

11

Civil Society: Human Rights NGOs and Other Groups

A. NGOs, INGOs, AND CIVIL SOCIETY

COMMENT ON TYPES AND ACTIVITIES OF NONGOVERNMENTAL ORGANIZATIONS

Nongovernmental organizations (NGOs)—both domestic and international (INGOs)—have figured prominently in many preceding Chapters. This Chapter explores their character, constitution, functions, methods of work and effects.

NGOs pervade and are a vital part of the overall human rights regime. Above all, human rights NGOs bring out the facts. They also contribute to standard-setting as well as to the promotion, implementation and enforcement of human rights norms. They provoke and energize. They spread the message of human rights and mobilize people to realize that message. Decentralized and diverse, they proceed with a speed, decisiveness and range of concerns impossible to imagine in relation to most of the work of bureaucratic and politically constrained intergovernmental organizations.

NGOs operate on the basis of differing mandates, each responding to its own priorities and methods of action, bringing a range of viewpoints to the human rights movement. It is inconceivable that the state of human rights in the world, whatever its shortcomings, could have progressed as much since the Second World War without the spur and inventiveness of NGOs.

Human rights NGOs are only a part of a much broader range of nongovernmental actors whose activities are part of what are now commonly referred to by such terms as 'civil society', 'transnational advocacy networks', and 'social movements'. Until the fall of the Berlin Wall, the concept of civil society was little more than a heading in the history of ideas, addressed by those looking at the work of Hegel, Locke and Adam Ferguson. Today, the term is everywhere, even if its definition remains contested. One major study defines it as 'a sphere of social interaction between economy and state, composed above all of the intimate sphere (especially the family), the sphere of associations (especially voluntary associations), social movements, and forms of public communication'. This definition excludes political parties and those actors of 'political and economic society

[which] are directly involved with state power and economic production, which they seek to control and manage'.¹

Transnational advocacy networks, a term used by political scientists, have been defined even more broadly so as to encompass: '(1) international and domestic nongovernmental research and advocacy organizations; (2) local social movements; (3) foundations; (4) the media; (5) churches, trade unions, consumer organizations, and intellectuals; (6) parts of regional and international intergovernmental organizations; and (7) parts of the executive and/or parliamentary branches of governments'.² Commercial economic actors are about the only group clearly excluded from that definition. Finally, in definitional terms, 'social movements' are said to 'have no definite memberships or authority structures; they consist of as many people, as much territory and as many issues as seems appropriate to the people involved; they have no central headquarters and are spread across numerous locales; and they are all inclusive, excluding no one and embracing anyone who wishes to be part of the movement'.³ It is in this latter sense that the term 'human rights movement' is sometimes used, including in this book.

To add to the terminological complexity, a great many acronyms have been coined to describe different categories of groups. In addition to NGOs and INGOs (international NGOs) they include: CSOs (civil society organizations), CBOs (community-based organizations), PVOs (private voluntary organizations), GROs (grassroots organizations), QUANGOs (quasi-NGOs), GONGOs (government organized NGOs), BINGOs (business and industry NGOs), DONGOs (donor organized NGOs), and DNGDOs (domestic nongovernmental development organizations).

This book uses the term NGO partly because of its consistent historical usage in the human rights domain, partly because its use in Article 71 of the UN Charter has discouraged any alternative terminology in that context, and partly because a 'nongovernmental' character remains a defining element in the make-up of any such human rights group. Nevertheless, the term NGO, standing alone, still reaches too broadly for our purposes. It includes myriad types of organizations that are (more-or-less, depending on the state) independent of the state: economic interest groups like labour unions, consumer unions or industrial associations; racial, gender and religious groups; issue-oriented groups like educational, environmental or animal welfare organizations; groups representing those with disabilities or the elderly or the young; public interest groups that are anti-corruption or pro-universal health care; and so on—the many types of associations of citizens and of non-state institutions that some theorists view as the essential ingredients of the concept of civil society.

This Chapter is concerned with that subset of NGOs which is involved with human rights issues, although that category is rapidly expanding. Post-Cold War efforts to make human rights an integral part of the mainstream in a wide range of

¹ Cohen and Arato, *Civil Society and Political Theory* (1992), ix.

² Keck and Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (1998), 9.

³ J. Rosenau, 'Governance and Democracy in a Globalizing World', in Archibugi, Held and Köhler (eds.), *Re-Imagining Political Community: Studies in Cosmopolitan Democracy* (1998), 28 at 42.

activities have highlighted that expansion by bringing a significant number of development and humanitarian NGOs into the picture, by urging businesses and other private actors to accept human rights responsibilities, and by underscoring the relevance of human rights considerations in areas such as trade, environment, or labour.

Within individual states, it is often the domestic human rights NGOs that call governments to account and compel reconsideration of policies and programmes that have been designed in disregard or violation of human rights norms. It is not only the domestic policies of a state that figure in NGO reporting and advocacy. The development in a few states of a foreign economic policy that takes into account human rights violations in other states owes much to the information provided and pressures exerted by NGOs.

At the international level, and particularly in the United Nations context, the frequent reluctance of governmental actors to criticize their counterparts from other countries and the limited supply of independent sources of information have contributed to making NGOs the lynchpins of the system as a whole. In situations in which NGO information is not available or where the NGOs are either unable or unwilling to generate political pressures upon the governments concerned, the chances of a weak response by the international community, or of none at all, are radically increased. A high proportion of the most significant initiatives to draft new international instruments, to establish new procedures and machinery, and to identify specific governments as violators have come as a result of concerted NGO campaigns designed to mobilize public opinion and lobby governmental support. As noted in Chapter 8, well over half of the 3,240 persons who participated in the 1999 session of the UN Commission on Human Rights were NGO representatives. At the Beijing World Conference on Women in 1995, 40,000 persons attended the NGO forum. According to UN estimates the number of international NGOs grew from around 1,300 in 1960 to more than 36,000 in 1995, and the number has increased significantly since then.

