



**50 Years of  
AMNESTY INTERNATIONAL  
- Reflections and Perspectives**



**SIM Special 36**

**Wilco de Jonge, Brianne McGonigle Leyh,  
Anja Mihr, Lars van Troost (eds.)**

**Utrecht, 2011**



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Reflections and Perspectives**

This document is a joint publication of Amnesty International and SIM on the occasion of the symposium in celebration of the Dutch section of Amnesty International's 50<sup>th</sup> anniversary, 7 December 2011.



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*SIM SPECIAL 36*

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## Outline

|    |  |     |
|----|--|-----|
| I  | Introduction   | 1   |
| 1  | Stefanie Grant, Amnesty’s Achievements: Some Reflections on the Early Years  | 11  |
| 2  | Anja Mihr, The Impact of Amnesty International’s Policies and Campaigns During the Cold War – the Case Study of East Germany | 21  |
| 3. | Sir Nigel Rodley, Amnesty International’s Work on Physical Integrity – A Personal Reflection                                 | 51  |
| 4. | Stephen Hopgood, Amnesty International’s Growth and Development Since 1961   | 75  |
| 5. | Petra Catz and Ashley Terlouw, Amnesty International: Fifty Years of Refugee Work  | 101 |
| 6. | Yvonne Terlingen , Amnesty International’s work on intergovernmental organisations: a New York perspective                   | 127 |
| 7. | Ellen Dorsey, Managing Change: Amnesty International and Human Rights NGOs   | 181 |

*Outline*

|     |   |     |
|-----|---|-----|
| 8.  | Bert Klandermans, Who Participates and Why?   | 221 |
| 9.  | Ann Marie Clark, Expanding International Standards of Justice: Amnesty International's Classic Strengths and Current Challenges | 241 |
| 10. | Nicola Jägers, Amnesty International and Multinational Corporations in 2061   | 269 |
| 11. | Notes about the Authors   | 315 |

# **SIM SPECIAL AMNESTY INTERNATIONAL AT 50 – INTRODUCTION**

LARS VAN TROOST

In September 2010, Peter Baehr, a founding father of the Netherlands Institute of Human Rights (SIM) and one of the pioneers in human rights and foreign policy research, met with staff members of Amnesty International Netherlands in Amsterdam to discuss the possibilities of a SIM Special publication dedicated to the 50<sup>th</sup> anniversary of Amnesty International (Amnesty or AI). This collection of essays is the result of the conversations that started there and then. Unfortunately, Peter unexpectedly passed away in November 2010. Although he did not live to see the result of this publication, for which he initially guided us in the choice of topics and contributors, we thank him for his work and dedicate this SIM Special to his memory.

Early on in this project, we realised that it would be impossible to cover the full story of AI in ten articles. This is because Amnesty's story is not only one about human rights (itself a dynamic concept) and their post-World War II internationalisation, but also one about foreign policies, the United Nations, decolonisation, the Cold War, as well as one about the development of (international) social movements and global activism. Instead, we have brought together articles covering characteristic examples of AI's work and results over the past 50 years and articles on a few key organisational issues without aiming for completeness.

We asked the contributors to this SIM Special not just to look at the history of particular aspects of Amnesty's work and development, but also to look ahead – both long-term and short-term. What choices and challenges will Amnesty face? Which directions are open to the organisation and which opportunities will it meet?

With regard to the choice of contributors to this collection, we chose academics and practitioners. In the field of human rights (as in law, politics, and international relations more generally) those categories are certainly not mutually exclusive. Nonetheless, this choice partly explains the differences in style and tone of the contributions. An interesting mix of scholarly work and personal reflections is the result, as well as a, hopefully, balanced mix of insider and outsider perspectives.

AI's history is partly the history of mandate development. In later years, this development was sometimes referred to within AI as "from mandate – to mission". Presently, it is one of the largest international human rights organisations. In 1961, AI started out as a small, London-based operation with a narrow field of work, usually referred to as "the mandate", which focused on 'freedom of opinion and belief, based on independence and neutrality', as Stephanie Grant, AI's first Head of Research, reminds us. Grant joined AI's International Secretariat in London in 1964, three years after it first came into operation. At that time, AI only had national sections in the UK, the Federal Republic of Germany, Ireland, Denmark, Israel, Norway, and Sweden. She records why AI's operations, in its early years, were guided by the principle that less is more.

Indeed, AI had a very narrow focus when it first became operational. Amnesty's founder, Peter Benenson, started the organisation as a one year *Appeal for Amnesty* – in May 1961, claiming he was outraged by the imprisonment of two Portuguese students for raising a toast to liberty. Benenson's appeal was first published in *The Observer* in the UK and soon reprinted in major newspapers around the world. It highlighted the cases of several persons persecuted for their opinions or beliefs in different parts of the world and living under different political systems. Together with four further cases, the stories of five of them are told more in-depth in Benenson's booklet *Persecution 1961* of which the opening words are as follows:

This book contains nine essays; each tells the story of a person who has suffered for his ideals. The nine people have been chosen to

illustrate various forms of persecution. They show what can happen to people who put forward views which are unacceptable to their government or unpopular with their neighbours. [...] And there are people in prison with better-known names. The selection of lives in this book is designed simply to show that there is no area in the world where people are not suffering for their beliefs, and no ideology which is blameless.<sup>1</sup>

The book focused on nine cases of persecuted persons, geographically and ideologically well-balanced. Not all white, and only one woman among them. And, no mention of the Portuguese students, either in Benenson's by now famous article or in his almost forgotten booklet. There is no doubt that Benenson is the founding father of AI, but the two Portuguese students, whose imprisonment supposedly triggered his outrage, seem to be just characters in a founding myth.

Forgotten prisoners, incarcerated for the wrong reasons, are what Amnesty seemed to be about in the early years. But soon, the treatment of prisoners (whatever the justified or unjustified grounds for their detention were) would also become a major area of work for the organisation. Sir Nigel Rodley, in 1973 the organisation's first legal advisor and future UN Rapporteur on Torture, recounts in his contribution how AI, from the early 1970s onwards, developed its work in the area of physical integrity, with its long-term campaigns against torture and the death penalty as almost perfect examples of effective human rights work in the international arena.

For its work against torture and more generally for having contributed to securing the ground for freedom, for justice and thereby also for peace in the world, Amnesty was awarded the 1977 Nobel Peace Prize. Around this time, Amnesty is clearly growing with new national sections having been established in the Faroe Islands, the US, Finland, New Zealand, the Netherlands, Austria, Japan, Luxembourg, Switzerland, Mexico, South-Korea, France,

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<sup>1</sup> BENENSON, P., *Persecution 1961*, Penguin Books, London, 1961, p. 9.  
*SIM Special 36*

Nepal, Belgium, Canada, Ghana, Australia, Iceland, Italy, Greece, Spain and Venezuela.

Some of these national sections began focusing on another human rights issue too. Petra Catz and Ashley Terlouw (both formerly headed the Refugee Department of Amnesty's Dutch section) tell us that in some, but not in all, national sections AI developed a strong program for refugee protection. Such programs have existed, for example, in Germany, the US, the UK, and the Netherlands. Catz and Terlouw describe how AI's work for asylum-seekers and refugees developed from individual case work in some sections (in the Dutch section originally for Portuguese, Greek and Spanish refugees) in the early 1970s to a much broader and more integrated program on migration in which, nowadays, a growing number of national Amnesty sections seem to become involved.

Together, Catz, Terlouw, Grant, and Rodley remind us of working areas, methods, and standards developed by AI over several decades that might well remain relevant for the organisation in the future. Forgotten prisoners still exist, although nowadays the most important categories, according to Grant, might be stateless migrants and security detainees. With the move "from mandate to mission", human rights of migrants in general might have come to the centre of AI's attention, but refugee protection is, according to Catz and Terlouw, still a pressing issue and an area that could benefit from AI's country research, legal analysis and strategic campaigning. Nigel Rodley, currently a member of the UN Human Rights Committee, highlights that 'the problems of torture, death penalty, extra-judicial killings and enforced disappearance are still with us and accurate, comprehensive information on them is still the strongest weapon in the armoury of human rights defenders'. Accordingly, he pleads for these issues to be given the priority AI had once given them, in both quantity and quality.

Rodley fears that the "devolution" of Amnesty's International Secretariat to the regions might not be helpful to retain (or regain) a high measure of reliability and thoroughness of AI's research output. On the other hand, Catz and Terlouw show that at least in the area of

refugee protection, “devolution” is not an entirely new phenomenon within AI. Whether in the area of individual case work, in collecting and disseminating country information to lawyers and decision-makers or in the political and legislative arena, a certain measure of non-centralised research, advocacy and campaigning has been going on for decades within the organisation.

Stephen Hopgood (author of *Keepers of the Flame: Understanding Amnesty International*), in a contribution on AI’s growth and development, points out that AI has been facing a long time and significant dilemma here. Hopgood’s contribution is focused around four themes: membership, money, geography and internal authority. He asks whether ‘an Amnesty that is organised around doing its own research in London [can] also become a truly global membership-based activist and advocacy movement’. Hopgood’s provocative answer to this question is ‘yes in principle and no in practice’, to which he adds: ‘[t]he difficulty of running a global movement *and* fully investing in research of the highest quality worldwide is likely to prove intractable and it seems clear, in my opinion at least, from the emphasis on movement growth and activism that it is serious research that will have to go’.

Bert Klandermans (Professor in Applied Social Psychology) further elaborates on the membership theme by focusing his contribution on the dynamics of engagement and disengagement in AI’s membership. He also discusses the relationship between volunteers and professionals in an organisation like AI.

High quality research combined with worldwide popular-membership campaigning and professional lobby work in capitals around the world and at the UN has long been considered as the strategic mix that explained AI’s success. In a contribution on Amnesty’s work at the UN from a New York perspective, Yvonne Terlingen, a long-time Asia researcher and UN representative of AI, seems to concur with this view. ‘At the UN’, she writes, ‘AI’s work is subjected to the closest scrutiny. AI is only as good as the quality of its research and the reliability of its information and actions’. But Terlingen also adds that AI’s lobbying capacity in the South and the

East is currently limited, and that such capacity should be strengthened, for instance by cooperation with NGOs working on the national or regional level. She notes that '[s]haring its experience and knowledge of how IGOs work, and building lobbying partnerships with appropriate NGOs at the national level, [...] should be an important part of its new approach'. As for opportunities in the near future for strengthening the international human rights architecture, Terlingen points AI towards the initiative for the establishment of a World Court of Human Rights.

Between them, Rodley and Terlingen give a picture of AI's influence and effectiveness in the international arena. In contrast, Anja Mihr (Associate Professor for Human Rights, International Relations, Democratization, Reconciliation and European Human Rights Systems) focuses attention on the impact of Amnesty's policies and campaigns at the national level. What did AI effectively do for the promotion and protection in the former German Democratic Republic (GDR)? Mihr records that 'in the 28 years in which Amnesty was working on the GDR, the organisation noticed that the prison conditions improved for those prisoners that they had "adopted" and that the majority of these political prisoners were released earlier or received a reduced sentence'. While seeking major changes (for instance, the immediate and unconditional release of prisoners) the successes were small: improvement of detention conditions, early releases or reduced sentences. On the other hand, they might have been more than people would expect from simple international letter-writing campaigns targeted at a seemingly die-hard government. Perhaps a better measure of AI's impact was the change of tactics by the GDR authorities, namely a move away from long-term detention to more repetitive, short-term imprisonments. These repetitive, short-term detentions were less easy to campaign against through AI's classical adoption strategies than prison sentences of 15 years. Nonetheless, AI adapted and AI's volunteers became more experienced, the organisation sped up its communication systems, and it learned to work the media well. As a result, mass arrests in 1988 were reacted upon by AI in a matter of

hours. In addition, after receiving the 1977 Nobel Peace Prize, AI won credibility in the GDR and amongst other states, which prompted governments to become more and more willing to make human rights issues part of their foreign policy agenda.

Moving away from a specific country focus, Ann Marie Clark (Associate Professor of Political Science) returns to a question she addressed for the first time 20 years ago: what characteristics permit AI, as a volunteer organisation, to have an impact in a world of governments? It was around this time that again, many new national sections were established, including in Côte d'Ivoire, Ecuador, Barbados, Senegal, Peru, Portugal, Chile, Hong Kong, Puerto Rico, Brazil, Trinidad & Tobago, Ghana, Tanzania, Tunisia, Bermuda, Uruguay, Sierra Leone, Hungary, Argentina, Mauritius, the Philippines, and Paraguay.

In 2011, the answer to Clark's question differs from the answer in 1991, partly because Amnesty changed over the years, taking on a larger number of human rights concerns, and partly because an increasing number of NGOs joined AI in campaigning for human rights. Clark concludes that 20 years ago AI 'had brought advocacy of freedom to the fore as a popular and appealing global idea'. Amnesty's agenda was well known and very much appreciated. Today, its much broader human rights agenda might be in need of more explanation. Education of the public might be of greater importance than it was 20 years ago. She writes that '[t]o be successful and relevant to those whose rights are harmed by the conditions of poverty, for example, AI will need to identify and publicise the causal links that it can best help to change'.

One of those new areas of work that came to the fore in Amnesty's work after 1991 is the subject matter of Nicola Jägers' contribution: Human rights abuses by non-State actors, in particular, corporate actors. Jägers (Associate Professor of International Law) recounts how major incidents, like the Bhopal gas leak in 1984 and the execution of Ken Saro-Wiwa and eight others in Nigeria in 1995, focused the attention of human rights activists and organisations on corporate responsibility for human rights beyond the international

labour rights regime. She describes how, after a late start, NGOs have ‘taken the lead in formulating the human rights expectation of companies’. Within AI, the UK and Dutch sections were among the first to develop a program of engagement and action on the issue of business and human rights. Internationally, it took at least until 1995 before the issue gained real prominence within the organisation.

Moreover, it is only ten years ago that the organisation struggled with a strategic question: should AI take a promotional or an oppositional approach towards companies? In other words, should AI try to talk its way into the boardroom or should it start setting up barricades? A two-pronged strategy became the answer. And what lies ahead, according to Jägers, is work ‘on many different levels simultaneously’. AI and other NGOs working in this field should perhaps not forget that States carry obligations to protect individuals against harmful corporate practices too. Human rights and business is also State business, courts included.

Ellen Dorsey (co-author of *New Rights Advocacy: Changing Strategies of Development and Human Rights NGOs*) reminds us in her contribution that in relation to its traditional work AI hardly knew a dilemma like “the boardroom or the barricade” one in its work on corporations. Originally focusing its arrows at States, AI was known for its “naming and shaming” and “mobilising shame” strategies. Those strategies called for clear and defensible evidence of abuses, impartiality, and a basis in ‘internationally agreed upon norms and codifications’. According to Dorsey, AI plays a ‘dominant role within the larger system of human rights advocacy’, but she warns against complacency. She identifies many developments that the organisation has to respond to, like a changing world demographic, power shifts in the international arena, the emergence of new human rights issues and new methods of communication and information delivery.

Dorsey challenges AI and other human rights organisations and activists to focus their attention on power. Although human rights organisations often formulate their goals in terms of limiting the power of governments or corporations and empowering right-

holders, Dorsey reminds us that ‘what is critical to the success of any NGO is the capacity to generate *power* in a targeted way to achieve specific goals’. She also points to the fact that within the last 15 years organisational fields like “development”, “environment”, “women”, and “indigenous rights”, that originally were separated in terms of issues, methods of operating and actors involved, become more and more integrated. Human rights, as an organisational field, are now closely related to all those other fields. This interconnectedness of organisational fields is crucial for AI in making new strategies, developing new methods, finding new partners, and analysing the power to develop new rights.

Dorsey foresees that two “new rights” might emerge for Amnesty’s advocacy in the years ahead, including the right to water and the right to Free Prior and Informed Consent (FPIC) as defined in the UN Declaration of the Rights of Indigenous Peoples. She notes that ‘AI can help breathe life into them, through on-going monitoring and reporting, advocacy, litigation and popular education’.

Overall, Dorsey expects major changes for Amnesty in the years and decades ahead in terms of strategies, methods, and partners. In itself, this is no reason for grave concern because, according to Dorsey, AI has been confronted with comparable major challenges before. Indeed, she writes that AI ‘has built alliances across geographic, political, and economic divisions and it has contributed to the development of movements, leadership, and organisations to carry forward local and issue-specific human rights work’. While doing this, AI has won new members and supporters. Consequently, since 1992, national Amnesty sections were established in Algeria, Colombia, Benin, Slovenia, Taiwan, Costa Rica, Togo, Morocco, Poland, and the Czech Republic.

Whether the pleas of Rodley and other contributors to this SIM Special are compatible with Dorsey’s expectations about AI’s development in the coming decades is a matter that cannot be decided between the covers of this issue. However, if this issue contains relevant arguments, considerations, questions, and points of view that contribute to further debate on the question of the proper

mix of continuity and change for AI, the broader human rights movement, and civil society as a whole, the editors would consider this SIM Special to be a success. We can only hope that Peter Baehr would have joined us in that assessment. A final word of thanks goes to Alessandra Ricci Ascoli at Amnesty International Netherlands and Stephanie Meulenbelt at SIM for their professionalism and patience in working with the editors.

Also on behalf of the other editors,

Wilco de Jonge, Amnesty International Netherlands  
Brienne McGonigle Leyh, SIM, Utrecht University  
Anja Mihr, SIM, Utrecht University

# **AMNESTY'S ACHIEVEMENTS: SOME REFLECTIONS ON THE EARLY YEARS**

STEFANIE GRANT

## **1. INTRODUCTION**

Only weeks after Peter Benenson made his Appeal for Amnesty International (Amnesty) in May 1961,<sup>2</sup> the foundations of the Berlin Wall were laid. For the next three decades, the Wall would divide Berlin and give physical expression to the harsh ideological divisions of the cold war in Europe, and beyond. This was not an auspicious time to start an international movement for freedom of opinion and belief, based on independence and neutrality. That it succeeded was both a victory against the odds, and the result of a sophisticated marriage between idealism and the political constraints within which Amnesty had to operate. This article reflects on the ways in which these limits and the political constraints of the early years formed the organisation and influenced its achievements.

## **2. THE FIRST TWENTY YEARS**

Amnesty's most important achievements can be measured in human lives – lives saved, prisoners released, threats averted. This is the constant thread which runs through its history. It is especially true of the early years, when Amnesty worked largely alone, using its prisoner work to extend the boundaries of human rights to their political and legal limits.

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<sup>2</sup> The Appeal called for an international campaign to work for the release of all those imprisoned for their opinions. BENENSON, P., 'The Forgotten Prisoners', *The Observer* (London), 28 May 1961, p. 20.

Peter Benenson's Appeal called for the release of prisoners of conscience, stronger refugee rights, and effective international protection. But when the Amnesty organisation was formed, its focus was narrower: the release of prisoners of conscience, fair trials, and the humane treatment of all prisoners.

