts, as well as gain a full picture of their needs in the areas of development, security, jobs, food, and so on. We actually find that the desire for justice for past crimes in post-war countries is often a very low priority. Yet, if you ask respondents if all their other needs were met, they often place justice on a much higher scale. A recent survey in the Central African Republic found that over 90 percent of the population surveyed wanted some form of justice in that country—even though they did not at first rate it as their highest priority.

- **Kenneth Roth:** I would like to comment on the argument that there is a correlation between ratification of a treaty and an increase in the number of human rights violations reported by Amnesty's annual report and the annual State Department country report on human rights practice. Let's leave aside the potential bias of that way of even looking at the world, or the idea that more information is now available: It may be that there simply is now more written up than before. There are broadly speaking two conclusions you could draw from that correlation: 1) Ratification is the cause of the increased abuse. (That is a controversial claim contrarian academics like to make.); or 2) Ratification is part of a broader process that also leads to more violations. For example, take a nice stable dictatorship in which there is no domestic turmoil. Such a state may be under pressure to ratify human rights treaties. At a point when they are trying to open up to the world, the same pressure that may lead them to ratify may also lead to more domestic turmoil, which leads to more repression as the

government tries to cling to power. There are lots of possible explanations for the correlation. The problem with academic approaches that treat quantitative indices as though they capture all the reality is that you really cannot answer which of those two possible scenarios is the proper one.

I'm aware there is a tendency among academics who do quantitative work to disparage the mere anecdote—"We're going to be scientific; we're looking at the data. You guys are just talking anecdotes." But, I just don't think it is that simple. The challenge isn't just analyzing the validity of the data. There is also a need to address reality with a few case studies. It is not just anecdotal. I suggest an approach that closely examines some of the countries that have ratified treaties in the last two years. Then, using interviews and analysis on the ground, researchers should try to understand what critical dynamics on the ground led to ratification, and what they have to do with any variation in the instances of abuse. That is not an anecdotal approach. That is a real-world case study. To do that kind of work takes time and money and an ability to operate in the world, which many of the quantitative academics do not have. But that is what is missing. And until I see those kinds of studies, I have a hard time taking the statistical analysis seriously because so much of it is so counterintuitive. And I don't mean counterintuitive in a way where I would wake up and say, "Oh my goodness, I never thought of it that way." But counterintuitive in the sense that the analysis just doesn't pass the laugh test. To make a claim of causality based on statistical analysis without studying the deeper things that might be going on strikes me as naïve. I would challenge academics to go beyond the anecdotal but to do serious case studies on a few of these cases. Then they would be in position to evaluate what the data shows and move beyond artificial statistical analysis.

- **David Petrasek:** About a year ago I looked into the CIRI (Cingranelli and Richards) database. It scares me the extent to which it relies on not just Amnesty data, but data only from Amnesty's annual report. There are no data in Amnesty's annual report that are consistent over time in terms of

quantitative information, except in relation to the death penalty. That is the only hard quantitative data that Amnesty has ever tried to track over time across all countries. Everything else in the report is what you would expect to find in a summary. Amnesty makes no effort to try to identify how many cases of torture there were in a country—whether there were 200 cases or 400 cases. The coders, however, appear to treat the report over time as though Amnesty researchers systematically recorded every extrajudicial execution, every incident of torture and discrimination—and never mind all the other human rights violations. I think that Cingranelli and Richards are aware of the limitations because I have read their articles and in them they list many qualifiers. The data set is available on line, though, and anyone can use it. If you go to the World Bank you see that the CIRI Index is the measure for human rights. The situation reminds me of Transparency International’s measure of corruption, which is a very problematic index.

We live in a world where everything is expected to fit in a chart. The Millennium Development Goals are the best example of this phenomenon. The idea seems to be that if you cannot mark progress over time quantitatively then progress hasn’t been made. I am increasingly seeing the CIRI index cited, and it seems to have emerged as the best that is out there. People are using it, though, without being aware of its huge limitations—i.e., that it is based on the Amnesty annual report which has made no effort to be quantitative except in relation to the death penalty.

- **Susan Waltz:** Moreover, Amnesty no longer attempts to cover the entire world. In the mid-1990s it developed a policy of Minimum Adequate Coverage (MAC) and after that moved to regional based coverage. The CIRI database does not appear to take this policy development into account, either.
- **Stephanie Farrow:** I wish to echo the concerns that have been voiced about coding the Amnesty annual report. Even if one were to base an analysis on all of the country and other reports that AI and Human Rights Watch have issued in a given year,

the picture would still be very dependent on many variables. There are so many demands on the researchers, and there is so much information coming in, that they have to do triage in relation to their available time. Because there are only 24 hours in the day, a researcher may choose for example, to devote time to following up on just two cases out of dozens or more. With the annual report, researchers are always terribly frustrated because they really want to say much more than is possible in the amount of space they are given. And there are so many human rights problems that are not covered that the annual report cannot be used as a reliable measure of the human rights situation across the world.