But numerical indicators tell only a small part of the overall story. Human rights NGOs have experienced a quantum leap in their professionalism from the days of the 'amiable amateurs' importuning delegates for a brief chat to the high level of professionalism of many groups today. By comparison with the situation even as recently as 15 years ago, the output of the major international NGOs is more visible and better marketed, their strategies are more clearly mapped out, their level of technical expertise is greater, and their funding more adequate to the task. The communications revolution has assisted them in gathering timely and compelling information, in disseminating it, in running well coordinated campaigns, and in enlisting public opinion.

Moreover, their impact is often more obvious and tangible than it was in an earlier era. The 1997 Ottawa Conference to draft a Landmines Treaty, the 1998 Rome Conference to draft the Statute of an International Criminal Court, and the 1999 Seattle Ministerial Meeting of the World Trade Organization represent a high water mark in terms of NGO involvement and influence. Perhaps most significant is the blurring of the distinction between the insiders and the outsiders as NGO representatives have become part of governmental delegations. They have also

increasingly become key partners in the delivery of humanitarian and other forms of development assistance, partners with government in performing a variety of functions such as human rights education, the monitoring of voluntary codes of conduct and even the delivery of basic social services, and even partners with businesses and labour unions in various areas.

THE NON-GOVERNMENTAL ORDER

The Economist, 18 December 1999, at 23

[This analysis was published after the failure of a WTO Ministerial Meeting in Seattle in November 1999 which had aimed to launch a new round of negotiations to further liberalize world trade. Commentators attributed much of the responsibility to a highly visible NGO campaign.]

... [The NGOs] that descended on Seattle were a model of everything the trade negotiators were not. They were well organized. They built unusual coalitions (environmentalists and labour groups, for instance, bridged old gulfs to jeer the WTO together). They had a clear agenda—to derail the talks. And they were masterly users of the media.

The battle of Seattle is only the latest and most visible in a string of recent NGO victories. The watershed was the Earth Summit in Rio de Janeiro in 1992, when the NGOs roused enough public pressure to push through agreements on controlling greenhouse gases. In 1994, protesters dominated the World Bank's anniversary meeting with a 'Fifty Years is Enough' campaign, and forced a rethink of the Bank's goals and methods. In 1998, an ad hoc coalition of consumer-rights activists and environmentalists helped to sink the Multilateral Agreement on Investment (MAI), a draft treaty to harmonize rules on foreign investment under the aegis of the OECD. In the past couple of years another global coalition of NGOs, Jubilee 2000, has pushed successfully for a dramatic reduction in the debts of the poorest countries.

The NGO agenda is not confined to economic issues. One of the biggest successes of the 1990s was the campaign to outlaw landmines, where hundreds of NGOs, in concert with the Canadian government, pushed through a ban in a year. Nor is it confined to government agendas. Nike has been targeted for poor labour conditions in its overseas factories, Nestlé for the sale of powdered baby milk in poor countries, Monsanto for genetically modified food. In a case in 1995 that particularly shocked business, Royal Dutch/Shell, although it was technically in the right, was prevented by Greenpeace, the most media-savvy of all NGOs, from disposing of its Brent Spar oil rig in the North Sea.

... Are citizens' groups, as many of their supporters claim, the first steps towards an 'international civil society' (whatever that might be)? Or do they represent a dangerous shift of power to unelected and unaccountable special-interest groups?

... Although organizations like these have existed for generations (in the early

1800s, the British and Foreign Anti-Slavery Society played a powerful part in abolishing slavery laws), the social and economic shifts of this decade have given them new life. The end of communism, the spread of democracy in poor countries, technological change and economic integration—globalization, in short—have created fertile soil for the rise of NGOs. Globalization itself has exacerbated a host of worries: over the environment, labour rights, human rights, consumer rights and so on. Democratization and technological progress have revolutionized the way in which citizens can unite to express their disquiet.

It is, by definition, hard to estimate the growth of groups that could theoretically include everything from the tiniest neighbourhood association to huge international relief agencies, such as CARE, with annual budgets worth hundreds of millions of dollars. One conservative yardstick of international NGOs (that is, groups with operations in more than one country) is the Yearbook of International Organizations. This puts the number of international NGOs at more than 26,000 today, up from 6,000 in 1990.

Far more groups exist within national borders. A recent article . . . suggested that the United States alone has about 2m NGOs, 70% of which are less than 30 years old. India has about 1m grass-roots groups, while another estimate suggests that more than 100,000 sprang up in Eastern Europe between 1988 and 1995. Membership growth has been impressive across many groups, but particularly the environmental ones. . . .

. . . As a group, NGOs now deliver more aid than the whole United Nations system. Some of the biggest NGOs, such as CARE or Médecins Sans Frontières, are primarily aid providers. Others, such as Oxfam, are both aid providers and campaigners . . .

. . . New coalitions can be built online. . . . [T]he Internet allows new partnerships between groups in rich and poor countries. Armed with compromising evidence of local labour practices or environmental degradation from southern NGOs, for example, activists in developed countries can attack corporations much more effectively.