Seen from today's perspective, in which human rights are legitimate and often imperative concerns, such a slim mandate may seem artificial, even timid. But the Europe of 1961 was marked by devastating and still recent human loss – the mass slaughter of the concentration camps, the brutal elimination of political “enemies” in purges and gulags, civil war atrocities, civilian deaths in wartime bombings, and the anonymity inherent in death on such a scale. Against this reality, Amnesty's focus on individual prisoners whose names were known, and the realisation that citizens in other countries could act together for their release, was something new, visionary and unprecedented.

Limits were seen as both as essential to effectiveness, and as a strength, because where resources are finite, “more” would be “less”. A direct link can perhaps be traced between these limits, and what Amnesty was and what it achieved.

At the start, prisoner work was a journey without maps. The goal was clear, but the techniques were new and untested. Methods of work developed in response to specific needs. Political impartiality was essential to effectiveness, and was ensured through the “balanced” adoption of prisoners of conscience from each of the three geopolitical groups: the “eastern” States of Europe and the Soviet Union, the “Western” States of Europe and the US, and the non aligned States of Asia, Latin America and Africa. When immediate action had to be taken to prevent torture and complement the slower, but sustained, adoption process, an urgent action network was created. Where action was needed – although there was doubt as to whether a political prisoner was a prisoner of conscience – the case was sent to an Amnesty group for investigation.

At a practical level, there was no money,<sup>3</sup> but work for prisoners and trial observations were done by volunteers. At a policy level, the “non violence clause” in Amnesty’s Statute did not imply that Amnesty was a pacifist organisation, but was a pragmatic recognition that the adoption of prisoners convicted of violence – even of Nelson Mandela – would compromise work for others. It was seen as a necessary limitation which enabled people of all political beliefs to work together without needing to agree on whether violence was justified in a particular situation. Another example is the “own country rule”, which barred members from working on cases in their home countries. Although its immediate purpose was to prevent members from being either co-opted or arrested by their governments in times of political crisis, it also led to the engagement of Amnesty members with human rights abuses outside their home countries. This – arguably – prevented the organisation from becoming another civil liberties movement, with international links.

Despite the polarised political climate of the time, Amnesty was able to grow, prosper, and set bench marks which others would later follow. There were a number of reasons for this. Its work asserted universal human values, it was so evidently even handed that its appeals could not be dismissed as special pleadings for political friends, and its facts were accurate. In contrast to the trade union movement, which became politically divided as a result of cold war pressures, Amnesty worked for prisoners of conscience and victims of torture regardless of their individual beliefs, or of the ideology of the State which held them. In practice, this 1960s strategy of necessity created a disciplined, independent, and democratic organisation, whose immediate achievements could be counted in prisoner releases.

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<sup>3</sup> Amnesty’s budget in 1964 was around £4,000.

In the early years, Amnesty's legitimacy derived less from international human rights law, which was then still in its infancy<sup>4</sup> – although the Universal Declaration of Human Rights (UDHR) hovered in the background as an inspirational text – than from its own working assumptions, and its visible distance from all governments.

These assumptions were set out in Amnesty's 1977 Nobel acceptance speech.<sup>5</sup> By this time, the international landscape was changing. Governments in both the eastern and western cold war "blocs" had pledged to respect human rights by signing the 1975 Helsinki Accords. The next year, 1976, saw two important breakthroughs: UN member States unanimously adopted a Declaration against Torture, and the US Carter Administration recognised human rights in its foreign policy. These gains were evidence of a new level of human rights acceptance, which Amnesty had helped to create, and which it then utilised in its work.

The Nobel speech shows the sophisticated understanding of the relationship between human rights, economic development, and peace which lay beneath Amnesty's still narrow mandate. Turkish lawyer Mumtaz Soysal, who accepted the prize for Amnesty's members, spoke of the "consensus" which had developed within the Amnesty movement on several key principles. Human rights were to be seen as ends, rather than means, and to use them as means to some other end was "perilous". Human rights were indivisible: the "temptation" to oppose civil and political rights to economic, social and cultural rights "must be resisted" as a "false conflict", because both categories were needed: '(w)hen those deprived of their socio-economic rights cannot make their voices heard, they are even less likely to have their needs met'.<sup>6</sup> Human rights were universal, and

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<sup>4</sup> None of the principal human rights treaties were in force in 1961: CERD came into force in 1965, the IESCR in 1966, the ICCPR in 1976 and CEDAW in 1981.

<sup>5</sup> SOYSAL, M., 'Nobel Lecture', available at: [www.nobelprize.org/nobel\\_prizes/peace/laureates/1977/amnesty-lecture.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/1977/amnesty-lecture.html).

<sup>6</sup> *Idem*.

recognition of this required a “re-thinking and revising” of a fundamental principle of international affairs: non interference in the internal affairs of a State. Human rights would not be protected if left solely to governments; the role of individuals “of good will” was nowhere more essential than when an individual human being remained ‘helpless before repressive government, a frightened national community, and an inadequate international machinery for redress’.<sup>7</sup> Read today, the text is striking in its confidence that Amnesty’s narrow mandate was integral to a wider pursuit of economic and social justice by others.

The list hints at another aspect of Amnesty’s influence: the human rights culture which was instilled in its members. In the 1980s, the new generation who entered the worlds of journalism, politics, school and university teaching, law, medicine and more, included many who already had a practical understanding of human rights, because they had been members of Amnesty sections and groups. Many of those who worked for an expanded application of human rights after 1990 – in the private and corporate worlds, for refugees and migrants, in rights based development, within the UN, through international criminal law and the ICC, during conflict, in humanitarian and peace keeping field operations, in countering terrorism, and elsewhere – were motivated by their Amnesty experience, and used it to good effect. Although the precise degree to which Amnesty members contributed to the “human rights revolution” [the phrase is Salil Shetty’s<sup>8</sup>] is a matter for historians, the fact is that many of today’s human rights experts began their human rights education in Amnesty. They are today human rights commissioners and ombudsmen, judges, UN treaty body members, special rapporteurs, and UN officials working in the field. By the

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<sup>7</sup> *Idem.*

<sup>8</sup> AMNESTY INTERNATIONAL, ‘Report 2011: Amnesty International at 50 says historic change on knife-edge’, *available at:* [www.amnesty.org/en/news-and-updates/report-2011-amnesty-international-50-says-historic-change-knife-edge-2011-05-13](http://www.amnesty.org/en/news-and-updates/report-2011-amnesty-international-50-says-historic-change-knife-edge-2011-05-13).

1980s, too, some political leaders could refer back to their time as adopted prisoners.

It had been clear from the beginning that two things were essential if individuals were to be protected, and both were central to the organisation's early operations. First, there must be complete factual accuracy so that appeals by groups could not be disproved or impugned by the detaining States. Second, protection of individuals required the development of enforceable international human rights law.

It followed that research into individual cases, and into the political and legal context within which action for release should be taken, was at the centre of Amnesty's work. The research task was eminently practical: to establish the identity and treatment of individual prisoners, during interrogation, in prison, and in court. This empirical research then became a tool with which to identify and diagnose broader patterns of human rights violations: the use and methods of torture, and new techniques of repression such as disappearance and extra judicial execution. If the primary purpose of Amnesty research in the early years was to identify individual prisoners of conscience, the result was, in effect, an epidemiology of rights violations. This could then be used as the basis for campaigning action to halt the violations and prevent their recurrence. Today's reduction in the use of the death penalty by States shows the powerful impact of this union between detailed fact finding, skilled lobbying of diplomats at the UN, and global campaigning which draws its energy from the imperative of saving the lives of those on death row.

Some examples illustrate the wider effects of case focussed research. After the Greek coup in 1967, Amnesty sent delegates to find the names of those detained so they could be adopted. Torture was not mentioned in their terms of reference because its eradication was not yet a central part of Amnesty's work. But when they investigated who was detained, the delegates also learned that these detainees had been tortured, and that torture was in systematic use. Their report catalysed action against Greece by the Netherlands and

others States for breaching the ECHR's strict ban on torture. This resulted in the withdrawal of Greece from the Council of Europe, and, at the same time, created a precedent for the human rights investigations by intergovernmental bodies, which is now a standard weapon in the armoury of human rights enforcement.

Amnesty set a more formidable precedent in 1973, when its first torture report established that torture, which had been thought to be "no more than a historical curiosity", was in use in over 60 countries across the political board.<sup>9</sup> In the campaign which followed – now seen as a "model" for human rights work – members pressured their governments; those governments took action within the UN to criminalise torture and strengthen international law; a Declaration on Torture and then a Convention against Torture were adopted by the General Assembly. These gave legal "teeth" to what had been the abstract legal principle of universal jurisdiction. General Pinochet's arrest in London in 1998, and the legal proceedings which followed, in which Amnesty participated, relied on the Convention and showed that these legal teeth could bite.

Work with prisoners had another important consequence. It led to a new realisation of the tragic long term medical effects of torture, and to the establishment of specialist treatment centres. Today, these exist in a number of countries, often set up by clinicians who had been Amnesty members.

The diagnostic power of case-based research was equally evident in the case of "disappearances". Unlike torture, political "disappearances", such as those in Chile and Argentine in the mid-1970s, presented a conceptual challenge. Two characteristics made the practice uniquely hard to understand and address: the government's denial of responsibility in each case, and the related difficulty of establishing the facts – even after a dead body was found. Amnesty needed to identify the component parts of the phenomenon in order to protect the victim, support the family, and

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<sup>9</sup> AMNESTY INTERNATIONAL, *Report on Torture*, Amnesty International London, 1973, p. 7.

establish accountability. Researchers, local activists, lawyers, and human rights experts were brought together to examine evidence from wherever it could be found: they asked who the victims were, what had occurred, which rights were violated, how the State could be brought to account, and how the practice could be defined and criminalised in international law.<sup>10</sup> This combination of research, analysis, definition, and, then, sustained lobbying for action within the UN, by different human rights groups, characterised the new human rights movement, and has resulted in a treaty criminalising forced “disappearances”.<sup>11</sup>

The context for Amnesty’s work was changing. In the first twenty years of its life, Amnesty was not the only human rights organisation [the churches and the trade unions were important allies], but its influence tended to dominate and even define human rights action internationally. By 1980, human rights were firmly on the international agenda. Amnesty was part of an emerging and expanding universe of national and international, governmental and non-governmental, human rights organisations, all concerned in varying degrees with human rights. The scope of human rights was also expanding, as evidenced by the broad constellation of rights set out in the mandate of the new High Commissioner for Human Rights in 1993. The creation of a High Commissioner was itself a striking achievement for Amnesty, which had taken the lead in pressing for this office.<sup>12</sup>

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<sup>10</sup> See AMNESTY INTERNATIONAL, ‘*Disappearances*’ – *A Workbook*, Amnesty International New York, 1981.

<sup>11</sup> International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, UN General Assembly Resolution A/RES/61/177.

<sup>12</sup> At the Vienna World Conference on Human Rights in 1993.

### **3. THE NEXT TEN YEARS**

Over the last 50 years, international human rights law has progressively interpreted the abstract norms contained in the UDHR, adopting operational principles and spelling out the duties owed by States to each individual man, woman, and child. Human rights groups have increasingly tested the policies and actions of public and private authorities against – on the one hand – the duties of those authorities, and – on the other hand – the rights of the individual. Amnesty's focus on the individual has enabled it to make a powerful contribution to the adoption of new and stronger principles, which it then applied in its own work. This dual task, first of creating law and, then, of using it to protect individuals, is as urgent today as it was 50 years ago.

While it is never possible to predict the future, it is clear that the next ten years will bring a radically changing world, which will be marked – at a minimum – by radical shifts in economic and geopolitical power, and by the increasing, but still to be defined, effects of a changing climate.

These power shifts will inevitably influence the ways in which international human rights law is used – strengthened or weakened. The human rights “machinery” which now exists, and which combines legal standards and enforcement with a more recent global system of criminal justice, has been painstakingly constructed over 60 years. Protection and accountability are today being enforced by national and international courts. This extraordinary achievement must be protected from the erosion which can intentionally or unintentionally accompany change. It will require sustained effort by an informed and campaigning Amnesty membership.

The new fact of climate change is likely to aggravate and trigger older and more familiar human rights violations, which are committed, for example, in the name of national emergency and national security, during conflicts over resources, in the course of displacement and forced cross border migration. Old techniques will need to be applied in new situations. The challenge is not for

Amnesty to become an environmental expert, but for it to retain its focus on the individual, and use its formidable arsenal of protection weapons within the context of broader environmental change. At the centre should be its focus on the individual woman, man, and child.

One population is perhaps symbolic of today's forgotten prisoners: stateless migrants. The scale of detention of migrants who have made irregular border crossings is unprecedented; they dominate some national prison and detention systems in both the global south and in the north. Significant numbers have no nationality, are stateless, and are thus entitled to international protection. But many are detained for long periods, sometimes indefinitely – *because* they have no nationality, and there is no State which they are entitled to enter. Here, too, the investigation of individual cases has a diagnostic power, because it is not until the individual stories are known that the gravity of injustices inflicted at State borders can be understood.

Perhaps the old Amnesty concept of forgotten prisoners should be reinvigorated to fit a contemporary world. It is true that sustained casework is a labour intensive activity, but it brings benefits, not only by pressing for release or due process, and identifying wider patterns of violation, but also by building understanding and solidarity between individuals across cultural and political divides. The fact that the adoption technique was created for a different era does not mean that it is outdated or that it should not be widely employed today, using all the power that the virtual media – video, email, and texting – can add to the pen and paper, postcards and letters, of earlier times.

# THE IMPACT OF AMNESTY INTERNATIONAL'S POLICIES AND CAMPAIGNS DURING THE COLD WAR – THE CASE STUDY OF EAST GERMANY

ANJA MIHR

## 1. INTRODUCTION

A former political prisoner from East Germany reports that ‘it is hard for many Westerners today to regard laws that officially forbid works of fictions (or novels) as a violation of human rights. Yet, not so long ago many countries of the world banned novels were more than just high school proscriptions. Some citizens in communist nations paid for their passion to read with years of their lives’.<sup>13</sup> Amnesty International (AI or Amnesty) was the first international human rights organisation to take up cases of Prisoners of Consciences (POCs) (in 1961) around the world, which included, among the countries in Eastern Europe, the German Democratic Republic (GDR). Most of the POCs that AI asked unconditional release for were intellectuals, so-called dissidents, and, as in the example noted above, high school students who had read George Orwell’s novels such as *1984* or *Animal Farm* (parodies on communist and totalitarian regimes of the 20<sup>th</sup> century) that were considered hostile to the state. Their imprisonment, unfair trials and often ill-treatment during interrogation and afterwards, violated international standards that the GDR had formally adhered to. Although politically independent, by adopting those POCs, AI made political statements

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<sup>1</sup> RODDEN, J., *Dialectics, Dogmas and Dissent, Stories from East German Victims of Human Rights Abuse*, Pennsylvania State University Press, 2010, p. 33.

against oppressive regimes. Then and now, the organisation made clear that no ideology, religion or regime type justifies human rights abuse of any kind.

The work of AI during the Cold War from 1961 to 1990 was shaped largely by the policies of the two big hegemonic States in the East and the West, and by the international human rights norms that these States agreed upon, denied or vetoed. It was Western countries who, at that time, had the normative advantage in the international debate, mainly at UN level, in directing the discourse toward civil and political rights. Without the realisation of these rights, so the argument went, no human right to education or work could ever be claimed. In addition, the politics of the Cold War shaped the mandate of AI beyond the end of the Cold War. However, it was only turned into a vision and mission statement in 2001, which now embraces the full spectrum of human rights worldwide.

## **2. AI DURING THE COLD WAR – THE EXAMPLE OF EAST GERMANY**

More than 20 years after the Berlin Wall fell and German reunification took place, the unjust political system of the former communist party in the GDR and its human rights policies are still being debated as part of a continuing discussion on transitional justice and reconciliation. The main issues focus on coping with an unjust German past, human rights abuses and the totalitarian dictatorship that lasted until 1989. Until then, human rights violations varied from property deprivation to restriction of free elections and expression. The democratic window dressing of the East-German leadership did not last long. In 1954, the first uprising took place in East Berlin, followed by violent suppression and repercussions against citizens. In 1961, the party leadership built the Berlin Wall. From that point onward a growing human rights movement, headed by human rights organizations, such as AI, had put pressure on the regime in East Berlin.

After the collapse of the Berlin Wall in 1989, and the German reunification the following year, the archives of 40 years of communist dictatorship revealed the truth and issues behind the false and self-imposed image of a peace and human rights-loving communist government. Human rights abuses were a daily practice from the moment the State was founded. AI had been one, if not the only, non-governmental organisations (NGOs), until 1989, that had shown the regime in East Germany to the world outside Germany. Human rights abuses were documented, campaigns took place and thousands of letters asking for better prison conditions, fair trials, and the release of over 2,000 POCs were sent to the authorities in East Berlin. To what extent these activities made an impact and led to changes in the GDR contributes to the debate over whether the GDR was a lawful State or not. It is hard to imagine that arbitrary arrests, and the fact that over 18 million citizens were in some way kept “hostage” behind the iron curtain till 1989, were signs of a free and peace-loving country.

### **3. COMMUNIST LEADERSHIP AND HUMAN RIGHTS ORGANISATIONS**

Violations of human rights in the GDR covered a wide range of freedom, and cultural, civil and political rights. It included restrictions on freedom of expression, religion, opinion, press as well as forced adoptions, ill-treatment and torture in police-detention, State-spying on the private sphere, professional disqualification, the instruction to shoot and to kill at the German border, and the death penalty. East Germany was a totalitarian dictatorship with a ubiquitous secret service that controlled and manipulated the civil sphere of its citizens. The State's secret service, referred to as the Stasi but also dubbed “the shield and sword” of the Communist and Socialist Party (*Sozialistische Einheitspartei Deutschlands, SED*), exercised total control over the country and its citizens. Many millions of citizens felt intimidated and even imprisoned behind the

iron curtain. Whoever had the desire to free him or herself from this narrowness through non-conformist art or publications, criticism of the political system, or the desire to leave the GDR for the West, bore the risk of violating GDR law, which was arbitrarily applied and executed, depending on the whims of the party leadership. Criminal political processes, which were generally hidden from the public, usually ended with the accused being sentenced to several years of detention. It was called “jurisdiction behind locked doors” by AI, particularly in the eighties.<sup>14</sup> An independent judiciary or court of appeal did not exist in the GDR.<sup>15</sup>

Human rights existed, if at all, only on paper; publication and official UN documents on ratified human rights treaties, such as the 1966 International Convention on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were kept away from citizens. The same was true for the Final Act and documents of the Conference on Security and Cooperation (CSCE) in 1975, in which human rights and the so-called humanitarian dimension – for example, visiting family members behind the iron curtain in the West – were guaranteed for all European States that participated in the conference. By contrast, in the GDR, disseminating the 1948 Universal Declaration on Human Rights or the 1966 International Conventions was prohibited, even though the GDR ratified these treaties, with reservations, in 1973. To duplicate and disseminate those documents could easily lead to prosecution and imprisonment, just as with many other documents, novels or newspapers that were considered “hostile to the state”.