We need a more sophisticated way to assess human rights situations. There are many other ways besides relying on AI and HRW's annual reports to assess the effectiveness and the impact of human rights treaties. Studies need to be more creative in their assessments of what is taken into account. How are human rights advocates themselves using the treaty standards, for example? Kenya, which ratified the Women's Convention (CEDAW) just before it was to host the 1985 World Conference on Women, proceeded to do little at the national level to implement that treaty. But local activists and women's rights groups did an amazing job. They took the treaty, ratified by the state, and promoted it locally with their municipal governments and with individual tribal leaders. They used the treaty, and it had an impact. How do we effectively judge impact? If we are going to judge effectiveness of treaties, the research needs to be a lot deeper and broader to assess the actual impact of human rights treaties in communities.

### *Human Rights Research Methodologies and Ethics*

- **Eric Stover:** Trustworthy information and the ability to get that information out quickly can be essential to preventing human rights abuses. In 2009, we held a technology and new media conference at Berkeley and it was fascinating. When I opened the meeting, I had to say, "Look, I'm not going to ask everybody to turn off their cell phones" because we had a bank of "real-time" bloggers in the back of the room. They were all

twenty-somethings and they had their laptops open and were blogging away. We had a mobile technology competition as part of the conference. Over 50 organizations around the world send in what they are doing with mobile technologies. Some of these new ideas were quite creative. New technologies can have a positive side, and we need to keep our minds open, and figure out ways to harness these innovations. But there are also serious draw backs to these new technologies which I think we in the human rights community need to discuss. We need to ask, “What are the ethics? What is the veracity and utility of the information being received? How are technologies and the information they generate being used to bolster repressive regimes?”

*Relationship between NGOs and Victims/Survivors*

**Ann Marie Clark:** My question is about the evolution of methodology and advocacy work. How would you say relationships have changed over time between NGOs and people whose rights have been violated? The ability to gather information and the ability to identify themes suggests that conceptual advances have been made, and that patterns can be recognized through statistical analysis. At the same time, Erik Stover’s presentation emphasizes that there is also real potential for very deep service to people on the ground as well. I’d like to hear the practitioners’ reflections on these issues.

- **Curt Goering:** Human rights organizations’ relationship with survivors and victims of human rights abuse is a very important one. In Amnesty’s information-gathering and public outreach work there is an increased awareness of, and sensitivity to, people who have survived torture, especially when you sit down for an interview with someone who has been through a horrendous experience and ask them to recount at length what they endured. It is important to consider what retelling an experience might trigger in an individual—what it might cause someone to relive: in some cases it might re-traumatize an individual; in others, an individual may need to talk about the experience they have suffered in order to work through it. We train our staff to be

aware of and sensitive to those possibilities. Some witnesses may also bring certain expectations along with the information they are providing, and often we cannot meet the full expectations. The information might be used, and it might make a difference in the end. Or, it might only add to the body of evidence and not particularly help a given individual's circumstances. For some witnesses that may be enough. Others need more.

- **Kenneth Roth:** I think it is worth saying that the human rights movement has become much more sophisticated and more professional. And that necessarily introduces a certain distance from the victims. There is clearly, and inherently, contact with the victims at the investigative stage. And there are times when it is very useful to deploy victims to change the way that people see the world. For example, we have done this very successfully in Geneva at meetings of the Human Rights Council, which tend to occur in an unreal atmosphere. If you can bring in some victims before the Council, you can change the way people look at things. But most of what we do is beyond the ability of the victims to follow or beyond our ability to keep victims informed. Whether it is providing information to a broad range of journalistic contacts and trying to get into relevant press around the world; whether it is trying to work in a dozen capitals in places around the world to try to enlist influential powers to use their clout to back human rights; whether it is going to tribunals and trying to get them to prosecute or in front of the UN and trying to get them to deploy peacekeepers—these are all complicated processes. Realistically, we just do not have the capacity to bring the victims along in all of this. Is that good or bad? There are benefits and costs. As a result of our emphasis, I think we are more effective in applying pressure, and over time that pressure builds a stronger defense of human rights. But there is a risk of losing touch with the victims because so much of this activity does take place without any day-to-day contact with the victims. The contact is in isolated stages of the process. That is the reality; and I would not advocate going backwards. It is just the way that the movement has developed.

- **Michael McClintock:** I agree with Ken that as we become more professional—as we get bigger, as we deal with more issues, in all parts of the world, and as we engage in situations of war and peace—there is a danger of losing contact with people in the field. It is impossible to follow up with everybody you meet. On the other hand, I think researchers in the 70s were thrown into the deep end with little preparation or backup. We were sent out to find information and talk to people with no possibility of the close and ongoing contact that we can have now with so many more people, and without the kind of detailed guidelines and training programs that were developed at Amnesty and Human Rights Watch (which I actually know better than contemporary Amnesty). The Children’s Rights Program at Human Rights Watch, for example, has detailed guidelines on working with children. We are just not as ham-fisted as we were in the old days. Now there is detailed training and guidance on how to work with victims of sexual violence before a researcher is sent in the field to do this. The level of sophistication today is very different than in the past. Part of the sophistication is to go beyond mere empathy—taking into account the safety of the people you are dealing with even before you go into a situation. There is greater awareness of the potential risks to victims and those working with them. Because of improved training and guidelines, researchers take into account the likelihood of putting someone in even greater danger than they were in before and put considerable thought into follow-up to improve protection.