This phenomenon—amorphous groups of NGOs, linked online, descending on a target—has been dubbed an 'NGO swarm' . . . [which has] no 'central leadership or command structure; it is multi-headed, impossible to decapitate'. And it can sting a victim to death.

Less dramatic, but just as important, is the rise of NGOs that are dubbed . . . 'technical' groups. These specialize in providing highly sophisticated analysis and information, and they can be crucial to the working of some treaties. . . . In the campaign to cut third-world debt, a handful of NGOs, including Oxfam, have become as expert in the minutiae of debt-reduction procedures as the bureaucrats at the IMF and World Bank. Increasingly, they have been co-opted into making policy. . . .

If the power of NGOs has increased in a globalized world, who has lost out? . . . Certainly national governments no longer have a monopoly of information, or an unequalled reach, compared to corporations and civil society. But the real losers in this power shift are international organizations.

Inter-governmental institutions such as the World Bank, the IMF, the UN agencies or the WTO have an enormous weakness in an age of NGOs: they lack political leverage. No parliamentarian is going to face direct pressure from the IMF or the WTO; but every policymaker faces pressure from citizens' groups with special interests. . . .

Less obvious is whether NGO attacks will democratize, or merely disable, these organizations. At first sight, Seattle suggests a pessimistic conclusion: inter-governmental outfits will become paralysed in the face of concerted opposition. History, however, suggests a different outcome. Take the case of the World Bank. The Fifty Years is Enough campaign of 1994 was a prototype of Seattle (complete with activists invading the meeting halls). Now the NGOs are surprisingly quiet about the World Bank. The reason is that the Bank has made a huge effort to co-opt them.

James Wolfensohn, the Bank's boss, has made 'dialogue' with NGOs a central component of the institution's work. More than 70 NGO specialists work in the Bank's field offices. More than half of World Bank projects last year involved NGOs. Mr Wolfensohn has built alliances with everyone, from religious groups to environmentalists. His efforts have diluted the strength of 'mobilization networks' and increased the relative power of technical NGOs (for it is mostly these that the Bank has co-opted).

. . .

B. HUMAN RIGHTS NGOs

In the readings that follow we first take up the issue of how, if at all, a 'human rights' NGO might be distinguished from other NGOs. We then look at some of the obstacles that governments place in the way of domestic NGOs and examine the mandate of some of the most prominent of the INGOs.

HENRY STEINER, DIVERSE PARTNERS: NON-GOVERNMENTAL ORGANIZATIONS IN THE HUMAN RIGHTS MOVEMENT

(1991), at 5

[These excerpts are from the report of a retreat for human rights NGO activists from around the world.]

. . .

[A. What makes a group a 'Human Rights' NGO?]

Participants distinguished between 'national' NGOs limiting their activities to

their home country, and 'international' NGOs (INGOs) that act in two or more countries. . . .

Our discussions about threshold definitions underscored how diverse were the participants' understandings of the human rights movement. Certain questions recurred. For a public interest group to qualify as a 'human rights' NGO, must it base its criticism of state conduct on international human rights law—the Universal Declaration of Human Rights (UDHR), the Civil-Political Rights Covenant, and so on? Most participants thought not. They were more persuaded by the nature of the claims made and the goals advanced by a group than by the formal source of the norms that it invoked to criticize state conduct.

In fact, some participants noted, the choice between relying on a national legal system or on international law norms to support advocacy before national institutions often amounts to a question of strategy. Employing domestic standards rather than international law might be politically expedient—more political clout, less risk that an NGO will be viewed as inspired by alien doctrine. On the other hand, international law has strategic advantages in countries whose domestic legal norms are of little assistance. . . .

Participants suggested other reasons for national NGOs to rely on domestic law. In countries that have ratified few covenants, NGOs arguing before national courts can criticize domestic law or conduct as violating international norms only by invoking the less determinate customary international law. . . . [P]ublic interest groups in the U.S. that vindicate civil and political rights—for example, the American Civil Liberties Union (ACLU), or the NAACP Legal Defense and Education Fund (LDF), an NGO committed to ending discrimination against blacks—base their advocacy on domestic constitutional law and only rarely refer to international human rights. Nonetheless, from an international perspective, these groups are as much 'human rights' NGOs as, say, Tutela Legal in El Salvador, which invokes primarily international standards and has close links with INGOs.

Public interest groups in fields like consumer or environmental protection or workers' safety regulation fall within more ambiguous categories. Whether they are classified as 'human rights' organizations does not, however, appear to have operational significance.

Many participants concluded that self-perception and self-definition by NGOs constitute the only sensible method of identifying human rights organizations. It would be impractical and unwise to maintain a protective boundary around some core or traditional preserve of human rights work, such as the protection of individuals against violence or discrimination. Who would define and monitor such a boundary, and what sanctions could be imposed on organizations crossing it but still claiming to be human rights NGOs? An attempt at authoritative definition could block a natural and important growth of the human rights movement, such as its earlier evolution toward economic and social rights, or its present initiatives toward linking human rights concerns with developmental and environmental issues. Other participants, however, stressed that to be effective, it was important for NGOs to hold to clearly defined mandates based on consensual legal norms.

Like the human rights movement itself, NGOs are in a state of flux. The costs of such change and uncertainty—a threat to the human rights movement's core identity, a blurring of fields, disagreements about whether employing the rhetoric of 'human rights' for certain goals will strengthen or hurt the movement as a whole—inhere in a dynamic, decentralized, multicultural, universal movement.