Imprisonment was not the only severe human rights violation under communist dictatorship. The arbitrary arrests and denial of

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<sup>14</sup> AMNESTY INTERNATIONAL, German one Democratic Republic, Rechtssprechung hinter verschlossenen Türen [Justice behind closed doors], Bonn, 1989.

<sup>15</sup> DROBING, U., (ed.), ‘Strafjustiz in der DDR’ [Criminal Justice in the GDR], Schriftenreihe der Gesellschaft für Deutschlandforschung, Vol. 64, Berlin, 1998.

fundamental medical supplies in detention were considered inhuman treatment. In addition, the so-called “buying out” scheme meant that over a thousand prisoners annually were sold for ransom and transferred to the Federal Republic of Germany. West Germany paid approximately 50.000 EUR per prisoner to be exiled into the West, calling it a humanitarian action to their brothers and sisters behind the iron curtain. For the GDR, it was a mere business, and in modern terms it would be labelled as human trafficking for ransom. Each year, up to 1.500 political prisoners found their way to the West. However, not all prisoners wanted to leave the GDR. A significant number of dissidents wanted to stay and introduce political and social reforms. Regardless of the numbers, the “buying out” of political prisoners from East Germany was a point of concern of the UN Human Rights Committee as well as other human right organisations in the West at that time. AI criticised these practices as human trafficking.

Economic and social human rights in respect to the ICESCR, which was emphasised by the Communist Party, were also largely violated. The choice of one’s profession and the ability to continue beyond higher education was regulated by State authorities. An early political selection of pupils and students who continued to higher education prevented many from choosing their work and studies freely. Ideas about free enterprise and property rights were redundant and obsolete under socialism and, consequently, totalitarianism. This was viewed, even then, as a serious violation of human rights. Until 1989, the West criticised above all, the restriction and violation of political and individual liberty rights in the GDR, and asked for their respect and implementation.

The communist leadership in East Berlin feared, rightfully, the dissemination of information and the claims of human rights violations. Thus, AI was one of the targets of the Stasi and the State Party. Amnesty’s human rights work slowly reached behind the iron curtain to East Germany, and then to Poland and the Soviet Union. Starting with the 1975 Helsinki Final Act, more and more people claimed human rights violations against the communist regimes. This

led to protests and resistance among the population, who would, consequently, question the inefficient and abusive political system that eventually led to the downfall of the regime. Near the fall of the GDR in 1989-1990, the government could not prevent people from protesting, and the party leadership could no longer resist the demands of thousands of demonstrators, and the civil rights movements during what were known as the “Monday demonstrations” in the streets of Leipzig and Berlin, in the summer and fall of 1989. People demanded for institutional reforms and human rights. The legitimacy deficit of the regime was most visible during this period. The absence of political participation and free elections led to the loss of credibility of the political elite.

In order to facilitate the suppression, the party leadership was urged to create lists of so-called enemies hostile to the State, such as NGO's, Western governments or simply all those individuals and organisations that opposed the regime. This list grew longer over the years, as these enemies were necessary for the maintenance of State power. They “kept the socialist revolution running” and manifested the power structure of the one-party system.<sup>16</sup> From the government's perspective, these “enemies of the State” predominantly evolved from the chaos of the Western civilisation.<sup>17</sup> In the end, this list indicted all organisations and mechanisms in the West that had criticised the GDR in any form. In addition, other human rights organisations and activists joined the criticism, such as that coming from AI. At the same time, the SED benefited from the “hostile picture” it drew of the West. Dictatorships need enemies in order to unify their citizens against a common evil adversary, and divert the attention away from their own crimes and human rights violations. In the case of the communist regimes, it was also meant to

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<sup>16</sup> DEUTSCHER BUNDESTAG [German Bundestag] (ed.), *Materialien der Enquete Kommission Aufarbeitung von Geschichte und Folgen der SED-Diktatur in Deutschland*, Volume VII, 1, 1991, p. 238.

<sup>17</sup> MEUSCHEL, S., *Authentizität der Parteiherrschaft in der DDR 1945-1989* [authentication and party rule in the GDR, for the paradox of stability and revolution in the GDR, 1945-198], Frankfurt A.M., 1992, p. 19.

hold ‘the communist revolution in momentum’ against capitalism.<sup>18</sup> AI was seen by East Berlin authorities as chaotic and foreign dominated Western forces. The Stasi apparatus did not understand the motivation of AI’s volunteer members who wrote letters and petitions to ask for the release of people that they had never met before. Often Stasi officials wondered why the thousands of volunteers from Amnesty in any part of the world would write to authorities if they indeed had no political interests. This kind of civil society organisational structure did not correspond to the political understanding of the communist party whose “cause” was purely political and not humanitarian.

#### **4. THE WORK OF AMNESTY INTERNATIONAL IN THE GDR**

The work of AI in the GDR has always been overshadowed by the East-West conflict between the two superpowers in the East and in the West, from the founding of the organisation in 1961 to the end of the GDR in 1990. Amnesty researchers could rarely personally ever go behind the iron curtain. Together with other former communist countries, the GDR was seen as a closed society, with little exchange from both sides. Letters of appeal to East Berlin authorities were never answered. Many other NGOs, particularly West-German NGOs, thus, operated illegally and in the East German underground, always threatened by discovery, expulsion or imprisonment. According to its mandate, AI could not operate in this way. The organisation was caught in the verbal fights and Cold War rhetoric between Eastern and Western powers. In the East, AI was seen as a

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<sup>18</sup> KOWALCZUK, I.S., ‘Articulation forms and objectives of against-constant behavior within different ranges of the society’, in: DEUTSCHER BUNDESTAG (ed.), Materials of the Enquete Commission “processing of history and consequences of the SED dictatorship in Germany”, Band VII, 2, 1991, pp. 1207-1208.

purely Western and bourgeois organisation that only acted in the interest of West German or other Western governments.

The organisation's work on the GDR started shortly after May 1961, as a response to an article that appeared in the British newspaper *The Observer* about *The forgotten prisoners*, as was explained in the introduction to this book.<sup>19</sup> At the beginning, the Stasi in East Berlin knew little about AI, partially because their secret service investigation unit did not include English-language sources in their assessment. They could not imagine that an AI volunteer in New Zealand would ask for release of a POC in the GDR. Hence, according to them, the main enemy was in West Germany, targeting the East, and, consequently, there was no need to expand investigation units beyond German-speaking sources. In the case of AI, the Stasi relied on sources from West Germany and, thus, strongly believed for a long period of time that AI was a West German organisation. Even secret services can err and, therefore, the Stasi continued to draw its "enemy picture" from what was their main combatant and political competitor: West Germany. This only changed in the 1970s with the Helsinki Final Act and its provisions for human rights and humanitarian actions.

Regardless of this, AI continued to ask for the release of political prisoners in all political blocks. In the times of the East-West conflict, that meant that the Amnesty activists asked for the release of political prisoners from everyone: communist, capitalistic, or developing country.<sup>20</sup> At the apex of the Cold War in the 1960s, however, AI was trapped between the ideologies asserted by US and the Soviet Union and, thus, between the West and the GDR. Although seen by most as merely a Western organisation, AI actually had to fight for its credibility on both sides. While it was impossible

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<sup>19</sup> BENENSON, P., 'The Forgotten Prisoners', *The Observer* (London), 28 May 1961, p. 20.

<sup>20</sup> BRONSON, M., Organisations that help the world, Amnesty International, Herst, 1992, S.37; POWER, J., *Amnesty International – The human rights story*, Oxford, 1981.

to be recognised by the communist powers, it was incredibly difficult to be seen as a neutral organisation by the West. AI was only appreciated by Western authorities to the extent that it provided evidence for violations of human rights in the Eastern Bloc. Through this mechanism, it served Western interests too. In the East, the political party leadership issued propaganda that AI only wanted to defame the GDR. Therefore, authorities refused AI entrance into the country for investigation of the alleged cases. Thousands of Amnesty letters and appeals from over 30 countries reached GDR prisons, ministries, and the communist leadership – the *Politbuero*. They were intercepted, registered, evaluated and later placed in prison and ministry archives for the period between 1961 and 1989. The Ministry of Internal Affairs and the Ministry for State Security, the Stasi, housed the main archives. None of these letters of appeal for release of better prison conditions was ever officially answered. That led to some frustration among those who wrote the letters, the thousands of volunteers and the membership of AI. Over the years, many volunteers wrote letters without knowing whether they would ever reach their recipient or whether they would have some impact.

Interestingly, Amnesty groups from West Germany did not participate in the letter writing campaigns because it was seen as a hopeless effort. The researchers in the International Secretariat (IS) of AI in London assumed that any letter from West German senders would only feed the communist propaganda image of East-German party doctrine and, therefore, have no effect whatsoever. Those letters would not have been seen as the voluntary work of people who cared about political imprisonment regardless of where in the world it occurred; rather it would have been seen as what the Stasi preferred to call: ‘Bonner activities to undermine the peaceful GDR’ – targeting Bonn, the former political capital of West Germany.<sup>21</sup> After the end of the Cold War, and after going through thousands of files of the Stasi and the Ministry of Internal Affairs, the estimation

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<sup>21</sup> THOMAS, M., *Communing with the Enemy: Covert Operations, Christianity and Cold War Politics in Britain and the GDR*, Peter Lang, Bern, 2005.

of London researchers in the 1970s and 1980s was proven correct. The Stasi “celebrated” each West German letter asking for release of judicial reforms – by any organisation – that assumingly intervened in internal affairs as a proof of hostile activities of the West German government against the GDR. As a result, Amnesty then applied the so-called “work to one’s own country” rule, meaning that due to close historical or political ties to one’s own or former country, any efforts in that direction would be useless. Such rules still apply within Amnesty, for example, with volunteers in South Korea that even today do not write to North Korea under the name of the organisation.

The permanent international pressure of the organisation on the SED regime in East Berlin did have an effect over time. In the 28 years in which Amnesty was working on the GDR, the organisation noticed that the prison conditions improved for those prisoners that they had “adopted”, and that the majority of these political prisoners were released earlier or received a reduced sentence. Most of them were “bought out” by the West-German authorities as part of a specific West-East German deal established in the 1960s. This so-called *Freikauf*, or buying out scheme, of political prisoners was highly disputed among human rights organisations. Although Amnesty could never prove that because of its campaigns the human right situation in the GDR was improving, today, it is evident that those prisoners who were adopted by the organisation received better conditions in prisons or were in fact – due to their prominent status and international publicity – more likely to be found on the buy-out lists of the West-German authorities.<sup>22</sup>

The IS of AI in London registered 2,107 cases of adoption by the end of the dictatorship. It must be noted, however, that in the first years of the organisation, statistics were kept irregularly. The actual

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<sup>22</sup> More data in: MIHR, A., *Amnesty International in der DDR 1961-1989, Menschenrechte im Visier der Stasi*, Chr. Links Verlag, Berlin 2002.

number may be somewhere around 3,000.<sup>23</sup> The total number of cases of political imprisonment, unjust or hidden trials and bad prison conditions may exceed 5,000. The number of the political prisoners in the GDR until its end is somewhere between 175.000 and 230.000.<sup>24</sup> Consequently, AI only could care for a fraction of these people and, thus, each case stood as an example for the many more unknown or less-investigated cases of individuals who suffered in GDR prisons.

At the beginning of the 1960s, AI had estimated the number of political prisoners at several thousand. In the *Amnesty* newsletter from February 1962, AI cites the figures of other organisations with 9,000 to 14,000 POCs. In later studies from 1966, the number rose to 6,000, and again, later, it ranges between 3,000 and 4,000 political imprisonments annually. In a country of around 18 million inhabitants, with at least 2,000 political prisoners added per year in the late 1980s, that makes six to seven people imprisoned each day.<sup>25</sup>

Due to its limited resources and its total reliance on volunteers, Amnesty could only adopt a limited number of POCs in the GDR in its first years. In addition, it had to take into account that those volunteers from outside Germany had to have some knowledge of the German language to write letters to East-German authorities. Thus, most letters came from the Netherlands, Denmark or Sweden, where German was still widely spoken or known. It was incomparable with today's campaigns methods, in which everybody who has access to internet or mobile phones and uses the world's

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<sup>23</sup> AMNESTY INTERNATIONAL, International Secretariat London, Summary of GDR of cases (conditions: 1.6. 1998).

<sup>24</sup> A complete list of figures and number can be found in: MIHR, *op.cit.*

<sup>25</sup> RASCHKA, J., 'Law politics in the SED State, adjustment of the criminal law during the term of office of Honecker', writings of the Hannah Arendt institute for Totalitarismusforschung, Bd.13, Cologne, 2000, pp. 324-325; and Amnesty News, February 1962 (AI Archive Sign. MRC-MSS 34/4/AMN.N).

*lingua franca*, English, can make instant appeals to any government in the world within seconds.

Thus, in the 1960s and in later years, only a couple hundred prisoners per year could be registered, investigated and/or appealed for. Prominent ones were the trade unionist Heinz Brandt, who was drugged and kidnapped from West Berlin to the East in 1961, or the philosopher Wolfgang Harich and the writer Erich Loest in the 1960s. They all had asked for more political reforms and freedom from the SED regime. Their stories were well known in the West and, consequently, also to AI through media coverage and the information received by their relatives and friends. The organisation adopted them as political prisoners.<sup>26</sup> Importantly, the cases of imprisonment were not limited to GDR citizens. West Germans or citizens from other countries were abducted and brought to secret trials in East Germany. For example, there is the case of Hussein Yasdi, an Iranian who in 1961, after the Berlin Wall had been built, helped GDR citizens escape to West Berlin. He was caught, and in 1962 he was condemned to lifelong detention in the GDR. His family lived in West Berlin. An Amnesty group in Sweden asked for his release.

Over the years, AI became capable of adopting more cases, partly due to the increase in volunteers and groups that could take up more cases in their work. On the other side, the number of cases increased due to law reforms. In 1968 and in 1979, the communist leadership changed the political penal code to allow even more politically motivated investigations by the Stasi. Consequently, it led to more prosecution and penalisation of political verdicts. Most of the articles in the penal code from 1968 stood in contradiction to international human rights standards and, later, to the international human rights treaties that the GDR had signed. These included civil and political rights but also the so-called Helsinki Accords agreed to by the Soviet Union, the US as well as other Western and Eastern European countries during the Conference on Security and

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<sup>26</sup> AMNESTY INTERNATIONAL, *Annual Report 1985*, Frankfurt A.M, 1985, p. 355.

Cooperation (CSCE) in Helsinki in 1975. And the penal codes that tried to reverse the international agreements fell under even more scrutiny after the GDR became a member of the UN in 1973, and ratified the two main human rights covenants on social, economic and cultural rights, and on civil and political rights.

During this time, Amnesty had to adapt its campaign strategy to the changing policies and severe political persecution in the GDR. After short phases of “tolerance” and political freedoms, the party leadership always reacted with more severe repression, persecution and imprisonment. Thus, it reflected the typical cycles of suppression that followed after political reforms for a dictatorship that can be seen elsewhere in the world today. Over the years, AI could almost predict new waves of imprisonment in any dictatorial country in the world. Arrest waves of different intensity are common among these countries. One of the consequences for Amnesty was the increase of short-term political adoption cases, for example, after a wave of political repression and imprisonment that took place in 1984. Amnesty volunteers from Scandinavia (Denmark, Finland, Norway and Sweden) adopted altogether 30 “new” political prisoners in the GDR in a couple of months, in addition to another 46 with whom they were already working. That was an increase of nearly 70 percent, which was not easy to manage. But as the regime in East Berlin felt pressured, most of these short term political prisoners were released after a couple of months.<sup>27</sup>

Many other POCs stayed less than three years in prison due to the reforms of the political penal code. More penal reforms in 1977 and 1979 increased the number of verdicts, but at the same time reduced the sentences in general. The aim of the SED-regime was to imprison more political opponents for shorter periods and, thus, to create an atmosphere of terror, fear and insecurity among those who called for reforms of the communist system. The idea was that prisoners should be threatened and intimidated and when released

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<sup>27</sup> AMNESTY INTERNATIONAL, Section office Sweden, Stockholm: Coordination AI-Group reports 1984, approx. January 1985.

spread this message to other citizens. Total control and intimidation was meant to discipline those who questioned the regime.

But the legal reform did not achieve its deterrent effect because at the same time more and more people in East Germany claimed their freedom and other human rights and asked for political reforms. Most of these people, who felt they were being “kept hostage” behind the iron curtain or the Berlin Wall, wanted to leave the country and move to West Germany. This was one more reason for the SED leadership to penalise them. Therefore, the 1980s became an era of short but multiple imprisonments and persecution. AI estimated that an average of its adopted cases of about 1,300 political prisoners spent “only” half of their sentences in prison and were released before they completed their sentences. That meant that the NGOs had to react quicker and contact state authorities in East Germany the very moment they were aware of a prisoners name and location as some POCs were released by the time AI letters arrived in East-Berlin. It was a big change in the imprisonment policy compared to the 1960s, when political charges resulting in prison sentences of 15 years and more were common. This, of course, was good for the POCs and political activists and those who wanted to leave their country to go to the West, but at the same time made it difficult for the Amnesty letter-writing campaign, because by the time they started to send their requests and letters to the authorities in East Berlin, to ask for release of any particular person, that prisoner had already been freed or bought free by the West-German government. Consequently, many political prisoners were freed before actions and campaigns could start.<sup>28</sup>

The communist practice of repetitive and short-term arrests had consequences not only for Amnesty, but also for the international community that tried to put pressure on the East-German authorities. Moreover, by this time, Amnesty was using experienced volunteers, modern communication technologies, such as the facsimile, and the support it had received through the media – in particular after

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<sup>28</sup> AMNESTY INTERNATIONAL, *Annual Report 1985*, Frankfurt A.M. 1985, p. 355.

receiving the Nobel Peace Prize in 1977. Better media and communication technology was used to get better and quicker information about detention and developments behind the iron curtain. As a result, the organisation could react quicker and changed its tactical approach.<sup>29</sup> When, in January 1988, the mass arrest of approximately 160 people took place after they used a gathering that commemorated the former peace, human rights and a communist activist in the beginning of the twentieth century, Rosa Luxemburg, to protest for their claims and opposition to the current regime, AI was immediately informed through direct contacts in East Berlin. For the first time in its work in the GDR, AI could react within hours to ask for clarification about the political detentions of peaceful demonstrators.<sup>30</sup> That was a novelty in NGOs human rights work then. Today, however, NGOs react in far less time, but nevertheless have to double-check their sources and evidence for human rights abuses carefully. In 1988, the quick response by AI irritated the Stasi, and secret service officials kept asking how AI knew so rapidly and accurately about these imprisonments. At that time, Amnesty adopted 12 people within days and started an *urgent action* in the form of faxes or expressions from around the world asking for immediate release of these people. Today, any such campaign works via internet, E-mail or mobile phones. Faxes are rarely used anymore.