When your brief includes individual casework the emphasis on personal contact remains. For example, Human Rights Watch’s or Human Rights First’s or Amnesty International’s work with refugees is all about that personal contact. Such contact is necessary to gather basic information and develop examples that will illustrate a larger picture, and there is also a lot of actual work to resolve the specific problems of particular refugees. This is one of the secrets of our success. People—whether in Belfast, Mindanao or Peru—have learned to trust us. That is because of the empathy we

have shown, but even more importantly, the integrity with which we go into the field. In Bosnia, for example, people would tell our researchers where a road was clear of mines and whether it was safe to go down a particular path. That level of confidence is won by integrity and by proving over time that you take to heart the safety and well-being of the people on whose behalf you work, and you make it a priority. In the end, I think we are less coldly professional than some might say.

*Training Human Rights Field Investigators*

- **Stephanie Fariior:** Curt mentioned the need for the people who are doing the research to understand international humanitarian law, human rights law and the human rights standards against which they are going to judge government conduct before they go into the field. This raises the question of what training is required of those going into the field and what training the researchers at the home office receive. A researcher might be hired who knows the long political, social and economic history of the country, but they might not have appropriate training in interviewing people or sorting out what to do when the government professes something. How do you follow up on testimony based on memory? We know about the various biases that can alter memories. We also know of cultural differences in communication. The training of people who are doing the fact-gathering is important. The first two country visits I did for AI were back-to-back: Yemen and India. When I was asked to do these missions I called up Curt and asked him for advice on conducting the field research. Another colleague, Lamri Chirouf, also did a wonderful job of briefing me, but it was all learning on the spot rather than organized training.

## Chapter 5

### Looking Back and Looking Forward: More Milestones in the Normative History of the Human Rights Movement

Following the first three panels, practitioners were given opportunity to comment on additional important issues that merit exploration to complement topics discussed during this conference.

Susan Waltz introduced the topic.

**Susan Waltz:** If you were either to rework today's agenda or extend this conversation for another day, are there other milestones and topics that you would have wanted to address? One topic mentioned this morning was the *death penalty*. We might, for example, have asked someone to relate how the human rights movement came to be involved in work to abolish the death penalty and what the impact of that work has been. *Impunity* was another issue that arose in discussion. There may be others. If you were to try to describe the history of the modern human rights movement to people from another space or another age, what would you add to the list of topics that we have considered today? I would be very interested to know if you think there are other important milestones that we might have added to the program. In thinking about the history of the human rights movement and its contribution to normative standards, did we hit all the high points? Did we miss any significant developments?

As a separate issue, today's conversation has heightened my awareness of, shall we say, roads not taken. This came up, for example, in Nigel's presentation on the Torture Convention, and his account of Amnesty International's (AI) initial preference to have it discussed in the UN's crime sector rather than by human rights diplomats. In various ways, this workshop has brought into focus some of the strategy choices made by the human rights movement, and we can begin to appreciate that the path was not always straight or straightforward. Some issues or avenues were initially explored but ultimately dropped. I would like to hear your thoughts about this. We have an impression that the human rights movement in its early years

was more focused, and the issues somewhat tidier. But perhaps we are romanticizing about how neat and tidy things were in the early days. After all, that was a time when concepts and strategies were being invented, so there must have been a lot of messiness and false starts. (Whatever human rights work was in the past, it certainly does seem messy now, with a lot of new actors and new issues and fuzzy boundaries.)

I am interested to hear your comments on both of these issues.

#### *Human Rights Violations based on Sexual Orientation and Gender*

- **Stephanie Fariior:** Sexual orientation and gender is one area that has caused great discomfort in human rights organizations and, for cultural reasons, within AP's worldwide membership, but we have seen real movement on the issue. At Amnesty International's 1991 International Council Meeting, some of the national delegations arrived with strict instructions to vote against the proposed resolution expanding AP's work on this issue. We had extensive discussions over the course of the week, very frank sharing of views, a lot of education, and ultimately consensus on a new position was reached, and things have continued to evolve since then.

#### *Neglected Populations*

- **Kenneth Roth:** Following up on Stephanie's point, the human rights movement has gradually taken on populations who have been neglected traditionally—starting with women but extending to gays and lesbians, refugees and workers. There is a growing consciousness of the need to very self-consciously expand beyond the original political prisoner orientation, which tended to be focused on urban elites. Relatedly, it might be interesting to look at how the movement has dealt with the rights that are most culturally contested. What I have in mind are women's rights, sexual rights, and religious freedom. Those are three areas where at least at the cultural level you don't get buy-in the way you do with many of the other rights that we have discussed. It requires innovation and strategies for

promoting these rights in the areas where they are most contested.

### *Discrimination*

- **Margo Picken:** The concept of discrimination is at the core of the international human rights instruments. The inclusion of discrimination clauses was used to justify jettisoning the minorities system that was established by the League of Nations following World War I. We should examine how discrimination came to be such a focus, and build it much more forcefully into our work.

### *Impunity and Accountability*

- **Kenneth Roth:** Initially there was quite a bit of resistance within the human rights movement against the idea of urging prosecution of anyone. Human rights activists historically were supposed to favor the defendant or at least monitor the way the defendant was treated. The idea of actually working to put somebody in the dock was counterintuitive. That evolution of the attitude toward accountability is interesting.