PERSPECTIVES ON DOMESTIC NGOS

The following three comments of participants in and observers of the non-governmental movement raise issues of (1) assessing NGOs in terms of their 'genuine efforts to promote human rights', (2) governmental control of NGO activities, and (3) broad participation in NGO activities.

Aryeh Neier, Not all Human Rights Groups are Equal

Letter to Editor, *New York Times*, May 27, 1989, p. 22

... A phenomenon that has concerned the human rights movement is the proliferation of groups claiming to speak in the name of the human rights cause but actually engaged in efforts to promote one or another side in a civil conflict. Nowhere has this been more of a factor than in Nicaragua. On both sides, the human rights issue has been a weapon to use against the enemy.

It may be useful, accordingly, to suggest a few questions to raise in distinguishing partisan efforts from genuine efforts to promote human rights. These include:

- Is the organization funded by or otherwise linked to any party to the conflict?
- Is it impartial? If it is an international group, does it regularly criticize abuses by governments of all political persuasions and geopolitical alignments? In situations of sustained armed conflict, does it criticize violations of the laws of war by both sides according to the same criteria?
- Does it engage in systematic field research and does it avoid sweeping comments, except to the degree that these are sustained by its detailed findings through field research?
- Does it exercise care in the use of language? For example, does it refer to 'torture' when the word 'mistreatment' would be more appropriate? When does it allege 'atrocities' as a 'strategy'?
- Does it acknowledge contradictory evidence, such as a government's prosecutions of its own personnel for abuses, or the statements of one witness that cast doubt on the statements of another?

Above all, of course, it is the record that an organization has compiled over time that indicates whether it deserves credence when it reports on human rights . . .

Peter van Tuijl, NGOs and Human Rights: Sources of Justice and Democracy

52 J. Int'l Affs 493 (1999), at 503

...
To maintain . . . control, governments use different means to hamper, disturb or stop NGO activities. They may challenge the credibility or legitimacy of an NGO or its actions by using legal or sometimes illegal means to ban NGOs from operating in the country or to intimidate or arrest NGO personnel. Governments that neglect or violate human rights are more inclined to try to control NGOs by repressing them or denying their right to exist. Where a state prohibits the operation of independent NGOs, such as in China, politically sensitive NGO activities can often be conducted by falling back on more informal methods. Collecting information on human rights violations or environmental degradation can be done using rudimentary forms of organization or individual action.

Under such severe governmental pressure, NGOs have found creative ways to survive using their organization's structure or mutual relationships vis-à-vis the prevailing legal and political regime. In Egypt, NGOs have been able to evade the impact of restrictive laws by registering as non-profit companies under the general Egyptian law on corporations. As a consequence, nearly all human rights NGOs in Egypt are registered as 'civil companies'. In Indonesia most NGOs are registered as foundations so they can avoid being subject to the restrictive law on mass organizations. NGOs may also exist and operate in an undefined institutional space created by lengthy legal or bureaucratic procedures. The Malaysian chapter of Amnesty International has been awaiting approval of its registration for five years. Nevertheless, it has been active ever since it applied for registration by operating in an undefined, gray area, thus not violating state laws.

Moreover, coalition building among NGOs has been an effective means of protection against government interference. In some cases NGOs have opted for national NGO coalitions or networks in order to build consensus and to present a unified front to authorities. In other cases NGOs have decided to stay away from centralized coalitions to avoid becoming visible targets for control-driven authorities.

Chidi Anselm Odinkalu, Why More Africans Don't Use Human Rights Language

Hum. Rts. Dialogue, Winter 2000, p. 3 at 4

...
The current human rights movement in Africa—with the possible exception of the women's rights movement and faith-based social justice initiatives—appears almost by design to exclude the participation of the people whose welfare it purports to advance. Most human rights organizations are modeled after Northern watchdog organizations, located in an urban area, run by a core management

without a membership base (unlike Amnesty International), and dependent solely on overseas funding. The most successful of these organizations only manage to achieve the equivalent status of a public policy think-tank, a research institute, or a specialized publishing house. With media-driven visibility and a lifestyle to match, the leaders of these initiatives enjoy privilege and comfort, and progressively grow distant from a life of struggle.

In the absence of a membership base, there is no constituency-driven obligation or framework for popularizing the language or objectives of the group beyond the community of inward-looking professionals or careerists who run it. Instead of being the currency of a social justice or conscience-driven movement, 'human rights' has increasingly become the specialized language of a select professional cadre with its own rites of passage and methods of certification. Far from being a badge of honor, human rights activism is, in some of the places I have observed it, increasingly a certificate of privilege.

COMMENT ON INTERNATIONAL NGOS

Human rights INGOs span an increasingly wide spectrum. For the most part, their activities focus on the preparation of reports on specific countries throughout the world (including a broad range of issues within any one country), as well as on generic problems involving many countries like censorship or prison conditions. They distribute these reports, provide the information in them to the media, and use the information to engage in lobbying or other forms of advocacy before national executive officials or legislatures and international organizations. That lobbying or advocacy may, for example, urge particular forms of pressure against offending countries. Sometimes INGOs initiate or (as *amicus curiae*) join in litigation before national or international tribunals.

Their other activities include the drafting of proposed legislation and of international standards, human rights education, active participation in conferences and other forms of promotion, grassroots mobilization on particular issues, leading popular protests and demonstrations, letter-writing and urgent action campaigns, monitoring and critiquing the work of governmental and inter-governmental human rights agencies, and working with and strengthening their local affiliates. In addition to INGOs focused on specific issues such as the rights of women, minorities, children, indigenous peoples, media freedom, and economic and social rights,⁴ there are several especially prominent ones with which students should be familiar.