Freedom of religion was constantly at stake in the GDR, and Amnesty dealt with some of these cases. Most victims of religious persecution and imprisonment were the Jehovah's Witnesses. They refused to participate in the obligatory military service. The communist party leadership considered them "anarchist", and, as a

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<sup>29</sup> POLE LACQUER, D., and RINK, D. (Eds.), *Zwischen Verweigerung und Opposition, politischer Protest in der DDR 1970-1989* [Between disobedience and opposition, political protest in the GDR 1970-1989], Frankfurt A.M., 1997, pp. 54-77.

<sup>30</sup> See NEUBERT, H., *Geschichte der Widerstandsbewegung in der DDR 1949-1989* [history of the opposition in the GDR 1949-198], Bonn, 1997, pp. 696-699.

consequence, forbade any religious practice. Amnesty noted sadly that many Jehovah's Witness congregations had been almost continuously in prison since 1939, first under Nazi dictatorship and then under the communist regime after the country was divided in 1949. Religious practice was also curtailed for Evangelical and Catholic Christians. Release from compulsory military service in the GDR for religious reasons had been possible since the law reform in 1962, but only if these young men agreed to do construction work instead, and they became the so-called "construction-soldiers".<sup>31</sup> Still, for hundreds of deeply religious men this was not an alternative, since they still had to engage with the military and thus ended up in prison for their beliefs. Systematic persecution of Christians or other religious minorities in the GDR was not known to Amnesty.<sup>32</sup> In an Amnesty report about 'Intolerance and discrimination against believers' in 1984, the GDR was not mentioned as a country in which systematic religious persecutions took place.<sup>33</sup>

With Mikhail Gorbachev, leader of the communist party in the Soviet Union until 1990, the Eastern Bloc became increasingly transparent. Human rights organisations also noticed this shift. But still, the Soviet Union as well as their communist satellite States remained dictatorships and, thus, the political rhetoric on the one side could equally lead to more imprisonment and demand for control over citizens on the other side. That was the case in the GDR. The last years of Eastern communist bloc countries were sensitive years. An increasing human and civil rights movement on both sides of the iron curtain threatened and weakened the communist regime, but it

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<sup>31</sup> AMNESTY INTERNATIONAL, *Political Prisoners in the GDR*, London/Cologne, 1967, p. 18.

<sup>32</sup> FRICKE, K.W., *Opposition und Widerstand in der DDR, ein politischer Bericht* [opposition and resistance in the GDR, a political report], Cologne, 1984, p. 144.

<sup>33</sup> AMNESTY INTERNATIONAL, Index POLE 03/05/84: External, Intolerance and Discrimination on Ground Of Religious or amounted, November 1984.

also led to a net increase in short term imprisonment and insecurity in society.

## **5. GDR HUMAN RIGHT POLITICS AND REACTIONS TO AMNESTY INTERNATIONAL**

Starting in the 1960s, the GDR government sought membership in the UN. However, because of the so-called “Hallstein-Doctrine”, and West Germany’s call to only join the United Nations as one united country, it took until 1973 to materialise – and only after West Germany stopped its restrictive policy and accepted East Germany as a separate country. The GDR also did everything possible to be acknowledged as an independent State by the United Nations. It not only recognised the 1948 Universal Declaration for Human Rights, but also the two main conventions over social and political human rights, as well as those to abolish racism (Convention on the Elimination of All Forms of Racial Discrimination, or CERD) and discrimination against women and children (Convention on the Elimination of all forms of Violence Against Women, or CEDAW) as well as others. The party leadership called for any necessary step to “permanently and continuously” ratify all United Nations conventions if necessary, with reservations and restrictions. Although those human rights conventions that were later ratified contradicted the understanding of the SED, the government officially recognised the international agreements. After doing so, the SED-regime followed its own interpretation and estimation of those human rights under the doctrine that they should by no means ‘interfere in inner state affairs’.<sup>34</sup> Their understanding of human rights was ‘socialistic’,

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<sup>34</sup> Federal Archive Berlin, SAPMO: DY-30-J IV-1515: Minutes of the Politbüros: Conception for the perception of the membership of the GDR in the ECOSOC of 28.6.1974. For the position of the GDR at the UN and the confrontation with Western NGO see: SPRÖTE, W. and WÜNSCHE, H., *The UN and its special organisations*, Berlin, 1983; BRUNNER, G. and KLEIN, E., *Internationale Menschenrechtsverpflichtungen der DDR*, in: BRUNNER, G.

and was intended to be the ‘highest form of human rights’.<sup>35</sup> Socialistic, according to the constitution of the GDR, meant equality of all people under the dictatorship of the proletariat and SED party leadership. More concretely, by ‘socialistic rights’ the leadership meant, for example, the right to nutrition, to work and to peace, and those social rights were, therefore, carried out in the GDR to the fullest extent – even though people were not meant to choose their work freely. Whatever the Socialist party said, or interpreted as it wanted, became the practice of law and justice in the GDR.

The international human rights conventions and treaties that the GDR government had signed slowly changed the meaning of human rights in the GDR. The first step was to accept and adapt the term “human rights” generally into its political rhetoric. While in the 1950s the term “human rights” – as defined by in the Universal Declaration of Human Rights – was seen as referring to rights that served “the protection of the dominant class in the West”, in the 1970s, this changed into the attitude that human rights served the “overall development of the human personality in the society”. Of course, this overall development was meant only in the sense that human rights were seen as socialistic.<sup>36</sup> The official GDR reading of human rights conformed slightly to the international understanding of human rights. The ideologists and key international human rights law experts in the GDR did not always share the GDR view, but were, nevertheless, loyal to the State. Rather, they saw human rights as representing “objective conditions of the respective society”, but always in relation to the State and, thus, the official policy of the SED leadership. Individual and political human rights were

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(Ed.), *Menschenrechte in der DDR* [Human rights in the GDR], Baden-Baden, 1989, p.18.

<sup>35</sup> MIHR, A., *op.cit.*

<sup>36</sup> Encyclopedia A-Z, Leipzig, 1962; Meyers Neue Enzyklopaedia, Vol. 9, Leipzig 1974.

recognised only insofar as they served the political interests of the Communist Party.

The official understanding of human rights was again drastically changed with the agreement of the CSCE Helsinki Final Act in August 1975. At that time, a human rights catalogue was agreed upon, which contained all substantial political human rights. It also reflected the conditions of the Cold War much more realistically than the other international human rights treaties. Security and confidence building were at the centre of the CSCE. Human rights were seen as serving the purpose of confidence building by, for example, allowing more communication and travel across the Iron Curtain. Multiple forms of cooperation and exchange of personal contacts were suddenly guaranteed as humanitarian and human rights 'relief agents' were permitted to cross the East and West borders. These humanitarian and human rights were manifested in the so-called Basket III of the Helsinki Accord. Although it was only an accord and not a treaty, it contained everything that many citizens and political activists had lobbied for in the GDR. It promised them more freedom to travel, family unification, and the right to access information across borders, which, at that time, meant more letter and phone exchanges. In the subsequent CSCE conferences leading up to the end of the 1980s, these human right principles were concretised. However, as mentioned earlier in this article, these international concessions were restricted by penal reforms in the 1980s, which led to more imprisonment. Parallel to the conferences, human rights organisations started constant lobbying campaigns by asking all governments members of the Helsinki Accord to respect, and if possible implement, the agreements on more freedom rights into the national legislation.

The one-State party leadership did not have the intention of respecting international human rights standards that challenged their absolute control. The communist system was based on such absolute control of power. Human rights and in particular freedom rights, eroded and threatened this absolute control and, consequently, their power. The GDR government intended to ratify international human

rights treaties because they sought more international recognition, without the expectation that their own citizens would actually claim these rights once the treaties were ratified. However, the government underestimated the effect that the formal act of ratification would have on the citizens' demands and claims.<sup>37</sup> The adherence to fundamental liberty rights in the GDR would have required concessions by the party leadership, which would have limited its power and would have even led to political power shifts. Political participation, free elections or allowing independent parties and groups of citizens to stand for elections would have meant the end of the SED – as it ultimately did in 1989-1990. Allowing free movement and travel would have meant the exodus of the East German population. Too many of its citizens were already discontent with the regime and wanted to leave for the West. Thus, more repression followed and this also affected the work of AI.

The term “political prisoner” was officially avoided in the GDR because, according to the communist doctrine, everybody was a free citizen freely adhering to the political dictatorship of the proletariat and the SED. But due to international pressure in 1977, the GDR submitted a request to the UN General Assembly to replace the term political prisoner with the term ‘fighters against colonialism and racism’.<sup>38</sup> It did not succeed, also because it became clear that together with other communist countries, the GDR followed the strategy that there are no political prisoners in socialist societies. According to the party leadership, the only political prisoners ever were communists who suffered in prison under Nazi- and fascist dictatorships. Furthermore, according to their view, socialist

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<sup>37</sup> KLEIN, E., *Menschenrechte, Stille Revolution des Völkerrechts und Auswirkungen auf die innerstaatliche Rechtsanwendung*, [Human Rights, Silent Revolution of International Human Rights Law and the impact on domestic legislation], Baden-Baden, 1997, p.12.

<sup>38</sup> Federal German Archive Berlin, SAPMO DP-1-SE-1439: MdJ, department of on the right of and contracting: Argumentation for argument with the slandering campaign of imperialistic States because of alleged pursuit and arrest of persons in the GDR because of their political thinking, 13.7.1977.

countries do not imprison communists. Consequently, there could be no political prisoner left anymore.

From the viewpoint of AI, however, it did not matter whether the GDR spoke officially of political prisoners or omitted this language. What was more important was the fact that in the GDR people who expressed their discontent with the regime peacefully and without violence were imprisoned. The SED regime persecuted, threatened and spied upon hundreds of thousands of people because of their political opinions or attitudes during the 40 years of the GDR.<sup>39</sup>

## **6. AMNESTY INTERNATIONAL'S EFFORTS AND IMPACT**

In the first years of the activities which AI directed at the GDR, neither the State authorities nor the Stasi knew how to cope with the organisation. In this “closed dictatorship society” in the Eastern Bloc, it was unrealistic to expect any official reaction. In the beginning, Amnesty manoeuvred and experimented in the way it organised its letter-writing campaigns. Different forms of activities had to be adapted to the different political systems and countries in the world. As one of the first human rights organisations based on voluntarism and operating worldwide, AI could not rely on the experiences of other organisations while fighting for human rights. The impact of its activities and applied methods was neither calculable for AI nor for the communist leadership in the East. This only changed in the 1970s, after the organisation could rely on a fixed mandate and some concrete strategy plans had been set up.

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<sup>39</sup> FRICKE, K.W., 'Weder Konzentrationslager noch politische Gefangene', in: *Deutschlandarchiv*, Jg. 20, number 2/1987; PRIBE, S., and DENIS, D., 'Health one and psychological damages of political pursuit in the view to rehabilitation and compensation', in: GERMAN BUNDESTAG (ed.), *Materials of the Enquete Commission "processing of history and consequences of the SED dictatorship in Germany"*, Bd. II, 1, p. 296.

The larger Amnesty actions, like worldwide publicity campaigns under the slogan “give prisoners a face and voice”, have been relatively successful since the end of the 1970s. Violations of human rights by the SED regime were denounced regularly and openly to the international public through the media and campaigns. Additionally, the organisation had grown by several thousands members. Appeals and inquiries reached the SED regime from over 30 countries. From Canada, the Faeroe Islands, Venezuela, and Sierra Leone to India, South Korea and Japan, letters, signature lists and other forms of appeals reached East Berlin.<sup>40</sup> In 1989, Amnesty counted thousands of volunteers in over 60 countries.<sup>41</sup>

Support came from international political leaders and celebrities. With this support Amnesty confronted the GDR governmental delegates whenever they travelled abroad to Western countries. As a result, the SED leadership had to consider more seriously questions asked about violations of human rights in the GDR, while at the same time asking for more international recognition and financial support for its eroding economy. Over the years, the SED made concessions, for example, in relation to what were called “the public enemies” – those who were viewed as hostile to the GDR. This was basically everybody who did not fully support the regime. Although the GDR criminal law was intensified in the 1970s, Amnesty observed some positive changes after the GDR became a member of the United Nations in 1973, and after it had joined the CSCE negotiations in 1975. Citizens who wanted to leave

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<sup>40</sup> Amnesty letters from the following countries are provable with the public security and the Ministry of the inside archives: Australia, Belgium, Bermudas (Great Britain), Costa Rica, Denmark, Finland, France, Faeroe Islands (Denmark), Great Britain, Greece, Hong Kong (until 1997 Great Britain), India, Ireland, Iceland, Israel, Japan, Canada, Luxembourg, Mexico, New Zealand, the Netherlands, Norway, Austria, Papua New Guinea, Portugal, Sweden, Switzerland, Sierra Leone, Spain, South Korea, Uruguay, the United States, Venezuela.

<sup>41</sup> AMNESTY INTERNATIONAL, *Annual Report 1989*, Frankfurt A.M., 1989, p. 594.

the GDR for family reasons or reunification were more easily allowed to leave the country than before. Exchange of any form (for example, information, visits and journalists) was easier, and Amnesty's researchers in London also benefited from this shift because they received more and faster information about human rights abuses, imprisonment and trials.

The organisation reminded the GDR of its obligations under the UN treaties or the Helsinki Accord. Amnesty was allowed to officially participate at international conferences in the GDR, such as the 1986 meeting of the World Federation of United Nations Associations (WFUNA) in East Berlin.<sup>42</sup> Amnesty also established assorted contacts with civil rights activists and artists in the GDR. Additionally, they were allowed to submit shadow reports to UN treaty bodies, such as that on Civil and Political Human Rights and to the CSCE follow-up conferences, upon the request of treaty body members and Western delegates. Finally, after many years of official silence, the strict anti-Amnesty policy in East Germany changed. In the summer of 1989, shortly before the collapse of the SED regime and the Berlin Wall in November 1989, the Stasi agreed internally that Amnesty was not like other organisations "hostile to the GDR" and, thus, a meeting with the organisation might be considered.<sup>43</sup> The international pressure and Amnesty's constant campaigns at the UN and CSCE level led the regime to change its mind. However, the meeting never took place because of the events that occurred in November that same year.

The agreements on international human rights standards gave AI the possibility to confront the party apparatus in East Germany. Since 1964, Amnesty has had advisory and observer status at the United Nations. In March 1976, the ICCPR came into force and

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<sup>42</sup> AMNESTY INTERNATIONAL, Legal Office, International Secretariat: Internal PAPER: "Trip ton Berlin and corroding thanks RK WFUNA Europe regionally Conference in Berlin (GDR) 7-10.9.1986," unpublished minutes of 13.9.1986.

<sup>43</sup> MIHR, *op.cit.*

Amnesty immediately reacted by confronting the GDR when reporting to the UN Human Rights Committee, reminding it of its duties to implement and fulfil the treaty.<sup>44</sup> Until 1989, the GDR submitted dozens of reports and answers to different UN human rights bodies and general inquiries by the UN. By the end of the Cold War, the GDR was a contracting party of 24 multilateral contracts on human rights, most of them never known by or transmitted to their citizens.<sup>45</sup> Until 1989, the GDR submitted a total of four reports to the human rights committee: in November 1973, before the establishment of the Human Right Committee, in June 1977, November 1983 and November 1988.<sup>46</sup> Twice during this time, a GDR delegation of diplomats, lawyers and politicians was confronted with evidence about its human rights abuses directly from Amnesty reports, which they did not feel ready to answer. UN Human Rights Committee members used the AI reports and asked the GDR delegation for explanations on the allegations, which included questions by the Committee members regarding the situation of political prisoners, the number of dissidents in house arrest, such as the writer and professor Robert Havemann, freedom to travel and leave the country at any time, the death penalty, and forced political adoptions. In 1975, the UN Secretary-General sent a questionnaire on the death penalty to the government in East Berlin. While the preparations were going on in East Berlin for the first reporting in Geneva in 1977, Amnesty received the Nobel Peace Prize in October 1977 and started a GDR campaign. As part of the campaign, the organisation had already published on violations of human rights and sent the reports to official authorities in East Berlin as well as to so-called socialist mass organisations that were State-

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<sup>44</sup> DDR Komitee für Menschenrechte [GDR Committee on Human Rights] (ed.) *Schriften und Informationen*, No. 2, Berlin, 1986, pp. 164-165.

<sup>45</sup> IPSEN, K., 'Die Selbstdarstellung der DDR vor internationalen Menschenrechtsorganisationen', in: GERMAN BUNDESTAG (ed.), *Materials of the Enquete commission "processing of history and consequences of the SED dictatorship in Germany"*, Band IV, 1991, p. 547ff.

<sup>46</sup> BRUNNER, *op.cit.*, pp. 15-48.

owned NGOs in the GDR. The Amnesty material was, thus, available before the UN Human Rights Committee meeting in Geneva. The GDR delegates to the UN Human Rights Committee underestimated the reputation Amnesty and its shadow reports had received in the West and amongst the Committee members.<sup>47</sup>

Amnesty proceeded tactically and published a press release two weeks before the reporting in Geneva on the occasion of the ceremonies for the anniversary of the Universal Declaration of Human Rights in December 1977. Therein, the case of a political prisoner, the surgeon Werner Schällicke in the GDR, was presented. He was a former SED-member and an active human-rights activist who had to spend months in solitary confinement. Schällicke had been condemned in 1974 to six years detention because he had, among other things, addressed the UN Secretary-General in a letter urging him to remind the GDR that it should adhere to international human rights principles. At the time of the UN report, the prisoner was seriously ill. Protest letters reached East Germany from around the world, particularly from the US.

But the SED leadership did not want to give in easily to AI's appeals. It feared that these appeals would impair the upcoming reporting before the Committee. Due to the prominence of the case, the director of the prison in Brandenburg, East Germany released Schällicke from his workload and granted him special medical treatment. Moreover, the prisoner's solitary confinement was lifted during the Amnesty campaign. Through Amnesty's actions his case received international attention. Nevertheless, it took until November 1979 before the Stasi and the Ministry of Internal Affairs released him to West Germany under the buy-out scheme.

Schällicke's case and others were part of the dialogue and reporting at the United Nations. The GDR diplomats were further questioned by the UN Human Rights Committee members about the GDR's compliance with other basic civil and political rights found in the treaty. Issues were put forth concerning citizens who had

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<sup>47</sup> AMNESTY INTERNATIONAL, Country Report GDR, London and Bonn, 1977.  
*SIM Special 36*

peacefully applied for the allowance to leave their country and settle elsewhere, those who had tried to escape to West Germany via the Iron Curtain or the Berlin Wall, the bad prison conditions in which overloaded cells and bad nutrition were daily practices, and the death penalty. The diplomats forwarded the UN Committee's comments to the authorities in East Berlin. High-ranking officials and ministries took notice, but still refused to respond with major reforms. Thus, within the files in East Berlin, this notice was later found: 'Opponent position of the UN was badly estimated; but our attempts to convince then have to continue'.<sup>48</sup> This note can only be understood if one understands the communist doctrine that essentially States that whoever is not with communist States is against them. Thus, if the UN Committee posed critical questions to GDR delegates, this was automatically seen as hostile actions against the State and interference in internal affairs. Therefore, the delegates had to be better prepared in the future to convince those Committee members that the GDR was a peace-loving and human rights-respecting State, even though the circumstances did not necessarily change within the country. Consequently, the UN Human Rights Committee's questions and recommendations were seen as what they were: mere recommendations and concerns without any further consequences if the Member State ignored them. But the SED's desire to reach out for more international acknowledgment was so strong that other State officials and diplomats were better prepared for the future whenever the issue of human rights was on the agenda.