### *Making Comparisons between Types of Human Rights Organizations*

- **José (Pepé) Zalaquett:** I think it is important to compare the different types of human rights organizations—staff-driven organizations, membership movements, official and unofficial organizations—and how those differences play out with regard to the work of human rights.

### *National Security and Human Rights*

- **José (Pepé) Zalaquett:** We need to focus on the issue of security. Security has been a bad word for the human rights movement because it is in the name of national security that so many atrocities have been committed. Yet decent people, who are our base of support value security, and if human rights isn't about peace in the streets and security at home, they don't

know what it's about. We need to be able to articulate these concerns. After September 11, half a dozen organizations prepared reports on human rights and terrorism. And basically they all said, "Terrorism is terrible. Now here are the 500 things that you cannot do to fight terrorism." I'm exaggerating, but the response was rather knee-jerk reluctance to recognize the reality of new and greater threats to security. I'm not saying that anything should go, but this issue of how to approach security concerns from a human rights standpoint has not been properly addressed.

### *New Media and Technology*

- **Eric Stover:** Human rights advocates really need to understand the pros and cons of new media and technology and how it is affecting the human rights movement either for the good or the bad. The more human rights advocates move into areas where they are dealing with large displaced or threatened populations, they need to have the skills to interpret quantitative data, such as mortality and morbidity surveys. They need to be trained to determine what makes a survey rigorous and valid, or riddled with biases. Otherwise, we will be drawing conclusions based on poor methodologies and making interpretations that actually distort the real picture. In addition, we need to be able to step back and be self-critical, to question our own received wisdom about what strategies work (e.g. the massive "Save Darfur campaigns" that generated a lot of heat but came up short on results), and, if necessary, gorge a few sacred cows.
- **Nigel Rodley:** I would not restrict Eric's idea to just the new media. I think it is worth analyzing the media in general. The media always has been a tool for human rights activism but we have not examined what the media has done to human rights activism in terms of the demands it has made on it. I'm sure that media had an important role to play in Amnesty changing its policy with regard to NGEs for example.

*International-Local Connections between Human Rights Organizations*

- **Christopher Avery:** I would be interested in looking at the evolution of the role of local and national NGOs, particularly in the global South. Specifically, it would be interesting to consider how their relationships with international human rights NGOs may have evolved over time, and whether or not and how effectively they have used the United Nations and international mechanisms themselves, directly.
- **Nigel Rodley:** I would like to look at national human rights institutions, specifically the human rights Government-sponsored NGOs (GONGOs) and how they relate both to genuine and national NGOs and international NGOs, as well as of course the official intergovernmental system.

*Professionalization and Building Constituencies for Human Rights*

- **Margo Picken:** I would like to think about the process of building constituencies for human rights. One of my concerns is that the professionalization of human rights has also taken human rights advocacy away from ordinary people who feel that they don't understand the work anymore, whereas in fact they are the driving force for human rights. I think that is a problem. In the past we had strong connections with church groups and trade unions, which meant we had a very broad membership in different countries of the world. Now, trade unions are weaker for all sorts of reasons, and the churches are not as engaged as they used to be. That is a huge loss. In terms of looking at broad constituencies to support human rights throughout the world, are we actually better off now or worse off?

*Effectiveness of New Human Rights Instruments*

- **Margo Picken:** As I prepared for this meeting I asked myself whether the plethora of different instruments we now have within the UN are effective. We have many special Rapporteurs, but they are under-resourced. There is a lot of

cosmetic activity at the UN. It looks as if much is happening but it might in actual fact be only be one person in the Secretariat. Is that real progress or is it cosmetic? And would it have been better to do what René Cassin said in his Nobel speech in 1968 when he was awarded the Nobel Peace Prize? He said, “Don’t keep looking for new mechanisms. Just build on what we have.” He was actually talking then about the International Bill of Human Rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights). Sometimes I wonder if we would have been better off if we had actually taken that approach because that was a route that was possible, I think. I would have liked to have some discussion about that.

### *Migration and Immigration*

- **Michael McClintock:** We haven’t talked about migration very much. It is a relatively new area of concern—politically speaking—and refugee flows can be considered a sub-set of the more general migration issue. We are looking at Fortress Europe and Fortress North America today. In the past, migration was seen as a somewhat separate area of human rights work, but it is becoming more integral to the whole sphere.

### *Building a Credible US Human Rights Foreign Policy*

- **Curt Goering:** I would like to examine what steps can be taken now to build a credible U.S. human rights foreign policy given the damaged reputation of the US on human rights . Another related topic would be the extent to which human rights considerations actually inform U.S. foreign policy.

### *Reliability of Human Rights Data*

- **José (Pepé) Zalaquett:** We also need to look at data reliability. In the US, DNA techniques have uncovered some 250 cases of wrongful conviction. The unreliability of witness

testimony is notorious. And when open societies break down and authoritarian governments take over, the problem of data reliability is only exacerbated: the governments deny everything and the opposition to these regimes may inflate the figures of victimization. It ends up being left to a truth commission, after the demise of dictatorial governments, to account for the reality of the human rights violations of the recent past. In Argentina, for instance, Western journalists are obliged to describe the number of disappeared as “an estimate between 9,000 and 30,000” because if they write a number less than 30,000 they will be blacklisted—and the groups of relatives won’t talk to them again. It is a completely impossible figure—30,000. People in Argentina know that but no one dares to speak about it, so there is a kind of emotional blackmail. There is a similar emotional blackmail in the area of impunity. For example, if you talk openly about the possibility of measures that may make some degree of distinction between crimes against humanity and other human rights violations, many organizations will take aim at you by calling you a “forgiver” or by saying that you favor impunity.