Amnesty International. Established in 1961, Amnesty (website: www.amnesty.org) had over one million members by 1999 in more than 160 countries, including national sections in 56 countries. Its International Secretariat in London employs 320 official and 95 volunteers. It is governed by a nine-member International Executive Committee elected every two years by an International

⁴ The University of Minnesota's Human Rights Library contains a wide-ranging list of NGO websites at www1.umn.edu/humanrts/links/ngolinks.html.

Council comprising representatives of the worldwide movement. The main focus of its campaigning has been to: free all prisoners of conscience (people detained for their beliefs or because of their ethnic origin, sex, colour, language, etc. and who have not used or advocated violence); ensure fair and prompt trials for political prisoners; abolish the death penalty, torture and other cruel, inhuman or degrading treatment of prisoners; and end extrajudicial executions and 'disappearances'. In 1998 it issued 93 major human rights reports on 49 countries and sent 132 delegations to 82 countries.

The International Secretariat's annual budget of over US\$25 million in 1998-99 came from membership fees, private donations and donations from trusts, foundations and companies. Amnesty neither seeks nor accepts governmental funds for its investigative and campaigning work.

Human Rights Watch. HRW (website: www.hrw.org) is the largest US-based INGO. It began in 1978 as Helsinki Watch. Americas Watch was added in 1981 and Asia Watch in 1985. The HRW umbrella was adopted in 1988. It is not a membership-based organization. As of 2000 it was organized into divisions covering Africa (sub-Saharan Africa), Americas (Latin America and the Caribbean), Asia, Europe and Central Asia, and the Middle East (Middle East and North Africa), as well as thematic divisions on Arms, Children's Rights, and Women's Rights. It has also maintained 'special initiatives' relating to academic freedom, corporations and human rights, drugs and human rights, free expression, prison conditions, and the United States. It has a staff of over 100 in New York and has a number of other offices worldwide. Its annual budget is over \$16 million. It describes its mandate in the following terms:

Human Rights Watch conducts regular, systematic investigations of human rights abuses in some seventy countries around the world. Our reputation for timely, reliable disclosures has made us an essential source of information for those concerned with human rights. We address the human rights practices of governments of all political stripes, of all geopolitical alignments, and of all ethnic and religious persuasions. Human Rights Watch defends freedom of thought and expression, due process and equal protection of the law, and a vigorous civil society; we document and denounce murders, disappearances, torture, arbitrary imprisonment, discrimination, and other abuses of internationally recognized human rights. Our goal is to hold governments accountable if they transgress the rights of their people (*Human Rights Watch World Report 2000*, vii).

The Lawyers Committee for Human Rights. In existence since 1978, the LCHR (website: www.lchr.org) describes its work as 'impartial, holding all governments accountable to [human rights] standards. . . . Its programs focus on building the legal institutions and structures that will guarantee human rights in the long term. Strengthening independent human rights advocacy at the local level is a key feature of its work'. It also 'seeks to influence the US government to promote the rule of law in both its foreign and domestic policy, and presses for greater integration of human rights into the work of the UN and the World Bank' and 'works to protect refugees through the representation of asylum seekers and by challenging

legal restrictions on the rights of refugees in the United States and around the world'. Its funding comes from foundations and law firms.

The International Committee of the Red Cross. The ICRC (website: www.icrc.org/eng) was established in 1863. It describes itself as 'an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities conducted by the [Red Cross] Movement [consisting of national Red Cross and Red Crescent societies] in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles'. It is funded largely by the Swiss Government.

Médecins sans Frontières. MSF (website: www.msf.org) was set up in 1971 and was awarded the Nobel Peace Prize in 1999. Its mandate focuses principally on emergency medical relief but in recent years human rights issues have assumed greater prominence. 'In carrying out humanitarian assistance, we act as a witness and will speak out, either in private or in public, about the plight of populations in danger for whom we work. In doing so, [MSF] seeks to alleviate human suffering, to protect life and health and to restore and ensure respect for . . . human beings and their fundamental human rights' (www.msf.ca).

QUESTIONS

1. Neier talks of 'genuine efforts' to promote human rights. Which if any of the following characteristics or tasks of NGOs would you view as potentially raising questions about such genuineness of NGOs and their activities: types of funding sources, participation or not by broad dues-paying membership, appointment of NGO members by government?

2. Recall Question (3) at p. 157, *supra*, which raised the issue of how human rights NGOs should allocate their scarce resources. Consider this question again in the context of Part C's analysis of human rights organizations, and this Chapter's concentration on NGOs. If you were the director of an INGO, how would you decide about what issues to examine? You might, for example, explore a given problem across a few or many countries—perhaps gender discrimination or press censorship. You might concentrate on offences within a given state, or devise some other approach to your work. Under what criteria would you select among countries, topics, or strategies? What priorities would you establish?

imprisoned for espionage by Yugoslav authorities at the height of NATO's bombing campaign.

The spy charges were vigorously denied. However, Dateline revealed that CARE Canada, CARE Australia's sister organization, had at the time entered into a contract with a Canadian government agency to recruit observers for what was in effect a quasi-military monitoring program in Kosovo. This 'peace monitoring' operation, run by the Organization for Security and Co-operation in Europe (OSCE)—of which Canada is a member—was later said to have passed data to NATO.

... In a revealing interview, CARE Australia's chairman, former prime minister Malcolm Fraser, told SBS he'd been unaware of CARE Canada's contract at the time, though he remained convinced it had not been a factor in Wallace and Pratt's arrest. However, he made plain his strong disapproval of the deal. ...