For the second verbal reporting to the UN Human Rights Committee, the GDR delegates had done their homework, although again with some restrictions. One request of the UN Committee in 1978 was to make the ICCPR more accessible to the wider public. The East German authorities had done so, however, with major restrictions. The official GDR State committee for human rights had

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<sup>48</sup> Federal German Archive Berlin, SAPMO, DP1-SE-1410: Here also statements are specified to individual problems from the convention over civilian and political rights.

published parts of the human rights conventions in a membership journal. Thus, the delegates thought that by making parts of the convention accessible to some selected citizenry of the country, they had fulfilled the request of the UN Committee. Substantial articles of the convention were neither translated from English into German nor were they published. In particular, the GDR government did not want to make public the rights to freedom of expression and freedom to travel. These were exactly the articles with which Amnesty had confronted the GDR in thousands of letters: freedom to leave one's own country, fair trials, freedom of expression, and opinion and freedom to assemble.<sup>49</sup> The publication of the incomplete Covenant was an embarrassing compromise in relation to what the Committee had once demanded.

While the oppressive regime continued in East Germany and the protest against the SED leadership increased in 1988 and 1989, Amnesty contacted the United Nations directly. In April and June 1989, the organisation submitted to the UN Human Rights Commission petitions concerning dramatically rising numbers of the short-time detentions after mass demonstrations, which continued in all major cities across the country. People went on the streets to protest electoral frauds in May 1989, and the demonstrations continued until the Berlin Wall came down in November. The UN Human Rights Commission registered the appeal under UN-index UN/188/89 and sent the Amnesty request to the GDR Foreign Ministry in East Berlin. The GDR State Council, its chairman Erich Honecker, as well as the Minister of Foreign Affairs and Ambassadors at the UN in New York, Geneva and London also received a copy from Amnesty. A few months earlier Amnesty had published a book on the GDR with the title "Justice Behind Closed Doors", criticising the secret and unfair political trials in the country. High-ranking officials and the Stasi knew well about these claims. The UN Secretary-General, Pérez de Cuéllar, acknowledged the

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<sup>49</sup> GDR KOMITEE FÜR MENSCHENRECHTE (ed.), *Schriften und Informationen*, number 1, Berlin 1980, pp. 25-29.

claims and reports by Amnesty concerning the situation in the GDR and addressed the Head-of-State in East Berlin. In his address he asked for further information about detentions and secret trials.<sup>50</sup>

Adequate answers were not given and time was running out: a few weeks later the GDR would no longer exist in its old form. The Heads-of-State and party had to resign after the Wall fell in November 1989, and new elections and a new government system would be put into place in the spring of 1990. In October 1990, East and West Germany were reunified. After the reunification, AI could, for the first time, officially file claims for information on what had happened to all its letters and reports. The findings were revealing. Thousands of letters were archived and the reports translated and collected by GDR Ministries or the Stasi. Many prisoners that Amnesty had adopted over the years received better attention during their imprisonment or were released earlier, in particular in the 1980s. Due to AI's pressure, secret trials were partly opened and, in general, the former SED regime had to justify itself to both the international community as well as to its own citizens. This was mainly due to international pressure by the UN, through the CSCE process and the combination of AI's letters, reports and lobbying, jointly with the work of the UN, CSCE and, in particular, the UN Human Rights Committee. But the reforms that the SED regime had wanted to introduce in 1989 came too late. People went to the streets, protested and claimed their human and citizen's rights and, thus, brought about the end of the GDR.

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<sup>50</sup> BStU MfS IX-10007-Archive: In a letter of deputy Secretary-General Amnesty's, Larry Cox, at Erich Honecker and Javier Pérez de Cuéllar, Secretary-General of the UN, with hexagonal appendix of 23.6.1989. Therein it means among other things: 'The violations of human rights in the German Democratic Republic continue in the way, like them in the report of Amnesty International of 17 April 1989 were described'.

## **7. SOME CONCLUSIONS**

The international attention and pressure of NGOs, such as Amnesty and the UN, shed light on human rights violations, in particular during the 1970s and the 1980s. But the organisation's objective to directly contact prisoners and to send trial observers partly failed due to the strict State security control. Amnesty's major impact and success was that prison conditions improved, that GDR officials had to justify themselves, and issues of human rights and reforms were discussed internally – after becoming aware of AI's concerns and appeals. The SED leadership knew that the international community was watching them and that Amnesty's information and claims were correct and not mere propaganda. The credibility of the organisation, in particular after it received the Nobel Peace Prize in 1977, had increased over time and was taken seriously behind the Iron Curtain. Nevertheless, Amnesty had not reached all its objectives. It was never permitted to AI representatives to talk to high-ranking officials in East Berlin and felt that law reforms did not manage to improve the law according international human rights standards.

Amnesty's work and efforts may also not be separated from the Perestroika and Glasnost movement of the leader of the Soviet Union, Mikhail Gorbachev, who, since 1985, had paved the way for reforms and even Germany's reunification during his communist leadership. His work also paved the way for concessions that the USSR and communist satellite States, such as the GDR, had to adhere to human rights in the following years. The GDR was forced to react because of the mass demonstrations, the claims for fair and free elections, and the massive departures of thousands towards the West. The old propaganda eroded and the system weakened. More information about human rights entered the GDR through media and telecommunication and people started to refer more often to human and citizen rights than in the years before. Claiming what the government had already signed and ratified seemed to be uncontroversial – however, the Stasi wanted to maintain the SED party leadership control over the country. Despite using more force

and arbitrary detentions, it failed in the end. At the same time, AI strategically lobbied international organisations, worked with the UN Human Rights Committee, and was present at the CSCE conferences. These actions established the credibility of AI and increased its impact on the regimes behind the Iron Curtain. International pressure, although condemned by the East, was, in the end, the most successful way to contribute to the regime change, protect people from severe human rights abuses, and lead to the relief of many prisoners.

# AMNESTY INTERNATIONAL'S WORK ON PHYSICAL INTEGRITY – A PERSONAL REFLECTION

SIR NIGEL RODLEY

## 1. INTRODUCTION

When I joined the International Secretariat (IS) at the start of 1973, work for the release of Prisoners of Conscience (POCs) and for fair trials within a reasonable time to be accorded to other political prisoners was the main focus of the Amnesty International (AI) mandate, virtually to the exclusion of all else. Gradually, the organisation took on other issues. It soon realised that it was invoking specific human rights that were understood to be applicable to all, not just the narrow range of prisoners within the existing mandate.

It could not just say to governments, “Don’t torture prisoners of conscience” or “Don’t execute (judicially or otherwise) political prisoners” or “Don’t kidnap either category of prisoner”. The prohibitions of torture and cruel, inhuman or degrading treatment or punishment, and of arbitrary arrest and detention applied to all, as especially did the ‘inherent right to life’.<sup>1</sup> Accordingly, from the 1970s onwards, AI began working on various aspects of the right (or rights) to physical integrity. This was not the result of a conceptually worked out decision. Rather, it was a natural response to abuses inflicted on those at the core of AI’s mandate and it evolved in a piecemeal fashion.

The following text will discuss the development of AI’s work on these issues and seeks to assess its contribution. It will call for

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<sup>1</sup> The language of article 6 (1), *International Covenant on Civil and Political Rights* (ICCPR), 23 March 1976, 993 UNTS 3.

action on these issues to be restored at least to levels that were reached by the beginning of the 1990s.

## 2. TORTURE

In 1972, the International Council Meeting (ICM)<sup>2</sup> agreed to have its first sustained campaign – to take place in 1973 – on the issue of torture. The organisation, primarily through the Research Department of the IS which brought together all AI's country and regional expertise – had become aware that POCs and other political prisoners were commonly tortured in many parts of the world. It was particularly vivid in Greece, after the Colonels took control in the 1967 coup, as well as in Franco's Spain. Even the British in Northern Ireland had briefly resorted to interrogation techniques that, while not as brutal as in the other countries mentioned, could still be categorised as torture.<sup>3</sup> The problem seemed to have systemic elements that did not lend themselves to traditional AI group work for individual prisoners or at least not solely to such work.

Thus, AI's first issue or theme campaign was launched. Of course, in some ways the core work for POCs and political prisoners could be understood as a thematic campaign, but it was never conceptualised as such, and the focus on the tactic of group work tended to conceal that.

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<sup>2</sup> AI's highest decision-making body, consisting of then annual, now biennial, meetings of all AI Sections.

<sup>3</sup> As found by the European Commission on Human Rights in *Ireland vs United Kingdom*, *Yearbook of the European Convention on Human Rights*, Vol. 19, 1976, para. 794, albeit not endorsed by the European Court of Human Rights: *Ireland vs United Kingdom* (1978) Series A, No. 25, paras. 167-168. AI expressed its disagreement with the Court in a news release AI Index NWS 02/04/78, 19 January 1978. See RODLEY, N. and POLLARD, M., *The Treatment of Prisoners under International Law*, 3<sup>rd</sup> edn., Oxford University Press, Oxford, 2009, pp. 100-103.

The most high profile elements of the campaign against torture were an AI World Report on Torture and an international Conference on the issue. The report demonstrated the existence of torture in many countries and even highlighted systematic torture taking place in a substantial number of these countries.<sup>4</sup> It attracted an enormous amount of publicity. The international Conference was to be held in the premises of UNESCO, but the lease with UNESCO provided that the proceedings should not impugn (*mettre en cause*) UNESCO Member States. Since it had been announced that the Report on Torture would be distributed to the Conference, UNESCO contacted AI a week or so before the Conference to say that this was a breach of that term of the agreement, and the permission to hold the Conference was withdrawn. A hastily arranged meeting between the Deputy Director-General of UNESCO (the Director-General was visiting Morocco, whose torture practices had been highlighted in the Report), an AI delegation consisting of AI Secretary General Martin Ennals, French Section President Marie-José Protais and myself failed to resolve the problem, even though AI expressed its willingness to withdraw the Report as a Conference document. We understood that the Deputy Director-General had recommended reinstating the lease, but the Director-General would not agree.

The negative outcome led to further worldwide publicity for the Conference, for which a new venue was rapidly found (Tour Olivier de Serres). Moreover, it was bad publicity for UNESCO. Interestingly, the organisation offered to allow its interpreters to do the interpretation at the new venue. Later, in 1974, despite AI's alleged breach of the lease, UNESCO admitted AI as an organisation in consultative relations.

At the end of the Conference, an ad hoc meeting of AI's International Executive Committee (IEC) took place to consider how AI should follow up on the Conference. The general line from the IS was that AI should seek to promote the creation of a separate anti-

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<sup>4</sup> AMNESTY INTERNATIONAL, *Report on Torture*, Amnesty International London, 1973.

torture organisation. My recollection is that the issue of torture did not seem central to AI's existing mandate concerns, and that the adoption of group technique (then AI's predominant vehicle for pursuing its objectives) was not the best suited for helping victims of torture. However, the IEC knew that AI had become intimately associated with the issue and it would not be appropriate to let go of the issue. The result was the creation of a Campaign against Torture (CAT) unit in the IS. This unit would eventually become a Campaign Department.

An early achievement of the CAT unit was the development of an urgent action network through which cases, where people were thought to be being tortured or to be at risk of torture, could be brought to the attention of the movement for urgent contact with the authorities of the country in question. This technique was also to be important for work to prevent enforced disappearance, the death penalty and even extra-judicial execution (usually where a person had received death threats). When the UN developed its own machinery to work on these issues, AI's urgent actions prompted them to develop their own urgent appeal systems. Indeed, in their early days, they relied heavily on material submitted by AI based on its own urgent actions.

A decade later, AI launched its 1984-1985 CAT II campaign. While the first CAT (CAT I) was mainly aimed at creating awareness of the prevalence of torture around the world, CAT II not only continued this process, but it also had more specific objectives. In the report prepared for the campaign, there was a strong focus on ordinary criminal suspects and their vulnerability to torture: it was not just political prisoners in the organisation's sights.

The campaign also promoted a '12-point programme against torture'.<sup>5</sup> Here, a key focus was on the prevention of torture and the avoidance of what it called 'the preconditions for torture'. This meant especially that people should not be held for long periods in

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<sup>5</sup> AMNESTY INTERNATIONAL, *Torture in the Eighties*, Amnesty International London, 1984, pp. 249-250.

the hands of their captors and interrogators (a situation known as incommunicado detention). Ensuring access to the outside world, family, lawyers, doctors and so on, was the key. While national legal systems were the main target of the programme, the campaign also explicitly advocated the creation of a UN mechanism that would take up allegations of torture with the governments in question. As will be seen below, these activities contributed significantly to developments at the international level, most notably the adoption in 1988 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), and the establishment of the mandate of UN Special Rapporteur on torture.

It is very difficult to know how far AI's work and that of others on the torture issue may have contributed to any reduction in the practice of torture. Indeed, we do not really know what, if any, global reduction there may have been. Certainly there are countries where there has been improvement. Take, for instance, the situation in Turkey, where the incidence of torture is generally understood to have been reduced. It may be that the main spur for this was Turkey's ambition to join the European Union. Equally, without the attention to the problem directed by national NGOs or international NGOs such as AI, the UN machinery and especially Council of Europe organs, the priority given to the problem by other EU States may not have been as high. However, there are also jurisdictions where the situation has substantially deteriorated, as exemplified by the Russian Federation's practices in Chechnya.

In particular, in countries where there have been signs of improvement in respect of political prisoners, it is often hard to know what the situation is with regard to ordinary criminal suspects. Frequently, unlike political prisoners who may well be contacted through national organisations or other human rights organisations, the same is not necessarily true for ordinary criminal suspects. For instance, after the change of government in Chile, pursuant to the referendum that put an end to the Pinochet regime, the most prominent national NGOs focused on issues of accountability and

reparation for the crimes of the dictatorship, leaving a substantially less prominent organisation (ironically with a reputation for more political motivation), CODEPU, as virtually the only voice of ordinary detainees.

What is clear, however, is that AI played a key role in multiplying international activity against torture, especially at the inter-governmental level. It has contributed to the development of international law standards, and, most importantly, to the creation and functioning of machinery aimed at combating torture.

I have documented elsewhere how governments that first raised the torture issue at the UN, in 1973 and 1974, mentioned the relevance of AI and its anti-torture campaigning to their motivation for their initiatives.<sup>6</sup> It was not so much that AI had advocated the specific initiatives, than that it had created a public awareness of the issue that some governments then wished to be seen to be addressing.

If AI had had its way, however, implementation machinery would have been its highest priority. The 1973 Conference had already called for the setting up of ‘a body with powers to investigate complaints [of torture] and report them to the United Nations General Assembly’ as well as for a UN High Commissioner for Human Rights who could investigate such allegations.<sup>7</sup> After all, Article 5 of the Universal Declaration of Human Rights (UDHR) also proclaimed: ‘No-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’. While the UDHR was not a binding legal instrument as such, it was already thought to have substantial political and moral authority, and it could even be considered an articulation of respect for human rights already found under the UN Charter. The problem was that, at that time, there was no political will to establish such machinery. This came later. As

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<sup>6</sup> RODLEY and POLLARD, *op.cit.*, chapter 1.

<sup>7</sup> AMNESTY INTERNATIONAL, Conference for the Abolition of Torture – Final Report, Paris, 10-11 December 1973 (hereinafter: Paris Conference Report), p. 15.

such, the setting of norms and standards was the only sort of activity that was possible. And it proved to be a worthwhile exercise.

## 2.1 STANDARD-SETTING

The International Conference had called for the development of codes for military, police and prison personnel.<sup>8</sup> It had also called for recognition of a number of safeguards involving access to, *inter alia*, lawyers, doctors and family members.<sup>9</sup> Within a year, the UN General Assembly had adopted Resolution 3218 (XXIX) of 6 November 1974, which contemplated the development of ‘an international code of ethics for police and related law enforcement agencies’ and ‘principles of medical ethics’ in respect of the treatment of detained persons. During the debate on these documents several speakers referred to AI and even to the Paris Conference.<sup>10</sup> By the end of 1975, all the work seemed to be paying off; the General Assembly adopted its first major normative instrument, the Declaration on the Protection of all Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration against Torture).<sup>11</sup>

The Declaration made clear that States were expected to treat torture as a crime, to investigate allegations of torture, and even information indicating the existence of the practice in the absence of a formal complaint. At the same session, the Assembly set in motion a process that would lead to the adoption of texts on police and medical conduct and principles for protecting people deprived of liberty.

As to police ethics, AI developed its own text – the Declaration of The Hague – after a consultation with experts including representatives of police bodies. It followed a position

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<sup>8</sup> *Ibidem*, p. 14.

<sup>9</sup> *Idem*.

<sup>10</sup> RODLEY and POLLARD, *op.cit.*, p. 23-25.

<sup>11</sup> General Assembly Resolution 3452 (XXX), 9 December 1975.

already taken at the Paris Conference, calling for police officers to refuse to obey illegal orders such as those to torture. This text, virtually unchanged, was adopted in the Declaration on the Police by the Parliamentary Assembly of the Council of Europe in Strasbourg.<sup>12</sup> Although submitted to the UN, the text as such was not the basis for the UN's drafting exercise.<sup>13</sup> The notion of an obligation of non-compliance was only to be indirectly found in what (had) been the UN Code of Conduct for Law Enforcement Officials (1978). However, 12 years later, building on the Code of Conduct, the Basic Principles on the use of Force and Firearms by Law Enforcement Officials made clear that non-compliance with an order incompatible with the Code should be free of repercussions, and that there should be no defence of superior orders in respect of serious harm resulting from carrying out manifestly unlawful orders.

The 1982 Principles of Medical Ethics, relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, went some way to meeting the criteria addressed at the Paris Conference.<sup>14</sup> The text rules out any participation of health professionals in harmful interrogation or even certification of fitness for interrogation in such circumstances. However, there is the qualifier that the interrogation not be 'in accordance with the relevant international instruments' (Principle 4 (a)). This opaque wording creates serious problems of interpretation for legally-untutored medical personnel. While, at its core, the notion of torture or cruel, inhuman or degrading treatment or punishment may be evident, there are penumbral areas where this is not the case. The same qualifying language applies to the prohibition of certification of fitness for punishment that is cruel, inhuman or degrading (Principle 4 (b)). This could lead to ambiguity when

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<sup>12</sup> Council of Europe Parliamentary Assembly Resolution 690 (1979).

<sup>13</sup> RODLEY and POLLARD, *op.cit.*, 496-497.