*The Status of Economic, Social and Cultural Rights*

- **José (Pepé) Zalaquett:** Another topic is the question of the justiciability of social and economic rights. For many years there has been a divide between those who don’t consider social and economic rights to be justiciable and those who think they must be fulfilled like any other right. Only very recently have there been efforts to bridge these two positions, and it will be a slow process to move on further in that direction.

And then there are some dilemmas, the gray areas, the trade-offs. The UN has proclaimed the indivisibility and interdependence of all human rights and that often leads to facile responses to such dilemmas. Not that rights aren’t indivisible. But the term has little meaning beyond the assertion that you cannot invoke the need to protect some rights in order to violate others. The point is that life is full of dilemmas, and you have to make choices. For instance,

concerning the satisfaction of social and economic rights, say public education, health or housing, nations constantly face the need to make choices as to priorities and budget allocations.

*The Role of the Judiciary in the Human Rights Project*

- **José (Pepé) Zalaquett:** Another topic would be the role of the judiciary. We now expect everything from judges, and judges, who were once considered bad guys, have become superheroes. From the politicization of the judiciary, we have now come to the judicialization of politics, which is a bit unnerving. Judges are expected to decide on budget priorities, on social policy, on everything.

*Innovating Techniques*

- **José (Pepé) Zalaquett:** And finally, we should consider the possibilities that new techniques afford. In politics, there are new possible ways to mobilize people for demonstrations or to fundraise for a political campaign through small donations and such. How can these possibilities be applied to human rights work?

## Chapter 6

### **Human Rights Scholars Respond: The Conversation Broadens**

In a final session moderated by Carrie Booth Walling, human rights scholars Ann Marie Clark, Julie Mertus, and Kathryn Sikkink shared their reflections about the normative history of the human rights movement, as reflected in presentations by the practitioners. They identified themes that emerged across panels and drew attention to gaps and absences in our discussions. They asked probing questions about the conceptual content of human rights, the defining characteristics of the human rights movement and its collaborative relationships, and the tools of human rights change. Their observations sparked a lively conversation in much of the same spirit as the panel sessions that preceded them. A summary of the remarks is provided here.

**Julie Mertus:** The human rights movement should be understood as both evolutionary and revolutionary, but there is an urgent need for it to become more revolutionary. The human rights movement has the potential to be both an instigator and source of revolutionary ideas. Human rights are powerful because they change people from being an object in their own life to being a subject in their own life. It is a sign of the success of the human rights movement that cultures are changing such that people want to be seen as rights holders. During the panel discussions yesterday, we failed to talk about discrimination and identity in the context of human rights. We do not yet have a human rights culture that supports all parts of the population. The movement risks an intellectual incoherence if it doesn't talk about and address identity rights.

**Ann Marie Clark:** There was a surprising consensus among participants about what Amnesty International (AI) does, how it does it, and how it gets results. Both law and people-pressure were identified as important for the work of Amnesty International, but less attention was devoted to describing how those two factors interact with one

another. I suggest that AI operates under an information-principle dynamic. AI needs information about human rights violations. Then, AI mobilizes action around the principle that relates to that information. Finally, AI uses legal norms to press for state accountability. Questions were raised earlier about the necessity of law whether law is necessary and whether it serves as a useful tool all of the time. If new information can lead to the changing content of human rights, are legal norms necessary? Legal norms are helpful in consolidating human rights gains so that activists do not need to keep reinventing principles—they help complete the accountability cycle. Information and principles are what enable mobilization around human rights. Legal norms, then, are the reference point for that process.

Some questions remain. If success for the human rights movement lies partly in generating pressure, what kind of pressure is effective? And how much is necessary? Human rights scholars could ask better questions if they knew what human rights practitioners want to know about. What would you try to figure out if you had more time?

**Kathryn Sikkink:** During the three panel sessions several practitioners commented on the role of allies in the human rights movement. Nigel Rodley described the human rights movement as going through three phases. In the first phase the human rights movement was insecure and it surrounded itself with allies. In the second phase the human rights movement became aloof as it sought to establish its own identity. In the third phase when the human rights movement gained confidence it began to reach out once again to create new allies. José Zalaquett argued that human rights movement had allies at all levels: domestic, regional and international. These allies included informed public opinion as well as the media or press. Margo Picken identified church groups and labor unions as close allies in the early days of the movement but who became less central later. Instead, the primary relationships were among multiple human rights organizations, creating a division of labor within the movement. There also appears to be a revolving door within the human rights movement as practitioners moved from early organizations like Amnesty International to other human rights NGOs (non-governmental organizations) and then became involved in building institutions like the United Nations or had joined national governments and academia. And the content of the our discussions indicated that initially the human rights movement was

intimately connected to victims of human rights violations but over time the distance between organizations and victims increased.