Said one leading agency boss: 'The future of humanitarian action depends on the degree to which it is impartial and independent. If you keep blurring the lines between aid and advocacy and political action you compromise that'.

... The Nobel-prize winning MSF was the most outspoken, with its Australian president, Fiona Terry, describing the CARE Canada deal as one which would shock and disappoint most in the aid community.

Terry, who is completing a doctoral thesis on ethical dilemmas in humanitarian action, says there's a lot of pressure on aid organisations to agree to 'mission creep'. As well, she told the Herald, the aid community was prone to a 'culture of justification'.

'It derives from the fact that the money comes from donors, and that skews accountability away from the people you are trying to assist, towards the donors whether private or government'.

... World Vision's Beris Gwynne points out that non-government organizations are hugely diverse, and for some it's appropriate to work more closely with official briefs. She puts organizations involved in 'democracy building' (an American favourite) at one end of the spectrum and the Red Cross, with its adherence to absolute neutrality, at the other.

QUESTION

Should humanitarian aid groups collaborate with human rights monitoring groups such as the OSCE? Is it desirable to put in place a strict rule in humanitarian NGO mandates either prohibiting or mandating such cooperation?

D. ISSUES ABOUT HUMAN RIGHTS INGOs

STANLEY COHEN, GOVERNMENT RESPONSES TO HUMAN RIGHTS REPORTS: CLAIMS, DENIALS, AND COUNTERCLAIMS

18 Hum. Rts Q. 517 (1996)

There are no mandatory guidelines about how to write a human rights report. Nevertheless, the genre has developed a recognizable standard style and format of its own. Most organizations feel constrained to follow certain rules, cover certain subjects and use a particular terminology. We find a language of objectivity, references to how sources are checked, standard ways of documentation and citation of testimonies, obligatory references to appropriate international human rights standards, avoidance of taking sides in the conflict or expressing political views, and references to previous reports.

These traditional self-imposed rules have good justifications. Adherence to a standard format, however, allows for a predictable set of government responses. There is a ritualistic pattern to the sequence of claim, counter-claim, and repeated claim.

There are variations by subject, scope, and type of organization, but the basic report contains the following seven fixed elements:

1. Expressing concern

The first paragraph, introduction, briefing, executive summary, or press release states the organization's position about the situation (for example, torture in Turkey or political killings in Colombia). The organization 'is concerned', 'remains concerned', 'is deeply troubled', 'strongly condemns', 'has grounds to believe that ...'.

2. Stating the problem

Then follows an introductory statement about the problem—either the overall human rights position in the country or the specific abuse in question (press censorship, unfair trials, prison conditions, etc.).

3. Setting the context

Some attempt is made to set out the context of the alleged abuses with the length and detail varying between book-length reports to ten page briefings. A brief political history gives the background to the conflict.

4. Sources and methods

There is an account (usually rather inadequate) of where, when, from whom, and how the organization obtained its information.

5. Detailed allegations

The largest section of the report is devoted to a detailed description of the violations in question. Statistics are given where appropriate. More often, individual cases are presented: conditions in a particular prison, testimonies of ex-detainees alleging torture, eyewitness accounts, and affidavits given to lawyers.

6. International and domestic law

The contents and applicability of relevant international legal provisions—covenants, conventions, standards—are set out. The target country's obligations according to international law, as well as details of domestic laws and enforcement procedures, are explained.

7. Required action

The report ends by 'calling on', 'urging', or 'demanding' the government to do something. The required action might be: (1) intervention on a particular case (release this political prisoner, reopen this newspaper, unban this organization); (2) changing a policy (repeal this law, end deportations, ensure fair trials); (3) conformity to international law; (4) implementing accountability (prosecutions or disciplinary actions against those responsible for violations); (5) investigation (an independent inquiry, access to human rights observers); (6) merely asking the government to condemn the violations in question.

NOTE

Consider the following protest against reports by a leading INGO. Letter to Pierre Sané, Secretary-General of Amnesty International, from Permanent Representative of Republic of Indonesia to the UNHCHR, 2 November 1994, UN Doc. E/CN.4/1995/108:

I wish to voice my strong protest against the contents of a series of publications that Amnesty International issued in succession this year [concerning East Timor and Indonesia]. . . .

Of the three publications in question, the booklet, 'Power and Impunity—Human Rights under the New Order' is the most virulent and malicious for it not only falsely attributes a 'persistent pattern' of human rights violations to the Indonesian Government but also misrepresents the present New Order of Indonesia as the product of a bloody coup d'état. This is worse than mere distortion of history. By misrepresenting the origin of the New Order which was the vantage around which the Indonesian people rallied to save themselves from chaos in the middle 1960s, you would deprive us of one of the defining moments in the history of modern Indonesia. . . .

... [I]n your desire to blacken the reputation of Indonesia, you have resorted to the dissemination of falsehoods, misrepresentations and innuendos without any factual basis. The second victim is the avowed noble mission of Amnesty

International, for by waging this political campaign, you have in fact abandoned the objective of promoting and protecting human rights and adopted a political agenda as well as a political objective. . . . You have also unmasked your Organization for what it really is, and which we have all along described it to be: an organization waging a political campaign against Indonesia under the banner of human rights.

For if Amnesty International were really interested in promoting human rights, it should not begrudge Indonesia the recognition given it by other countries and the United Nations Commission on Human Rights for its efforts to improve the human rights situation in East Timor. . . .