<sup>14</sup> General Assembly Resolution 37/194, 18 December 1982; Paris Conference Report, p. 15.

participation in corporal punishment is at issue. Moreover, despite the clear recommendation of the Paris Conference,<sup>15</sup> there was no agreement on procedures for protecting health personnel from adverse consequences for refusal to comply with the Principles or even less a procedure for ensuring accountability for non-compliant health personnel.

It is no accident that it took from 1975 to 1988 to achieve the drafting of the Body of Principles on detainees and prisoners. The need to ensure that the detainee was not at the sole mercy of the captors/investigators/interrogators had been obvious from the beginning. Several recommendations of the Paris Conference aimed in this direction, notably those concerning access to lawyers and others from the outside world. The fact that clarity and compliance had not been achieved a decade later led to the focus, mentioned earlier, on the 12-point Programme against Torture, at the time of CAT II (1984-85).

The difficulty of achieving agreement in these aspects led AI to campaign hard, both through the IS and its representation in New York (see article by Terlingen in this book) and the AI sections. At one point, I went out to join the team in New York to participate in an informal meeting of delegates to the Sixth (Legal) Committee of the General Assembly to explain AI's position. Of course, it was accepted that, in principle, detained persons should have access to lawyers, doctors, family, and so on. The problem was that governments were not willing to accept that such access should be absolute. Exceptions were insisted on, on such grounds as the need to avoid collusion, protect the investigation, and maintain institutional order. Eventually, what was agreed was that access to the outside world could not be postponed for more than "a matter of days". This somewhat elastic outcome was the best that could be achieved.

Turning to the normative aspects of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

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<sup>15</sup> Paris Conference Report, p. 15.

Punishment (UNCAT), their drafting was more rapid (1978-1984) than the Body of Principles. Perhaps its most far-reaching and most controversial element was its provisions for a form of universal jurisdiction, that is, an obligation on States Parties either to extradite or to try persons in their jurisdiction alleged to have committed the crime of torture. AI cannot claim credit for introducing the idea. It was in the original text proposed by the Government of Sweden. However, it may well be that the Swedish text was inspired by another one prepared by a group of experts and NGO representatives, including myself, convened by the International Institute for Higher Studies in the Criminal Sciences. This latter text also had universal jurisdiction provisions. Moreover, one of the experts at this meeting was the Attorney General of Sweden.

In any event, there was significant resistance to the idea, even among governments that had been in the vanguard of promoting international activity against torture, such as the Netherlands. Nevertheless, in this case, the Dutch government policy changed following a joint initiative of the Dutch sections of AI and the International Commission of Jurists (ICJ). They persuaded the Dutch parliament to adopt a resolution calling on the executive to support the universal jurisdiction components of the Swedish draft.

AI had been pressing the idea under the banner that there should be “no safe haven for torturers”. While there are not known to have been a plethora of universal jurisdiction prosecutions following the adoption of UNCAT in 1984, the 1989 Pinochet case more than vindicated the effort put into it. Here, it will be recalled, Chilean Senator-for-life and former Head-of-State Augusto Pinochet Ugarte was detained in 1988 by the UK under an arrest warrant issued by the Spanish judge Baltasar Garzon, with a view to his extradition to Spain. Even though he was eventually returned to Chile on health grounds, his 15-month detention in the UK – despite his Head-of-State immunity asserted by the government of Chile – represented a major rolling back of the protection enjoyed by State officials, even when alleged to have committed crimes under international law.

## 2.2 INTERNATIONAL IMPLEMENTATION

In addition to this semi-universal-jurisdiction element, UNCAT also has implementation provisions. Like other human rights treaties, UNCAT provided for the creation of a body to monitor its implementation, namely, the Committee against Torture.<sup>16</sup> And, as with other treaty bodies, it was envisaged that the Committee would review reports periodically submitted by States Parties, and would be able to consider inter-State and individual complaints if States, by separate declaration, agreed to be subject to such a procedure. This was none-too-controversial. However, the Swedish draft was innovative, providing for an automatic inquiry function in a situation of an apparent systematic practice of torture. This provision was controversial and was strenuously resisted by the Soviet Union and others. AI, especially through its sections, lobbied hard to avoid an agreement that would drop this function. In the end, however, as the text was to be agreed by the General Assembly in 1984, a last-minute deal was struck which provided for the possibility of a ratifying State making a reservation that would exclude this function. An indication of the significance of the AI role was that the Swedish delegation consulted with AI Secretary General Thomas Hammarberg, who was in New York at the time. He, in turn, contacted the legal office in London and we agreed that the solution was an acceptable one. We speculated – correctly as it turned out – that most States would be more reluctant to opt out of the inquiry procedure than would have opted in to another optional procedure.

Of course, the UNCAT procedures would only be applicable to States Parties to the treaty. Since 1973, AI had sought international

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<sup>16</sup> The original intention had been that the Human Rights Committee under the ICCPR would be the treaty body for the new convention too, but an intervention from the UN Legal Counsel considered that could not be done without amending the ICCPR itself, a virtually insuperable obstacle (UN Doc. E/CN.4/1981/WG.2/WP.6 (1981)).

machinery applicable to all States, but the world was not ready for that. By the time of CAT II, the situation was different. There were already two other thematic mechanisms in the UN Commission on Human Rights; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on summary and arbitrary executions (see below).

In April 1983, an international seminar on torture, convened by the Swiss Committee against Torture, agreed – on the basis of a note prepared by myself (during a year on leave from AI) – that an analogous mechanism on torture would be worth pursuing. AI adopted this goal, taking the view that it would best be pursued in 1985, once the draft of UNCAT left the Commission on Human Rights (to avoid muddying the waters) and after CAT II had started to have its predicted significant impact. The strategy paid off. The Dutch delegation introduced the idea to the 1985 session of the Commission, and during the discussion under the relevant agenda item, it was supported by the UN Assistant Secretary-General for Human Rights, numerous governments and, of course, AI. In an act of eloquent stage management, Argentina, still recently liberated from a brutal military *junta*, formally presented the draft of the resolution by which the function of Special Rapporteur on the question of torture would be created.<sup>17</sup>

In addition to the role it played in the establishment of these mechanisms, AI also went on then to submit its case and country information to the mechanisms, especially the Special Rapporteur, and that constituted a major resource for them. As already mentioned, AI's urgent actions were essential for the urgent appeals of the Special Rapporteur. AI's contribution to the practical functioning of the Committee against Torture and the Special Rapporteur on the question of torture, by way of provision of its research information, has been immeasurable.

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<sup>17</sup> Commission on Human Rights Resolution 1985/33, 13 March 1985.

### **3. THE DEATH PENALTY**

If AI's work on torture may have had more effect on the development of international law and standards aimed at preventing and prohibiting than it had on the incidence of the practice itself, the balance probably tilts in the opposite direction as regards the death penalty.

When I first joined the IS in 1973, there were some 25 abolitionist countries; now, as of August 2011, there are 105 (96 abolitionist for all crimes and nine for "ordinary crimes" (or "common crimes", that is, non-political crimes). This is 13 more than the 92 that are retentionist in law. If one subtracts from the latter figure the 34 States considered to be abolitionist *de facto* (no executions have taken place for ten years) and add them to the abolitionist group, then there are 139 abolitionist countries, as compared with 58 retentionist ones. Thus, over the last four decades, 114 States have abandoned the death penalty, 80 of them having done so by legislation. I can think of no reason why so many would have done so, other than the fact that AI took up the cause of abolition in 1973. Certainly some (Western) European and Latin American jurisdictions became abolitionist before AI's campaigning on the issue. However, the effect of AI's support of the issue was to help transform it from one of national criminal policy that was not a matter of international concern, to one implicating human rights as an issue of international concern. This was at a time, indeed, when the idea of human rights was taking off internationally and AI played a leading role in promoting the human rights project.

Until 1973, AI opposed only the death penalty in political cases. In that year, Swedish Section Chair and IEC member Thomas Hammarberg asked me to draft a resolution for the International Council Meeting that would make AI unconditionally abolitionist. (Since I came from an international law and United Nations background, the draft looked more like a UN document than an AI

resolution!) I recall the issue being controversial in some AI sections, but the resolution passed.

Researchers took up cases at once and, once established, the urgent action mechanism for torture cases proved to be ideal for seeking preventive action in death penalty cases. By 1977, the organisation launched a full-scale year-long campaign, modelled on that of CAT I. There was a report describing the use of the death penalty worldwide<sup>18</sup> and an international Conference held in Stockholm – this Conference was organised, like the Paris Torture Conference, on Human Rights Day (10 December).<sup>19</sup> It was the same day as the ceremony in Oslo where AI received the Nobel Peace Prize. (The Secretariat took quiet pride in making a success of the Conference, while IEC members represented AI in Oslo). My recollection is that the coincidence of these events led to greater attention to the Conference than might otherwise have been the case.

The beginnings of the consolidation of the death penalty as a human rights issue can almost certainly be attributed to the Conference. One of its participants was the late Dr. Christian Broda, the Austrian Minister of Justice. He had been very struck by the observation in a legal paper I prepared for the Conference, pointing out that the European Convention on Human Rights lagged behind its Inter-American equivalent, the American Convention on Human Rights, in that it did not explicitly excludes the introduction or reintroduction of the death penalty (or even implicitly, as arguably was the case for the International Covenant on Civil and Political Rights (ICCPR)). In fact, the Conference itself recommended the bringing of the ECHR into line with the other treaties in this respect.<sup>20</sup> Within six months, Dr. Broda had raised the issue at a

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<sup>18</sup> AMNESTY INTERNATIONAL, *The Death Penalty*, Amnesty International Report, London, 1977.

<sup>19</sup> AMNESTY INTERNATIONAL, *Report of the Amnesty International Conference*, Stockholm, Sweden, 10-11 December 1977, Amnesty International, London, 1978.

<sup>20</sup> *Idem*.

meeting of Ministers of Justice from the Council of Europe, the eventual outcome of which was the adoption of the Sixth Protocol to the ECHR, which requires the abolition of the death penalty, at least in peacetime.<sup>21</sup>

The Protocol has been remarkably influential. By the end of the Cold War, as Eastern European countries sought to enter the Council of Europe, they were required, not only to become party to the ECHR, but also its Sixth Protocol.

In other words, abolition of the death penalty was now a condition of membership of the club of States that were formally committed to human rights, democracy and the rule of law. And, of course, for this vast region at any rate, the death penalty was now irrefutably a human rights issue.

In 1980, that is two years after the 1978 meeting of the Ministers of Justice from the Council of Europe, Austria and a number of other States presented to the UN General Assembly a draft abolitionist protocol to the ICCPR, evidently inspired by the (as yet unconsummated) initiative of the Council of Europe.<sup>22</sup> A complex drafting process eventually culminated in its adoption, in 1989.<sup>23</sup> It was a divisive issue, the votes for the Protocol (59) were more than double those against (26), but there were 48 abstentions. In other words, only a minority of those present and voting expressed themselves in favour. Nevertheless, its very adoption made it harder for UN Member States to deny the human rights dimension of the death penalty, even at the universal level.

The direct evidence of AI's role is less apparent. However, the lineage of the Second Protocol to the ICCPR, stemming from the Sixth Protocol to the ECHR, is at least of some interest. Moreover, the advance of abolition, almost certainly thanks to AI's work,

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<sup>21</sup> Sixth Protocol to the European Convention on Human Rights, which allows States Parties to exempt 'acts committed in time of war or imminent threat of war'. Protocol 13 now provides for an absolute ban.

<sup>22</sup> Costa Rica, Italy, Federal Republic of Germany, Portugal, Sweden.

<sup>23</sup> General Assembly Resolution 44/128, 15 December 1989.

contributed to the number of positive votes. Naturally, AI lobbied consistently in support of the Protocol.

By definition, the Protocol would be binding only on States that were party to the ICCPR and became party to the Protocol. Accordingly, a key objective for AI was to achieve an international standard addressed to all States. It is here that AI was less successful. The death penalty had been an issue at the UN well before AI adopted its own abolitionist stance. As early as 1971, the General Assembly had affirmed that ‘the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries’.<sup>24</sup> By 1977, it reaffirmed this position, except without the words ‘in all countries’.<sup>25</sup> This was to be a straw in the wind. In the same resolution, it also referred the issue to the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders to be held in 1980.

AI saw the Congress as an opportunity to strengthen the normative proscription of the death penalty and it devoted considerable efforts to securing a positive outcome. However, the opposition was strong and, in the end, the sponsors had to withdraw an already diluted draft that would merely have reiterated the earlier position, adding tepidly that the ‘eventual abolition [of capital punishment] would be a significant contribution to the strengthening of human rights, including the right to life’.<sup>26</sup> This was a real setback, albeit it set the stage for the General Assembly’s new strategy that same year of promoting an optional protocol to the ICCPR.

Progress was not to be made in the UN’s political bodies until 1997, when the Commission on Human Rights began adopting a series of resolutions encouraging the use of moratoria by States. It took another ten years before the General Assembly was prepared to

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<sup>24</sup> General Assembly Resolution 2857(XXVI), 20 December 1970.

<sup>25</sup> General Assembly Resolution 32/61, 8 December 1971.

<sup>26</sup> RODLEY and POLLARD, *op.cit.*, 285.

follow the lead of the Commission.<sup>27</sup> By then, AI was a participant in, rather than the spearhead of, international abolitionist activity. A key actor has become Hands Off Cain, founded by the Transnational Radical Party in 1993 and the World Coalition against the Death Penalty, which includes 114 members (including AI and Hands Of Cain), founded in Rome in 2002.

While always seeking to strengthen the goal of abolition, AI also devoted attention to advance existing normative provisions aimed more modestly at restricting resort to the death penalty. For example, AI argued that the death penalty should be available only for the most serious offences and that it must result from a scrupulously fair trial with attendant rights of appeal. In addition, all persons under sentence of death should be able to petition for pardon or commutation of sentence. Indeed, AI was actively involved in the negotiations in the then UN Committee on Crime Prevention and Control that led to the adoption, by the UN Economic and Social Council, of the 'Safeguards Guaranteeing Protection of Rights of Those Facing the Death Penalty',<sup>28</sup> which were subsequently to be endorsed by the General Assembly.<sup>29</sup> This was helpful, particularly in respect of those States that were neither party to the ICCPR nor the American Convention on Human Rights. AI was always conscious of the potential problem of seeming to compromise its absolute commitment to outright abolition by engaging in discussion of measures that could be seen as implicitly legitimating the death penalty. It took a pragmatic line. The measures of restriction would undoubtedly save lives and it would be wrong not to contribute to that objective, and AI always made clear its total opposition to the penalty as such.

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<sup>27</sup> General Assembly Resolution 62/149, 18 December 2007, with an absolute majority of 104 for, 54 against and 19 abstaining.

<sup>28</sup> ECOSOC Resolution 1984/50, 25 May 1984.

<sup>29</sup> General Assembly Resolution 39/118, 14 December 1984.

#### 4. EXTRA-JUDICIAL KILLINGS

AI found itself addressing extra-judicial killings in much the same way as happened with the death penalty. That is, its main focus was on the extra-judicial killing of political opponents of governments. There was some hand-wringing by some of us on the grounds that this seemed to be removing the prisoner-orientation of the mandate (in the days when AI had a mandate and it was prisoner-oriented). However, it was unsustainable for AI, on the one hand, to insist that, for example, prisoners of conscience be released, while ignoring on the other hand, lethal action by which States could circumvent the need to imprison in the first place.

A first (indirect) AI contribution was when a representative of the Austrian government asked me to draft a resolution on this topic for presentation to the 1980 Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders – ironically, while most AI efforts were focused on the death penalty issue described earlier, the resolution as drafted was presented by Austria and others and adopted with no votes against and seven abstentions.<sup>30</sup>

In 1982/1983 AI did focus campaigning on extra-judicial executions, reversing the usual formula of a 1982 conference (held in Noordwijkerhout, Netherlands) followed by a 1983 report ‘Political Killings by Governments’.<sup>31</sup>

As always, this contributed to public awareness of the issues, but it is difficult to claim major direct impact. As evidenced by events in such countries as Libya and Syria during the ‘Arab Spring’, authoritarian regimes under threat have little hesitation in using ultimate force to try to consolidate their power. Moreover, law

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<sup>30</sup> Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders – Report, UN doc. A/CONF.87/14/Rev.1 (1981), chapter 1; see RODLEY and POLLARD, *op.cit.*, pp. 248-249.

<sup>31</sup> Several AI Documents, for example: AI Index 03/26/82, published in 1983. AI Index: POL 03/02/82, held from 30 April to 2 May 1982.

enforcement personnel or others acting with their acquiescence may be prone to engage in “social cleansing” of undesirable elements.

In terms of action at the inter-governmental level, Resolution 5 of the Sixth UN Crime Congress preceded AI's report and subsequent campaigning activities, as did even the creation of the UN Commission on Human Rights mandate of the UN Special Rapporteur on Summary and Arbitrary Executions (albeit it was informal AI diplomatic work in Geneva that led to the inclusion of reference to extra-legal executions in the preamble of the resolution establishing the mandate). Rather, the original initiative had been aimed at death penalties without the safeguards referred to earlier. Now, it would clearly include killings outside the judicial process.

Two later instruments adopted within the UN, the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Execution and the Basic Principles on the Use of Firearms could not be said to have been directly instigated by AI's work, though that work may have been “in the air”. Certainly, it gave AI an acknowledged authority that permitted it to make key contributions. For example, without AI's participation, the former might well not have included provision for “universal jurisdiction”, that is, trial of persons suspected of involvement in such killings wherever they may be found. The same sort of contribution may well be said to have helped adoption in the latter instrument of the principles of necessity and proportionality, according to which lethal force could only be deemed legitimate if deployed as a last resort to protect the lives of others.

## **5. ENFORCED DISAPPEARANCE**

In the case of enforced disappearances, it was AI's country work, rather than a thematic campaign, that led to worldwide awareness and revulsion towards the practice. Although the practice had been going on in Guatemala for some time, it was its appearance in Chile

after the 1973 coup against the constitutional government (during AI's ICM) that first focused attention on the issue. It is often forgotten that in 1975 – in a breakthrough for UN concern for human rights in specific countries – the UN Commission on Human Rights appointed not only the first country inquiry outside southern Africa and the Israeli-occupied territories, but also a working group to investigate the fate of missing persons in Chile. Of course, AI's was not the only voice, there were well-organised national NGOs – notably the *Vicaría de la Solidaridad* – and international NGOs, all protesting the practice. But, the coincidence of CAT I and the Chile coup meant that both Chile and AI were linked in people's (and governments') minds.