There are a number of questions I wish we'd had time to discuss. Should the success of the human rights movement be measured by its ability to set agendas, build institutions, create law, or change culture? How do we define and measure success and explain lack of success? The movement has not produced the kind of cultural change in the USA necessary for people to rise up and defeat calls for torture in the wake of September 11, for example. Statistics tell us that human rights violations are constant—that human rights performance remains flat—despite the existence of the human rights movement. If we accept those statistics, the human rights movement has not been successful because it did not change the behavior of governments. What is the sense of human rights practitioners? Is the world as bad today as when the movement started? Or is the movement a victim of its own success because it has drawn so much attention and human rights violations are now more recognized? The media plays an important role in the dissemination of information, mobilization of public opinion, and naming and shaming activities of the human rights movement. What does it mean for the future of the human rights movement if the press is increasingly fragmented or unreliable?

Competition among the human rights organizations was one of the themes that emerged from our informal discussions (not the formal presentations). Can organizations within the human rights movement be simultaneously competitive and complementary? What is the cause of competition between organizations? Is it based on funding issues? Motivated by press coverage? Substantive differences?

### **Discussion: The Conversation Broadens**

In this final round of discussion, human rights practitioners respond to the summary observations and questions raised by the participating human rights scholars.

*The Role of Law and People Pressure in Human Rights Change*

- **José (Pepé) Zalaquett:** Law deals with what ought to be while human rights organizations are dealing with the reality of the actual crimes. We must realize that law follows real life changes rather than leading them. Human rights organizations and their practitioners often act according to the “law in the making.” Practitioners invoke human rights norms before they are fully crystallized. The emergence of new human rights law is the result of a process whereby activists (or norm entrepreneurs) gradually generate consensus in favor of a principle or value that has to be protected by the law. In general, human rights law is catching up belatedly with reality. This is similar to academic life, which also tends to trail behind practice.
- **Wilder Tayler:** Law tends to be at the center of every successful human rights campaign but human rights campaigns also push the development and application of law.
- **Nigel Rodley:** International law doctrine speaks not only established law, but also of law in the making. Customary international law may be *lex lata*—the law as it exists—or it may be *lex ferenda*—law in the making or what the law ought to crystallize into. It is important to think about what kinds of normative action may be appropriate in a given case. Treaty law is binding but only on the parties to the treaty. Declarations create standards which can be used to invoke and somewhat push norms forward. With an established international standard it is possible to hold states to it. Standards give human rights practitioners the ability to say these are your standards that we are seeking to hold you to, not ours. This cuts right across the cultural relativism argument.

*Advocacy Strategies and Effective Pressure*

- **Wilder Tayler:** Pressure and persuasion are both important tools for the human rights movement—they are necessary for success—but they are tools and techniques, not the goal itself. Pressure is related to public advocacy; it is the result of publicity generated by campaigning. Persuasion, on the other

hand, is private advocacy. Sometimes human rights organizations put their arguments forward discreetly, not publicly, to secure a real commitment from the target actor. I recall once trying to explain the concept of enforced disappearance to a Japanese diplomat. We wanted Japan's support on a UN measure, but the diplomat didn't understand the concept. We drew diagrams on a paper and we passed it back and forth. It was humorous—but through this process Japan was *persuaded* to support the effort. Pressure and persuasion are the two main tools of the human rights movement. Apart from them there is not much more.

*Measuring the Success of the Human Rights Movement*

- **Wilder Tayler:** It is hard to say what the human rights movement has achieved, and even knowing what to talk about is difficult, because the definition of success is driven in part by the relationship between donors and human rights organizations. When human rights organizations ask for funding, they do not go to funders and say that they are changing cultural parameters through a process that will require decades of work. They would never be funded! Success must be measured in multiple ways by human rights organizations. In normative terms, I think that the human rights movement's success with the issue of impunity has been real. On the issue of human rights defenders, we have primarily been successful with the concept.
- **Nigel Rodley:** The human rights movement has been successful in making torture unspeakable; but acts of torture continue. Human rights practitioners go into prisons and see it happening. It is true that after 9/11 a brutal administration used brutal rhetoric justifying torture, but the fight back started soon after. The accountability is not fully there but the norm is still there. The debate about torture revolves around innocent versus guilty victims; but Amnesty International made the death penalty retreat and it did so through the process of elite persuasion.

It is interesting to explore how far human rights NGOs are seeking to change culture and how far they are seeking to change elite behavior. Think of cases like the death penalty, sexual minorities and civil rights. There has been an explosion of freedom (expression, assembly, conscience) but is it a success of human rights? There are big forces at play but this includes a human rights consciousness.

*Collaboration between Scholars and Practitioners*

- **José (Pepé) Zalaquett:** In answer to a question about how to help human rights scholars ask better questions and produce more useful research: Human rights scholars need to go directly to practitioners and activists and talk to them about their needs. Some academics are really trying to be relevant to practitioners but there is also a danger that some academics are drifting too far afield.

*Allies of the Human Rights Movement*

- **Margo Picken:** Churches continue to play an important role in the human rights movement domestically in countries where they have the courage and power to promote and protect human rights. But internationally, they are not as active as they once were. Moreover, governments have become incredibly sophisticated in advancing arguments to protect themselves; the human rights movement needs to be far more strategic. The spirit of the times is such that the United Nations is not conducive to pushing human rights forward, and the real dynamic is at the domestic level. International organizations still have an important role, however.