... [I]t should not, in its evaluation of the human rights situation in Indonesia, studiously ignore the enhanced social and economic rights that the Indonesian people, including the people of East Timor, Aceh and Irian Jaya, are now enjoying. A balanced and fair assessment of the human rights situation in any country should at least consider these factors. . . .

QUESTIONS

1. Cohen suggests that the format of NGO human rights reports and the range of responses elicited from governments have become ritualistic and calls for a re-examination of the style, format and genre of such reports. What sort of options might be considered?

2. What are the strategies reflected in the Indonesian response to the Amnesty reports? Do you find them effective?

3. It has been said that the effectiveness of groups such as Amnesty and HRW depends absolutely on their moral fervor and political nonpartisanship, which combine with their rational voluntaristic character to make them a sort of 'voice of humanity' to which states must listen.¹⁰ Do you agree?

DAVID RIEFF, THE PRECARIOUS TRIUMPH OF HUMAN RIGHTS

New York Times Magazine, August 8, 1999, p. 8

... [Human rights advocates] routinely claim that there can be no peace without justice. But the evidence suggests that often that isn't true. Consider the eight-year civil war in Sierra Leone, during which Revolutionary United Front guerrillas committed the most unspeakable atrocities and war crimes—routinely mutilating children and raping and murdering civilians. When they were defeated by a

¹⁰ J. Boli, 'Conclusion: World Authority Structures and Legitimations', in J. Boli and G. Thomas (eds.), *Constructing World Culture: International Nongovernmental Organizations since 1875* (1999), at 293.

Nigerian-led regional intervention force in 1998, their leader, Foday Sankoh, was tried and sentenced to death. To have executed Sankoh would have been justice. But the reality in Sierra Leone was that there could be no peace without a deal between the rebels and the Government. The guerrillas would not sign until Sankoh and other detained rebels were pardoned and set free. In the name of peace, the Government agreed not to prosecute—rightly, in my view. In order to seize what was almost certainly Sierra Leone's only chance, justice had to be sacrificed. And as a result, a fragile peace reigns in Freetown for the first time since 1991.

But the outrage of the human rights movement knew no bounds. Mary Robinson, the United Nations High Commissioner for Human Rights, declared that the United Nations did not accept the deal. There could be no impunity for human rights violations, she insisted. And in a letter to the United Nations Security Council, Human Rights Watch denounced the agreement. Its advocacy director, Reed Brody, announced that his group would lobby to get the blanket amnesty for Sankoh and his comrades annulled.

... Closer to home, we have different standards. At the same time Western leaders were welcoming Slobodan Milosevic's indictment for war crimes and insisting that the days of the 'culture of impunity' were numbered, the Blair Government in Britain was releasing paramilitary prisoners in Northern Ireland to further the peace process there. 'Justice and peace are often not the same thing', Holmes has said. 'Actually, they can be contradictory'.

Examples of this tension can be found around the globe. An obvious example is Algeria. In 1992, faced with the threat of Islamic fundamentalists taking power after free elections, the Algerian Government annulled that vote and imposed a state of emergency. Human rights groups were quick to respond. Amnesty International issued a special report denouncing the Government. The counterargument—namely, that had the fundamentalists been allowed to take over this might have been the last free election to be held in Algeria—cut no ice with them. Norms were norms, and violators were violators. In a similar display of orthodoxy, Human Rights Watch recently accused the United States Government of making drugs rather than human rights 'the centerpiece of U.S. policy' in Colombia. The message was plain: it is immoral *ever* to fail to uphold human rights.

I would say that there is a case to be made for what the Algerian generals did—and that it's understandable that the United States has concluded that Colombian drug interdiction is at least as important a concern, and as morally reputable a one, as human rights. This is not to say that human rights advocates are wrong to point out abuses; in the Algerian case, there was ample evidence of systematic and barbarous behavior on the part of the authorities. But there is a danger in turning human rights principles into dogma.

Imagine if Human Rights Watch were confronted not with contemporary Algeria but with Germany circa 1932. Wouldn't the world have been better off had there been a German Government with the courage to annul Hitler's victory at the polls? Seen through the tunnel vision of today's human rights leadership, such a move would have been unacceptable. A violation, after all, is a violation. It may be

stacking the deck to use an analogy with Nazi Germany, but it illustrates the hard questions about the assumptions of the human rights movement that are not being asked. What if you are a secular Algerian citizen? What is the relative moral weight of the human rights imperative versus your well-founded fear of fundamentalism? At the very least, the picture becomes cloudier, and the transcendent insights of human rights suddenly seem less transcendent.

Even the Kosovo conflict points to a problem with the human rights movement's absolutist stance. Most activists, though not all, privately hoped for and initially welcomed NATO's action. But consternation and self-doubt began almost from the moment the first bomb fell. Human Rights Watch even issued a report denouncing NATO military tactics like dropping cluster bombs on civilian areas. And yet it seems that it was *precisely* this bombing of civilian targets in Serbia—which may well have been illegal under international law, just as Human Rights Watch has asserted—that eventually forced the Milosevic regime to give in. The battle-damage assessments have shown that Serb forces in Kosovo came through largely unscathed. Once again: do human rights norms provide an adequate guide to what the right thing to do is in a hard case like Kosovo?

...

NOTE

Consider the following observations in Henry Steiner, *Diverse Partners: Non-Governmental Organizations in the Human Rights Movement* (1991), at 19. The excerpt is taken from the report of a retreat for human rights NGO activists from around the world, held in Crete in 1989. It is part of a debate between some of the Third World NGOs and INGOs present at the retreat about the nature of INGO human rights reports. The proposal made was that INGOs reach beyond their attention to (enumerated, individual) violations, ranging from torture to censorship, by emphasizing and analyzing issues of political, social and economic structures that underlie the violations—issues like land reform, or the role of the military. The excerpt responds to such proposals.