Soon Argentina was to adopt the practice on a massive scale, and AI's 1976 mission there and the ensuing report achieved high levels of publicity. It was then no accident that the UK referred to “the report of Amnesty International” when raising the subject of enforced disappearance at the Third Committee of the UN General Assembly. At that session, the Assembly by Resolution 33/173 of 20 December 1978, expressed deep concern and referred the matter to the Commission on Human Rights. In fact, the Commission skipped a year and it was only in 1980 that it created its first thematic mechanism, namely, the Working Group on Enforced or Involuntary Disappearances. Famously, the draft resolution, which would eventually set up the Committee and mentioned no countries, was being called “the Argentina resolution”. This was because the main reason a thematic mechanism was being formed was the absence of political will to undertake an inquiry into the situation in Argentina, even though it was comparable to that established by the friendless Chile. At this point, AI could not claim principal credit for the achievement of the creation of the Working Group. Indeed, by now, even some governments had got the bit between their teeth, notably those of France and the US. It should also not be forgotten how influential the moving sight of the mothers and grandmothers of the

disappeared, in their white headscarves, had been.<sup>32</sup> Overall, AI had helped create the context for change to happen and was among those working to bring awareness to the issue.

Thus, as with killings by governments, by the time AI produced its global report on the problem “‘Disappearances’ A Workbook”,<sup>33</sup> international action was already under way and its country work was also continuing. AI’s Urgent Action Network was very well suited to react at the early stages of arbitrary arrest that threatened to become an enforced disappearance. Further, AI’s information on actual and feared disappearances around the world was the main source of information in the early years of the Working Group.

AI was also to contribute to more significant developments at the international level, that is, the Declaration and Convention on Enforced Disappearance. The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (later the Sub-Commission on the Promotion and Protection of Human Rights) had decided to undertake the task of drafting a declaration against enforced disappearance. At its 1988 session, the member who had assumed responsibility for the project, Louis Joinet, asked a group of NGO representatives to suggest a text to him. As has been described elsewhere, the group consisted of Reed Brody from the International Commission of Jurists, David Weissbrodt from Minnesota Lawyers Committee for Human Rights (later himself a Sub-Commission member) and myself, representing AI.<sup>34</sup> The three of us worked late into the night to try to fulfil the request.

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<sup>32</sup> See KRAMER, D. and WEISSBRODT, D., ‘The 1980 UN Commission on Human Rights and the Disappeared’, *Human Rights Quarterly*, Vol. 3, No. 18, 1980, pp. 18-33.

<sup>33</sup> AMNESTY INTERNATIONAL, ‘*Disappearances*’ – *A Workbook*, Amnesty International New York, 1981.

<sup>34</sup> BRODY, R. and GONZALEZ, F., ‘Nunca Más: An Analysis of International Instruments on “Disappearances”’, *Human Rights Quarterly*, Vol. 19, No. 2, 1997, pp. 365-405, at p. 372.

Given that the initiative was made against the background of the existence of the Declaration against Torture, it was natural to turn to that Declaration for inspiration. In fact, the text we came up with closely tracked the Declaration against Torture, often merely substituting references to enforced disappearances in place of references to torture. However, some novelties were introduced. In particular, spurred by the inclusion in the Convention against Torture of provisions for a form of universal jurisdiction, and, as I recall, a provision to similar effect in what was then the draft Principles on the Prevention and Investigation of Summary, Arbitrary and Extra-Legal Executions, the group included parallel language in the text we handed over the next day. As it turned out, that language was too specific for some governments and it was diluted in the Commission on Human Rights. The final text had a certain ambiguity that permitted an interpretation in favour or against universal jurisdiction.<sup>35</sup>

To the extent that a negative interpretation was possible, it was a setback. Consolation may be found, however, in the fact that some 14 years later it was possible for the Convention against Enforced Disappearances to have universal jurisdiction provisions based on those found in the Convention against Torture. This development was, doubtless, facilitated by the inclusion of the crime against humanity of forced disappearance in the Rome Statute of the International Criminal Court (Article 7).

As to the 2006 Convention, I am not able to say what AI's specific role was, given that I had to follow its evolution from a distance. My impression is that AI was part of an influential group of NGOs, prominent among which were those representing the cause of the families of the disappeared, notably FEDEFAM. The ICJ was also particularly active in that group.

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<sup>35</sup> See RODLEY and POLLARD, *op.cit.*, p. 365 (for); NOWAK, M, 'Monitoring Disappearances', *European Human Rights Law Review*, No. 4, 1996, pp. 348-363, at p. 351, note 18 (against).

Readers may have noticed that in many of the drafting exercises AI and the ICJ cooperated closely. Occasionally, they decided not to pursue an issue, and, yet, at least in one case, unwittingly seem to have contributed to its emergence anyway. This was the case of the provision on enforced disappearances found in the Body of Principles for detained or imprisoned persons. The initial text of the principles was drafted in the Sub-Commission. As the discussion was drawing to a conclusion in 1978, I belatedly realised that it made no reference to enforced disappearance, no doubt because of its provenance as an instrument to combat torture. At lunch on the day in question, I asked my neighbour on my right Niall MacDermot (then Secretary General of the ICJ) whether he thought we should try to bring it up or whether it was too late in the day. He felt it was too late and I accepted that. The same afternoon, Sub-Commission member Harry Jayawardene from Sri Lanka, who had been my other neighbour at lunch, on my left side, produced a draft principle on enforced disappearance that was easily adopted. I cannot help thinking that my lunchtime discussion with MacDermot and the presentation of the text were not coincidental.

## **6. WHITHER NOW?**

Even though I still use “we” when referring to AI, I am aware that outsiders, even if they are also old hands – perhaps especially so – have limited status in giving an organisation a prescription for the future. In the case of AI, this is particularly true, since old hands were familiar with an organisation that had a clear and restricted mandate, and there is little intellectual purchase for them when they are called upon to make a prescription for a very different body that has effectively abandoned the discipline of a mandate.

Perhaps I may still speak from the perspective of a consumer of AI information. For that is what I have been for most of the past two decades, first as Special Rapporteur on the question of torture

(1993-2001) and since then as a member of the Human Rights Committee under the ICCPR. Although I have indicated that UN machinery is no longer as dependent on AI country information as it was earlier, that information would always be the first port of call. This was because of its reliability, thoroughness and near universal comprehensiveness (even with a limited mandate it could not always cover all aspects of the mandate in all countries – but universality remained an aspiration). It was also presented in an accessible way, combining analysis and case illustration.

The reliability is still a hallmark, if no longer the hallmark, of the AI product, despite a certain variability in quality. The thoroughness is generally to be expected, but sometimes seems patchy. If these impressions are correct, they are presumably attributable to the loss of tight control over the product of all countries and regions that the subsequently dismantled Research Department was structured to deliver, the concession to the country sections to produce their own material on their own countries, and the beginning of devolution of the IS to the regions. There has been a perceptible reduction of universality of coverage, despite substantial growth in the IS. It seems likely that this is because of the expanded range of concerns of the organisation. The quality of presentation remains high.

The conclusion is obvious, even if its attainability is uncertain. The issues under discussion in this reflection still seem to me to go to the heart of the principle of human dignity that underlies the whole human rights project. Regrettably, the problems of torture, death penalty, extra-judicial killing and enforced disappearance are still with us, and accurate, comprehensive information on them is still the strongest weapon in the armoury of human rights defenders. Accordingly, I can only plead for information on these issues to be given the priority AI had once given it, in both quantity and quality.

# AMNESTY INTERNATIONAL'S GROWTH AND DEVELOPMENT SINCE 1961

STEPHEN HOPGOOD

## 1. INTRODUCTION

Within Amnesty International (Amnesty or AI) the phrase 'growth and development' has historically meant AI's size, structure and geographical scope. In other words, how big Amnesty is, and how and where it is organised. Although the term 'development' has also been used to refer to the expansion in focus from prisoners of conscience (POCs) to full spectrum, in this chapter it is used in a more broad sense, as I concentrate on how Amnesty International as an organisation evolved. In other words, my focus is on its *internal* biography. Rather than a simple chronological account of numbers, names and milestones, to tell this story I will organise my narrative around four core themes critical to Amnesty's growth and development over the last 50 years: **membership**, **money**, **geography** and **internal authority**. I offer some sense of how these themes have changed since 1961 and how Amnesty has been shaped by various influences in dealing with them.

For the first three decades of its life, Amnesty's growth was mainly calculated in terms of groups (which varied greatly in terms of numbers of individual members) and national sections. The groups raised money for Amnesty and wrote letters on behalf of POCs, whose cases were sent to them by researchers from the International Secretariat in London. The quantity of verified POC cases distributed by these researchers was dependent on the number of groups requiring cases for adoption. Initially, each group received its own unique set of three cases. The rise in demand from new groups and the restrictions on supply in terms of researcher capacity, however, soon dictated double, and by the 1970s, triple adoption (three groups

getting the same cases). Amnesty's campaigns and lobbying work grew significantly (into areas like the death penalty, torture, extra-judicial executions, and disappearances), and as new methods of working evolved (like Urgent Actions), providing enough fully researched cases became increasingly difficult. It was a complex and time-consuming form of activism and put unsustainable demands on researcher time (see below).

Despite the formative significance of "groups", from the late 1970s on, a move towards individual members began spear-headed by Amnesty in the United States. This shift is still not complete, many groups persist and a member still joins a national section, rather than "Amnesty International" as a global whole. It is only in recent years that a headline figure of total *individual* global membership has been collated. Because information on the number of members comes somewhat unsystematically through national Amnesty sections, a single worldwide monthly figure for current individual membership is, at present, still not immediately available to anyone who inquires. Estimates, however, hover around the three million mark, but it remains unclear how members are counted.

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<sup>1</sup> The State of the Movement Report for the 2011 International Council Meeting talks of 'approximately 3.0 million members and supporters worldwide' (at the end of 2010). This confirms both the lack of precision about numbers and the ambiguity about who is a member (see below). See AMNESTY INTERNATIONAL, *State of the Movement Report*, 30th International Council Meeting Circular 27, AI ORG: 10/010/2011 [hereinafter: *State of the Movement Report*]. In a draft 'Blueprint' for reforming Amnesty, dealt with in more detail below, Secretary General Salil Shetty puts the figure in August 2011 at '3.2 million members and supporters'. See AMNESTY INTERNATIONAL, 'Making Amnesty International a truly global movement for human rights: Blueprint for an integrated and results-driven IS, closer to the ground', Draft 5 August 2011, ORG 30/011/2011, p. 6 [hereinafter: 'Making Amnesty International a truly global movement for human rights']. At least 35 percent of the 3 million members, according to the State of the Movement Report, were 'supporters' who gave money but did not join Amnesty while 25 percent were activists who did not join and did not give money, but who took part in

The growing number of new members who joined Amnesty in the 1970s and 1980s were less interested in Amnesty as an organisation and more interested in how it could be used to achieve broader human rights goals. They joined Amnesty as activists within the wider human rights movement, instead of the other way around, seeking to work less on 'traditional' Amnesty issues and more on increasingly prominent thematic concerns, including women's rights and sexuality rights. Although case work and country-based research, as methods, were retained, alongside groups writing letters, campaigns and lobbying became increasingly important forms of activism. Once permanent campaigners took over core functions at the centre of Amnesty, and thematic issues achieved more prominence, there was an inevitable shift away from local groups as the primary avenue for activism. Their dues became a source of income in itself and they became a sizeable concerned population which could be publicly referred to in support of Amnesty's demands *and* mobilised as campaign workers.

As with every other issue concerning Amnesty's organisation and operation, these shifts – from groups to individuals and towards more thematic work – were contested. Pioneer members and staff were committed to Amnesty's form of human rights activism in a deeply principled way. Primary loyalty had been less of an issue until the late 1970s: what Amnesty did and the scope of human rights work globally were nearly identical because Amnesty held a virtual monopoly on international human rights work.<sup>2</sup> As competition

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an Amnesty-sponsored action. See *State of the Movement Report*, p.13 note 5. The number of people who join and pay Amnesty International's membership dues (or more) is only unambiguously 40 percent of this figure of 3 million according to the *State of the Movement Report* (that is 1.2 million people).

<sup>2</sup> I have argued at great length that this made Amnesty until recently a kind of secular church. See HOPGOOD, S., *Keepers of the Flame: Understanding Amnesty International*, Cornell University Press, 2006. Indeed, I would argue the intensity of commitment many felt to Amnesty during these pioneering years made it a kind of sect or 'strict church'. See IANNACCONE, L.R., 'Why strict churches are strong', *American Journal of Sociology*, Vol. 99, No. 5,

increased, generating income and promoting Amnesty's brand as *the* global human rights Non-Governmental Organisation (NGO) would become ever more core organisational functions, the scale of global human rights work and the number of NGOs having increased hugely since Amnesty was awarded the Nobel Peace Prize in 1977.

Nowhere have growth and development questions been more complex than in matters of membership geography. Amnesty's founders intended it to be an international movement from the start. Minutes from their initial membership meetings, in the early 1960s, were all about how to get groups and sections formed beyond the United Kingdom and like-minded states in Western Europe. This international dimension was more important than almost anything else to founder Peter Benenson, who came to regret bitterly that Amnesty's headquarters, established initially in the basement of his legal office in London, was not located outside the United Kingdom, and what he too-late saw as the pernicious influence of the British government. The aspiration to be a truly global membership-based voice for civil and political rights (and now economic and social rights as well) is part of Amnesty's core mission, but, at the same time, the site of perhaps its greatest failure; membership and income is still overwhelmingly drawn from the same 50-year old list of initial Western sections. At the end of 2010, 84 percent of staff and 87 percent of members and supporters came from the 'Global North' (including Japan).<sup>3</sup> This quest for membership in the South is far from abandoned. In fact, it is now assuming even greater importance as part of Amnesty's organisational mission.

The fourth and final growth and development theme is *internal authority*; the relationship between Amnesty's centralised headquarters and staff in the International Secretariat (IS) in London and its worldwide membership and their leaders, including the biannually selected global leadership of the International Executive

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1994, pp. 1180-1211. This 'religiosity' has been systematically unpicked since the early 2000s and now faces permanent disappearance (see conclusion).

<sup>3</sup> *State of the Movement Report*, *supra* note 1, p. 4.

Committee (IEC) and the supreme policy-making body, the International Council Meeting (ICM). Issues of control and priority-setting were always likely to be difficult and have often proved intractable, with a series of reforming membership and professional leaders frustrated by their inability to turn often extremely perceptive analyses of what did not work into meaningful organisational change. As one report described this frustration in 1986: 'Decision-making is as hopeless as in the past. Eighty percent of our findings can be found in the Whitney Report of 1980. Although hardly anybody in the IS does not have a good understanding of the problems, solutions will not be easily [sic] implemented'.<sup>4</sup> Little has changed.

A 'Review of Reviews', conducted by advisers to new Secretary General Salil Shetty in July 2010, considered 15 separate evaluation and review processes, and largely focused on the IS of the past five years.<sup>5</sup> Its findings are entirely consistent with earlier reviews going back to 1967. The introduction to the Review of Reviews expresses surprise that a review by management consultants Accenture seems to have been poorly absorbed even by senior staff even though 'it is meant to change the entire structure and operating ethos of the organisation'.<sup>6</sup> Apart from a whole series of organisational and cultural issues, the Review of Reviews also notes that 'an additional serious problem not cited in the reviews is the failure or inability to carry out corrective measures even when the problems have been repeatedly highlighted and solutions repeatedly suggested'.<sup>7</sup> The authors complain that evaluations tend to be too IS focused and that within the IS 'the notion of "One AI" has yet to take

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<sup>4</sup> HOPGOOD, *op.cit.*, p. 115.

<sup>5</sup> This was an internal IS document prepared for the new Secretary General and has no formal identification number. It is titled 'Review of Reviews: Advisory notes on selected AI reviews and evaluations, RSU, July 2010'. A copy was made available to me by a confidential source.

<sup>6</sup> *Idem.*

<sup>7</sup> *Idem.*

hold. The degree to which this simply repeats identical complaints made in 1967, 1980, 1987, 1991, and 2001-2005, is remarkable.<sup>8</sup> It is a sign of a deep dispute about who ‘owns’ Amnesty’s legacy, and what that legacy is. Questions of Amnesty’s growth and development have been the battleground for this contest.

In fact, 2011 sees Amnesty facing another fork in the road perhaps even its greatest internal upheaval since 1967. ‘No-one shall have the right to hijack this movement,’ said former Secretary General Thomas Hammarberg in the 1980s.<sup>9</sup> This intensity of commitment is shared both by those committed to Amnesty’s traditional methods of working and those who see a different kind of future for it. In contrast to many global NGOs, Amnesty started in 1961 as a headquarters in London without a movement. It found and organised members for action. Because central functions came first, the IS’s organisational practices and institutional memory – especially the centralised gathering of research material – significantly influenced the style and content of work done by members in national sections. The IS’s size, cost, control over research, and policy and professionalism relative to the activist movement have remained perennial issues within Amnesty’s organisational growth and development. The proposal, in 2011, is in effect to choose ‘activism’ over ‘research’ by disbanding the IS’s research function altogether.<sup>10</sup>

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<sup>8</sup> Each of these years saw a major internal review of the International Secretariat’s functioning as detailed at length in HOPGOOD, *op.cit.* The years between 2001 and 2005 were in particular ones of almost continuous organisational upheaval.

<sup>9</sup> HOPGOOD, *op.cit.*, p. 101.

<sup>10</sup> I outline this claim – that in effect one can be a global activist organisation or a global research organisation, but not both – in more detail in the conclusion. Advocates of the reforms being proposed by new Secretary General Salil Shetty and senior leadership figures will vigorously dispute it. In ‘*Keepers of the Flame*’, my argument is that a universal organisation can have moral or political authority, but not both.

The following sections are organised around three time periods during which members, money, geography and management have been transformed: 1961-1977, 1977-1992 and 1992-2011.

## **2. 1961-1977**

As is now well known, Amnesty International began in May 1961 with an article in the British newspaper *The Observer* written by Peter Benenson.<sup>11</sup> There had been discussion of what would follow on from this call for action and it is clear from the first issue of *Amnesty* magazine, published on 27 June 1961, that the basic activist mechanism – like-minded self-organised ‘Groups of Three’, the ‘three’ referring to the number of POCs that each group would adopt; one each from the West, the Soviet bloc and the Third World – was already in place. These groups would raise money for Amnesty as relief for prisoners and dependants, write letters to prisoners and their jailers, and campaign against persecution as well as proving people of different views and backgrounds could work together in a tolerant spirit. The third issue of *Amnesty*, in late July 1961, appealed for 5000 GBP to keep the organisation going, the first of many such desperate appeals, and set the tone for most of the first decade, with Amnesty permanently short of cash and, by 1967, on the verge of bankruptcy.<sup>12</sup>

The first international meeting was held in Luxembourg at the Café Carrefour on 22 July 1961. Lack of money constrained the number of attendees who, in the end, came from the ‘national

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<sup>11</sup> The best source on Amnesty’s growth and development during the 1960s is Tom Buchanan in two articles: BUCHANAN, T., ‘‘The Truth Will Set You Free’’: The Making of Amnesty International’, *Journal of Contemporary History*, Vol. 37, No. 4, 2002, pp. 379-99; and ‘Amnesty International in crisis, 1966-1967,’ *Twentieth Century British History*, Vol. 15, No. 3, 2004, pp. 267-289.