*Evolution of Human Rights Concepts and the Human Rights Movement*

- **Susan Waltz:** Kathryn's observations about academic research on human rights performance raise questions about the *definition* and *content* of human rights. Who owns the conceptual definition of human rights and how has that definition changed over time? The answer to that question has implications for

whether you see things improving, worsening, or staying the same. In the early days of the human rights movement, the content and focus of human rights problems were defined from within the movement itself—prisoners of conscience, torture, disappearances. More recently, the human rights definitions and the human rights agenda have been shaped by ideas that originate from outside the human rights movement—from academics, to the experiences of women, to actors in the corporate world.

I think it's important to recognize that what we're seeing and defining as a human rights problem has not remained constant over time. There is a temporal dimension to the *idea* of human rights as well as the *practice* of human rights. We may want to consider not only what kinds of human rights violations have emerged, but whether any have started to disappear. Why, for example, is Amnesty International producing fewer prisoner cases than it used to? What is the relevant dynamic here?

- **Michael McClintock:** Susan alludes to the premise of success—the claim by some that Amnesty International's work on prisoners of conscience was so good that it led to increases in “disappearance.” This is not necessarily the case—it seems far more likely that in many cases the “disappearances” and outright murders were always there, but went unrecorded. It was in any case easier to respond to the cases of acknowledged prisoners, where there was no question of who did what to whom—and AI's original mandate expressly limited our work to these cases. The countries in which massive shifts to these secret and illegal methods occurred *since* the 1960s are not, in any case, the countries in which AI's work for individual prisoners of conscience achieved the greatest resonance. The global reduction in prisoners of conscience responded to many factors, not least the improvement of global communications and the internationalization of human rights standards. These made it more costly for governments openly to imprison their critics on spurious grounds. AI's efforts on their behalf were one dimension of this trend. In this regard, it's hard to think of a country with large scale political imprisonment that shifted to

murder and “disappearance” in which the political cost of that imprisonment was a significant factor.

Today’s need for work for prisoners of conscience should not be understated—there are probably more than we think, albeit in a far smaller group of countries. Amnesty’s work in this area today, however, probably requires greater resources than in the past, if only because the dangers of being wrong have increased. Human rights organizations are under a microscope—they have to be right when they say that a particular individual does not belong in jail.

- **Margo Picken:** The membership component of Amnesty International is absolutely crucial. Individual adoption (local) groups are important and so is building solidarity with a constituency. What distinguishes Amnesty is that it has always had to bring its membership along with it as its purpose and activities have evolved. Process is important as a means to get to the end. The means that are used do matter and I worry that the professionalization of the human rights movement is leaving the victims and public behind. That is a problem.
- **Nigel Rodley:** I believe in professionalization. It is better to do human rights work by knowing what you are doing. Professionalism is good but careerism is a concern. As human rights become more prominent it attracts people who are interested in the political prominence that goes with it. I prefer the discipline of professionalization to the emergence of careerism.

## Glossary

**AI (and Amnesty)** – Amnesty International. Founded in 1961, AI is one of the oldest and most prominent transnational human rights organizations, with international headquarters in London. The organization relies on 3 million members and supporters in 150 countries to carry out its work, and policies are vetted through complex processes and structures that involve membership in the decisions. (See *ICM, IEC, IS, AI mandate, and Secretary General* below.)

**ICM** – International Council Meeting, AI’s highest organizational decision-making body.

Held every two years, the ICM today brings together approximately 500 members and staff for the purposes of planning and reviewing the direction of Amnesty International’s human rights work. The ICM also elects the International Executive Committee (IEC).

**IEC** – International Executive Committee, a nine-person elected body that serves as the organization’s international governing board.

**IS** – International Secretariat. Based in London, UK, it is responsible for the majority of the organization’s research and campaigning work.

**AI Mandate** - For many years, an internal “mandate” limited Amnesty International’s work to a relatively small number of issues, including the release of prisoners of conscience, fair trials for political prisoners, opposition to torture, disappearances and the death penalty. The mandate was amended several times, and was ultimately replaced in 2002 with a broader mission statement linking AI’s work to the full spectrum of rights enshrined in the UDHR.

**Secretary General** – AI’s executive director of worldwide operations.

**ESC** – Economic, social and cultural rights. Generally understood to be those included in the ICESCR, although ESC rights are no longer considered a discrete category of rights.

**FMLN** – Farabundo Martí National Liberation Front. One of the main participants in the civil war that gripped El Salvador in the 1980s. Founded in 1980 in El Salvador as a coalition of left-wing guerilla organizations, since 1992 it has become one of the country’s major political parties.

**HRC** – Human Rights Council. An inter-governmental body within the United Nations (UN) system created in 2006 to replace the Human Rights Commission, which had become highly politicized and was generally recognized as non-functional. An intergovernmental organization created within the UN body in 2006 by the UN General Assembly.

**HRW** – Human Rights Watch. A prominent international human rights NGO that originated as a series of US-based “watch committees.” The first such committee was charged to monitor Soviet compliance with the 1975 Helsinki Accords. Subsequent committees were formed to monitor human rights concerns in Latin America, Asia, Africa and the Middle East. Before consolidating as “Human Rights Watch” in 1988 the organization was known as the Watch Committees.

**Human Rights First** – A prominent human rights NGO based in New York and Washington. Formerly known as the Lawyers’ Committee for Human Rights.