Even though conceptions of right are surely relevant to broad-ranging advocacy for social change, proposals that NGOs challenge basic political and economic structures of a society differ dramatically from the NGO work of two decades. Where, it was asked, could a mandate for so enveloping a task be found within the corpus of human rights law? Was not the strength and success of the human rights movement attributable partly to the fact that norms were relatively discrete, set only basic ground rules, expressed no final vision of the good or just society, and rested largely on consensus?

...

To the extent that NGOs base their prescriptions for society not solely on a body of human rights norms but on broader social analysis, how are they to be distinguished from other institutions in the vast and controverted world of social analysis—think tanks, academics, government policy makers? As one commentator among many on political choices, an NGO might repel or enlist our sympathies. But it would shed the objectivity that traditional human rights groups

claim in their reporting of facts and judgments about violations. A claim of 'accurate' analysis, of accurate diagnosis and prognosis, could not be supported in the way that, say, Amnesty International could support its account of violations and its condemnation of governmental action under a widely acknowledged norm prohibiting torture. The public interest sector of the human rights movement could lose its character as a defender of legality and readily merge into the broad political process.

QUESTION

Is it the task, or even the responsibility, of human rights NGOs to come up with a comprehensive balance sheet of the various concerns that need to be taken into account in a given situation and base their advocacy on that calculus, rather than to undertake a human rights analysis and then leave the political weighing of different considerations and structural or causal analysis to others?

PHILIP ALSTON, THE FORTIETH ANNIVERSARY OF THE UNIVERSAL DECLARATION

in J. Berting et al. (eds.), *Human Rights in a Pluralist World, Individuals and Collectivities* (1990), at 1, 12

... [It] is my contention that the result, albeit not the intention, of Amnesty's efforts is the widespread dissemination of a conception of human rights which is partial (in the sense of being incomplete) and is not a faithful reflection of the Universal Declaration and the assumptions underpinning that document (from which the Declaration derives its strength and standing). I would suggest that the great majority of Amnesty members and activists would, if pressed, provide a rather distorted list of basic human rights which would reflect the list of core 'mandate' issues pursued by Amnesty and little more. This distortion is essentially a consequence of the enormous success of the organization's determination not to be diverted from the core issues as it sees them. If that consequence could be characterized as intentional then Amnesty should not claim fidelity to the Universal Declaration and should concede that its concerns, far from being a reflection of universal minorities, mirror more closely values associated with the Western liberal tradition. In that case, any pretense to ideological blindness or neutrality should be abandoned. I believe, however, that for the most part that consequence is entirely unintended. If that is the case, it is time for the organization squarely and openly to address the issue of how it can best combat the risk of being perceived to endorse an unduly selective conception of human rights, while at the same time maintaining its core focus which can be justified in terms of manageability, legal specificity and operational potential.

I would not suggest that this will be an easy task, and there will be some among its membership who will resist it fiercely (for reasons of both effectiveness and

ideology). Nevertheless, there are some relatively straightforward and painless first steps which could be taken by way of an expanded public information and education campaign. ... [A] very widely distributed booklet entitled *What Does Amnesty International Do?* notes that Amnesty's 'work is based on principles set forth in the ... Universal Declaration'. It states that while the organization's focus on prisoner's rights leads it to concentrate 'on a specific program in the human rights field' this 'does not imply that the rights it does not deal with are less important'. But at no point in the twenty-five-page booklet is any indication given as to what those other rights are. It is hard to believe that a brief educational reference to those other rights would in any way impair Amnesty's need to maintain a limited range of concerns.

The principal retort to my objection is likely to be that Amnesty, like all other human rights NGOs, is entitled to be specific in its focus and that other groups can better fill the gaps that Amnesty leaves. But this argument overlooks the fact that Amnesty, whether it likes it or not, is the single dominant force in the entire field. It is bigger, richer, better organized, more representative and more influential than most of the other groups put together. As a result, it is precluded from taking refuge in a justification which, when proffered by smaller NGOs, must (reluctantly) be accepted. As the great powers themselves often need to be reminded, with power and influence comes responsibility. Much of that responsibility may be unwanted, but it cannot simply be shrugged off.

NOTE

Compare the following observations in Amnesty International *Annual Report 1998*, www.amnesty.org/ailib/aireport/ar98:

Addressing the imbalance between economic rights and other human rights is vital at a time when the debate over human rights is increasingly played out in the economic sphere. When governments fail to protect their citizens from the negative consequences of globalization, the need to protect and enhance economic rights becomes evident. The parallel imperative of ensuring that economic rights are not divorced from other human rights is shown each time that people are harassed, tortured and killed in the name of economic progress.

Amnesty International, with a mandate geared primarily to civil and political rights, has been a part of this imbalance. The very success of the organization in building a worldwide membership and raising its concerns among a wide public has been a factor in focusing attention on civil and political rights. Amnesty International is now engaging in broader human rights debates and seeks to promote the full spectrum of human rights in its campaigning and human rights education activities. However, this side of its work has remained relatively underdeveloped. Decisions taken by the 1997 International Council Meeting affirmed the need to explore ways of raising awareness of the full range of human rights, to provide more economic and social context in Amnesty International's reporting, and to make greater efforts to promote international standards and mechanisms protecting economic and social rights.