**ICC** – International Criminal Court. A permanent international court established in 2002 to prosecute perpetrators of the most serious crimes of concern to the international community, including genocide, war crimes, and crimes against humanity. Not to be confused with the International Court of Justice, see *ICJ*.

**ICCPR** – International Covenant on Civil and Political Rights. A core human rights treaty that together with the UDHR and the ICESCR

comprise the bedrock of international human rights law. It commits ratifying countries to respect, protect and fulfill civil and political rights. Adopted by the UN General Assembly in 1966 and in force since 1976.

**ICESCR** – International Covenant on Economic, Social, and Cultural Rights. A core human rights treaty that together with the UDHR and the ICCPR comprise the bedrock of international human rights law. It commits ratifying countries to respect, protect and fulfill economic, social, and cultural rights. Adopted by the UN General Assembly in 1966 and in force since 1976.

**ICJ (sometimes called the World Court)** – International Court of Justice. The main judicial body of the United Nations, it addresses legal disputes and questions submitted to it by states and IGOs. (Not to be confused with the International Criminal Court, see *ICC*.)

**ICM** – See *Amnesty International*.

**ICTR** – International Criminal Tribunal for Rwanda, a special international court established by the UN Security Council in 1994 to prosecute grave crimes associated with the Rwandan genocide.

**ICTY** – International Criminal Tribunal for the former Yugoslavia, a special court created by the UN Security Council in 1993 to prosecute grave crimes committed during the wars in the former Yugoslavia.

**IEC** – See *Amnesty International*.

**IGO** – Inter-governmental organization. Organizations whose members are nation states—such as the United Nations, the European Union, and the Organization of American States.

**IHL** – International Humanitarian Law (or *laws of war, international humanitarian law of war*), the body of customary and treaty law that defines the conduct and responsibility of nations at war, relative to each other and to civilians. It includes most prominently the

Geneva Conventions and the Hague Conventions, but also the 1997 Landmine Treaty.

**ILO** – International Labor Organization. An inter-governmental organization dealing with international labor issues and standards.

**IS** – See *Amnesty International*.

**Mandate** – See *Amnesty International*.

**NGE** – Non-governmental entity. A term used by Amnesty International and other human rights organizations in reference to insurgent groups and other non-government political entities that commit human rights abuses.

**NGO** – Non-governmental organization. In the human rights context, NGOs are organizations comprised of private individuals working to protect and promote human rights, either domestically or internationally.

**OECD** – Organization of Economic Co-Operation and Development. An inter-governmental organization that monitors economic development and engages in related policy discussions.

**Prisoners of Conscience (POC)** – A term coined by Amnesty International to identify individuals imprisoned for the non-violent expression of their beliefs or opinions. Amnesty International calls for the unconditional release of such prisoners.

**Special Rapporteur** – An individual charged by the United Nations Human Rights Council to investigate a specific set of human rights concerns. (See *Thematic mechanisms*.)

**Thematic mechanisms** – Refers to the various special rapporteurs, representatives, independent experts or working groups acting under United Nations auspices to investigate specific human rights concerns.

**Third Committee** – the Social, Humanitarian and Cultural Affairs Committee, a standing committee of the United Nations General Assembly.

**Treaty body** – A committee of independent experts charged to monitor implementation of the core human rights treaties, such as the ICCPR and the Convention Against Torture.

**UDHR** – Universal Declaration of Human Rights. The first and most fundamental human rights standard approved by the United Nations (1948). Its thirty articles elaborate a wide range of civil, political, economic, social, and cultural rights. Even though it is not a legally binding document, the UDHR is considered the cornerstone of international human rights law.

**UNESCO** – United Nations Educational, Scientific and Cultural Organization.

**UN Human Rights Division** – The UN Secretariat's initial office devoted to human rights, replaced in 1993 by the Office of the UN High Commissioner for Human Rights.



## Participants

**Chris Avery** is the Founder and Director of the Business and Human Rights Resource Centre, which tracks the human rights impacts of more than 5,000 companies in 180 countries. He formerly served as Legal Advisor and then Deputy Director of Research at Amnesty International's International Secretariat.

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**Michael McClintock** has worked in the human rights field for more than 30 years. He was formerly the Director of Research at Human Rights First and currently serves as a consultant and advisor to HRF's Fighting Discrimination Program. He previously worked for both Amnesty International as a researcher and Deputy Head of Research and Human Rights Watch as Deputy Program Director.

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**Kenneth Roth** is the Executive Director of Human Rights Watch. As a former federal prosecutor he worked on the Iran-Contra investigation. Roth has written extensively on a range of human rights issues including international justice, counterterrorism, the foreign policies of major powers, and the work of the United Nations.

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**José Zalaquett** is a Chilean human rights lawyer and academic. He is currently Professor of Human Rights at the School of Law, University of Chile and Co-Director of its Human Rights Center. Zalaquett helped to create and then lead Chile's Vicaría de la Solidaridad, an organization sponsored by the Catholic Church that defended those detained by the Pinochet regime and filed habeas corpus documents on behalf of the missing. He served on Chile's National Commission for Truth and Reconciliation and has worked for, served on the board and consulted for numerous human rights organizations. He recently completed a term as President of the Inter-American Commission on Human Rights of the Organization of American States.