<sup>12</sup> HOPGOOD, *op.cit.*, p. 70.

sections' of Belgium, Ireland, France, Germany, Switzerland, the UK and the United States. The question on their agenda was "international and impartial control of the Amnesty Movement". Slowly, over the next two years, a series of further and historically critical developments took place: a library of POC names in London was created and steps were undertaken to establish a more formalised International Secretariat (IS); national sections came into being with own constitutions and responsibilities for raising funds within their own national jurisdictions; an early version of the Annual Report appeared; the basics of an international executive committee (with Sean MacBride as chairman) were agreed upon and an annual Amnesty International meeting was organised. It is remarkable how many of these organisational fixtures were already in place within a few years of 1961, and that so few of them have been radically altered.

The British Section – which was in the 1960s more or less identical with the IS, and the most influential section in the new movement – continued to supervise cases to be sent out to the 'Threes', which by March 1963 numbered 226 groups according to what was now called the *Amnesty International Bulletin*. This switch in the name was important – it was explicitly a move away from the 'wider public' and towards Amnesty's membership, something indicative of a growing organisational consciousness. The first issue of the renamed *Bulletin* told readers: 'This Bulletin belongs to the ever-growing membership of AMNESTY: we hope that they will feel that it belongs to them, and that they can use it – to express views and carry announcements – as they wish.'<sup>13</sup>

In a 1964 feasibility study and plan for Amnesty's growth and development, prepared by fund-raising management consultants

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<sup>13</sup> AMNESTY INTERNATIONAL, 'Amnesty International Bulletin', March 1963. Most of these early Amnesty International publications are available at the Bodleian Library, University of Oxford and at the IS archive in Easton Street, London. Material in this chapter on early publications comes from my notes for *'Keepers of the Flame'* based on the Bodleian archive.

Wells Organisations, a snapshot of Amnesty lists Amnesty sections as: UK, Ireland, Germany, Belgium, the Netherlands, France, Switzerland, Italy, Denmark, Norway, Sweden, Canada, Israel, Luxembourg and Australia (where all the states except Queensland had their own section).<sup>14</sup> In 2008, the list of the top 13 sections (from first to last in terms of membership size) was as follows: United States, the Netherlands, Spain, UK, France, Norway, Denmark, Austria, Germany, Switzerland, Italy, Australia and Sweden.<sup>15</sup> Despite some variation in the list the message is clear: it is the West writ large that was and remains Amnesty's not just core, but almost total membership. It is also worth noting the importance of the United States in the 2008 list. Amnesty in the US (AIUSA) made several false starts in the years 1961-1977; the IS tried hard to get a US section started, but faced from some scepticism about the 'groups' as a feasible model for US membership and about fund-raising via small-scale local action. In the US case, direct mail would be a revelation in fund-raising terms.

By 1965, there were 400 groups in Amnesty and the few researchers at the IS – now becoming a more distinct entity from the British Section – were already struggling to keep up with the demand to provide for each group three prisoners who had each had their details verified. Furthermore, there was a particular problem with the Soviet bloc, where information on POCs was scarce.<sup>16</sup> Some groups

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<sup>14</sup> This document is available in the IS archive at Easton Street along with many other early documents in the IEC and SG files. It is dated 20th August 1964 and was submitted to Peter Benenson by Air Commodore D.L. Amlott of 'Wells Organisations Institutional Limited'. They were based in Berkeley Square, London and described themselves as "fund-raising management consultants".

<sup>15</sup> This membership information was supplied directly to me by email by staff at the IS.

<sup>16</sup> See the memo written by TEITELBAUM, M., 'Memorandum on the present position of the library department of Amnesty International for the International Executive meeting in Dublin in March 1965'. Calculating the actual number of groups at this point is problematic. The British Section had,

were only receiving two cases (one from the West, one from the Third World), and duplication – more than one group getting the same POCs – soon followed. The number of groups grew steadily through these years, which intensified the pressure caused by poor financial management and a lack of professionalism. The year 1967 was a watershed in a very public way; Peter Benenson was in effect fired from his own organisation for a series of public and private actions that put him at odds with Amnesty's leadership, thus, proving beyond doubt that the Amnesty idea was bigger any one individual.

Under its first proper Secretary General from 1968, Martin Ennals, Amnesty grew extremely quickly, especially in the early 1970s. AI Germany very quickly became the largest section, and income poured in. This rising flow of funds was still very shoddily handled, the IS engaged in a series of poor auditing practices amounting to tax evasion. This drew the fury of IEC chair Sean MacBride, whose archived letters to Ennals, along with the report of an independent auditor, do not make comfortable reading.<sup>17</sup> It was clear that Amnesty would have to deepen its professionalism if it was to escape censure from those who trusted it with their money. As the work increased, new forms of activism were also developed. Amnesty had begun to work on the death penalty, and to this was added work on extrajudicial executions and disappearances. A rapid response innovation – the 'Urgent Action' – was pioneered to try to stop those in danger of torture or disappearance from vanishing without publicity. In 1973, Amnesty launched its Campaign for the

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according to the feasibility study in 1964, some 350 groups alone. Yet, if the Teitelbaum memo is correct, the total number of groups in Amnesty was 400. If this were the case, the sections outside the UK would only have had 50 groups at this time, but an IEC report from 1967 puts the combined number of groups in all sections minus the British at 346 in 1966, with Sweden at 87, Denmark at 54 and Norway at 50. Things become clearer once we get into the 1970s.

<sup>17</sup> This account relies on memos and letters available at the IS archive in the IEC files for the years 1970-1975, most of which have no formal identification number.

Abolition of Torture, an issue on which it has been identified as an authority and an innovator ever since and one that formed the bedrock of its new Campaigns Department.

The growth in groups, sections and income through these years is remarkable. In 1967, the contributions to the International Secretariat from all sections totalled 2781 GBP, with 750 GBP of that coming from the British Section. By 1977, barely ten years later, the sections were being invoiced for 500,000 GBP expected to rise to 750,000 GBP a year later (the 1974-1975 budget called for 250,000 GBP for the IS). Groups had also increased hugely, with about 950 in 1971, 1500 in 1974 and by the end of 1976 an exact number of 1817; led by Germany (573), Sweden (277) and the Netherlands (232). The British Section now languished fourth (at 153), with France at 103 and the US at 87. This would be nearly 2500 by 1980 before growth in groups slowed, less than doubling in the next ten years.<sup>18</sup> By 1977, money and new members were plentiful and AI seemed to have a secure and vibrant future. Yet, geography and IS-movement relations remained areas of critical concern.

Despite AI's remarkable membership growth, up to the present, Amnesty has failed to generate significant non-Western membership. In 2010's *State of the Movement Report*, the figure of 13 percent of members and supporters from the Global South (up from 9 percent in 2008) was achieved by including numerous non-paying activists of whom many were neither formally Amnesty members nor financial contributors.<sup>19</sup> Slow growth in the North also helped raise the share of membership from the South to 13 percent. Amnesty became acutely aware of this imbalance in the mid 1970s, and established a field presence in India as a way to discern what was needed to attract Indian members. The report, returned by Amnesty stalwarts Richard Reoch and Jane Ward, shows significant insight

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<sup>18</sup> These figures are drawn from AI Membership Statistics: AI Index ORG 40/02/96, available at the IS archive and reproduced in a table in HOPGOOD, *op.cit.*, p. 109.

<sup>19</sup> *State of the Movement Report*, *supra* note 1, p. 4 and p. 13 note 5.

and explained only too well why Amnesty did not thrive in India. This has a particular significance as it is in India, along with Brazil, that the new Secretary General Salil Shetty, himself Indian by birth, has high hopes for expanding Amnesty's presence into the South.

In 1974, the Indian section was financially weak with only 80 paid-up members (who joined as individuals, the idea of adoption groups lacking resonance). Reoch and Ward found Amnesty's emphasis on individual rights, rather than social justice, made it irrelevant in a country that faced vast poverty, disease and overpopulation problems. Basing their views partly on those expressed by national sections from outside Europe, at a South Asia Regional Conference held in New Delhi in 1975, they recorded that Amnesty was seen as a foreign, Western organisation with colonial overtones and an aversion to tackling the underlying social roots of poverty and underdevelopment. Crucially, they found that 'most people who are interested in joining the organisation are most often members of the small educated urban elite who are very much westernised and English-speaking', and, as they went on in an analysis that may still have some validity in India in 2011:

This elite, with its Western outlook, is often closer in spirit to the European society than to the rural masses in their own country. On the other hand, the social activists, who provide information to Amnesty International on prisoners, do not actually see themselves as having anything in common with the Amnesty movement itself; they merely hope to use the organization's external pressure to further their own socio-political aims.<sup>20</sup>

The second major Amnesty concern brought growth and development together. National sections feared the IS was getting too big and too powerful, yet, they pushed it harder and harder for greater productivity. This is a, perhaps *the*, perennial theme throughout Amnesty's organisational history. Case sheet production

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<sup>20</sup> REOCH, R. and WARD, J., 'Amnesty International in the Third World', NS 134, 18 July 1975, p. 2.

was declining rapidly, from 2458 in 1974 to 832 by mid 1979.<sup>21</sup> How could it not given the rapidly escalating demands on the central staff from new campaigns, lobbying work and escalating group numbers? A 1976 paper to the IEC on growth and development, reported a shortage of researched cases for groups as high as 669.<sup>22</sup>

### **3. 1977-1992**

All of the above led to 1977's Cambridge Crash Committee (CCC), the first concerted attempt to plan for AI's future. At Pembroke College, Cambridge University in the UK, in June 1977, some of the most senior Amnesty members and professional staff met to discuss the next five years of Amnesty's growth and development.<sup>23</sup> Among other things, the CCC identified the need to:

- strengthen the organisation of national sections and decentralise away from the IS
- monitor unstructured individual membership growth and ensure new members and staff were better trained about the universal aspects of AI's work
- make AI more universal especially by getting a 'foothold' in second and third worlds
- retain a prisoner orientation while relating civil and political to socio-economic rights
- maintain high quality research and information handling

To obtain these goals, the CCC made a series of recommendations to Amnesty as a whole; to avoid a 'massive growth of individual

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<sup>21</sup> HOPGOOD, *op.cit.*, p. 83.

<sup>22</sup> In other words, many new groups were not receiving any new cases to work despite this being the principal driver of new membership. HUTTER, I., 'Growth and development of Amnesty International – Part Two', labelled NS 271/76/II, and filed as POL 05/IEC 77, p. 4.

<sup>23</sup> 'Report of the crash committee (CCC) appointed to advise on AI development and planning,' July IEC 1977, agenda item 14, IEC Files.

unstructured membership’, for example, and to invest more in developing work in areas outside the West, as the effectiveness of the organisation depend in part on being ‘seen to be universal’.<sup>24</sup> The growth of IS was to be reined-in over the next three to five years, with more resources going into building up membership and national section capacity (termed ‘decentralisation’).

However, because of the increasing diversity of the work – case-sheets, campaigns, lobbying – and growing membership *more* staff posts at the IS in London were created to meet increasing demands from groups and national sections. Plentiful funds meant there was no real budget constraint to prevent this.<sup>25</sup> And these positions tended to become permanent. In reality, Amnesty International was becoming a major international human rights NGO – running international campaigns, lobbying at the UN (with permanent staff in the US), with income in the millions of pounds and a Nobel Prize. To draw power away from the headquarters would have made sustaining that global vision very difficult, and the idea that national section staff and groups, who were often volunteers, were going to be able to sustain the degree of coordination, information gathering and activism to keep up this ‘One Amnesty’ momentum was naïve.

Where once there was no ‘human rights movement’ and members joined Amnesty International in order to support human rights work, newer members were often human rights activists campaigning in various ways already. Amnesty was just one forum for such work amongst others. Particularly after President Jimmy Carter’s adoption of rights language in the United States in 1977 and the formation of Helsinki Watch in 1978 (which would later become Human Rights Watch), Amnesty faced collaboration and competition

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<sup>24</sup> *Idem.*

<sup>25</sup> And of course this meant staff to look after staff (in terms of finance, pensions, personnel, information and communications technology, buildings management etcetera), especially once the IS moved to its permanent Easton Street headquarters after 1983.

issues with other rights groups and movements who put pressure on it to adopt new issues and positions. Amnesty had lost its monopoly.

In addition to a new breed of members, many of whom came from a rapidly expanding US section and were often younger than traditional members, more professional human rights staff also emerged. These were people experienced in the new languages and techniques of human rights advocacy. As activists who were personally and professionally interested in rights *before* joining Amnesty, they created some anxiety about a loss of organisational identity among those whose primary loyalty remained to Amnesty's vision of rights. Professionalisation was also increasingly necessary, because, as international NGOs made more noise, governments got a lot savvier about attacking human rights data. This had to be better sourced and defended. The group-based, volunteer spirit that was critical for Amnesty's sense of its specialness could not sustain a global research organisation. The IS had to grow and professionalise. Inevitably, this resulted in a coterie of several hundred permanent staff in London, which made the AI movement as a whole unable to have both the global Amnesty it wanted and prevent this centralisation. Sustaining a global campaigning mission *and* the attachment to POCs meant more money and more members which in turn meant more opportunities to hire professionals to manage the complex organisation, raise substantial income, market Amnesty globally and handle logistics. As well as *professionalise*, Amnesty would also have to *bureaucratise*, something perceived by Amnesty's pioneers as the very opposite of what AI was fundamentally about.

By 1987, a decade after the CCC, another stock-taking exercise took place. The members of the "Committee on Long Range Organizational Development" (CLOD) found similar problems as in 1977, particularly in respect to the growth of the IS bureaucracy. Ordinary members, swollen by the success of *their* organisation, wanted a bigger say in how things were done within the

organisation.<sup>26</sup> At the same time, IS staff numbers had doubled to 205 between 1975 and 1985. AIUSA had also begun to grow rapidly with a 46 percent share of Amnesty's registered fee-paying individual members by 1987 (this was more than in Western Europe).<sup>27</sup> AIUSA was influential in CLOD, whose main recommendation was to create an Amnesty more internally democratic and more permeable to the wider human rights movement, captured in the slogan 'one movement, one message, many voices'. It put, relatively speaking, less emphasis than previously on growth in the Third World, stressing new advocacy techniques, increasing awareness of rights and raising money in the West. It sought to deepen and professionalise the bits of Amnesty that already existed as much as it stressed opening new sections in Asia and Africa. By the mid 1980s, membership outside Western Europe and North America was still only 10 percent (and this included Australia and New Zealand).

The IS was more marginal in the CLOD report than in almost any other review of Amnesty before 2011. But ignoring the IS did not mean the movement was not utterly dependent on IS organisation, legal expertise, research networks, lobbying, media links, financial planning and much more. Increasingly unable to meet the demands of vocal new members and an ever-expanding remit in campaigns and research, movement-IS relations reached their lowest ebb when Secretary General Ian Martin resigned in 1991 – in frustration at what he saw as the refusal of Amnesty's senior voluntary leadership to fully support its permanent professional staff. He and many of his senior staff concluded that the IS could no longer meet the numerous competing pressures for research and movement services without more resources. Giving the IS more power and money was the opposite of what the Amnesty movement had in mind. By 1992, the number of individual members was fast

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<sup>26</sup> The CLOD report, presented to the 1987 ICM, is indexed as ORG 31/01/87 in the IS archives.

<sup>27</sup> HOPGOOD, *op.cit.*, p. 110.

approaching one million, but its core staff, at that point, still numbered only a few hundred. In his resignation letter to the IEC, Martin made it clear that he felt that as of 1989, the movement and the IEC had shown a “lack of realism” about what the IS could achieve with constrained resources and qualified support, and that the extreme professionalism he saw in the IS was not fully appreciated by an ever more demanding membership.<sup>28</sup>

This brings us to 1992 and the beginning of a period of more or less continuous reform (Ian Martin stayed on for a year in order to facilitate the search for his successor, Pierre Sané). The IS would never again be as powerful within the movement as it was at the end of the first thirty years of Amnesty's growth. The Secretaries General who followed Ian Martin had to balance increasing external demands as well as manage the IS. In addition, they had to deal with the enhanced competition from Human Rights Watch after 1992, a rapidly evolving communications and media space, and a seemingly continuous array of human rights atrocities, including those in Iraq, Bosnia, Rwanda, Congo, Kosovo, and Darfur, as well as the events of 9/11 and the War on Terror.

#### **4. 1992-2011**

According to 2010's figures, combined income for Amnesty as a whole was 206 million EUR, an increase of three percent on 2009's figure of 200 million EUR.<sup>29</sup> In 2009, 22.5 percent (45 million EUR) went to the IS. Out of the 200 million EUR, the biggest income generators were the US (28.7 million EUR), the Netherlands (28.5 million EUR), UK (26 million EUR), France (15.5 million EUR),

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<sup>28</sup> HOPGOOD, *op.cit.*, p. 121-125.

<sup>29</sup> The 2010 figure comes from the *State of the Movement Report*, *supra* note 1, for the ICM. The figures for income and members from 2009 are based on data provided to me by the IS and include a more detailed breakdown, hence, I use them in the following paragraph.

Germany (12.7 million EUR) and Australia (12.4 million EUR). These sections accounted for 62 percent of Amnesty’s global income. The next two sections, Switzerland and Denmark, accounted for 4.9 percent and 4.3 percent respectively. Given their relatively small size, the absolute contribution of sections in the Netherlands, Switzerland and Denmark is significant, their per-head of population contribution huge. In the Netherlands, 1 in 50 Dutch citizens is a member of Amnesty. Were the same to be true of the United States there would be an AIUSA membership of 6 million people. In India it would be more than 20 million people.

Of the 200 million EUR figure from 2009, the only non-Western section is Japan, which raised 1.1 million EUR. Apart from Japan, only four other sections are from outside Europe: the US, Canada (English-speaking section), Australia and New Zealand. Nothing could point to the failure to create a significant income base outside the West better than this list of major sections. Membership follows the same trajectory. Figures provided by the IS for 2008 show that the top 13 sections had a combined membership of 2.74 million. The table below shows their membership sizes.<sup>30</sup>

|    | AI section  | 2008 membership |
|----|-------------|-----------------|
| 1  | USA         | 418720          |
| 2  | Netherlands | 299960          |
| 3  | Spain       | 258638          |
| 4  | UK          | 241070          |
| 5  | France      | 217236          |
| 6  | Norway      | 126500          |
| 7  | Denmark     | 105089          |
| 8  | Austria     | 95822           |
| 9  | Germany     | 95039           |
| 10 | Switzerland | 84964           |
| 11 | Italy       | 81998           |
| 12 | Australia   | 78786           |
| 13 | Sweden      | 78070           |
|    |             | 2372125 (TOTAL) |

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<sup>30</sup> This table of 2008 data was provided by the IS in 2010. The membership figure is comprised by ‘regular supporters, one time supporters, paying members, non-paying activists’ according to the IS.

The top five sections comprise 60 percent of Amnesty's global membership. One conclusion which Amnesty has consistently drawn, is that it needs to try harder, find new forms of activism, and invest more money in building up its membership in the South (and East).<sup>31</sup> This presents a significant dilemma. Can an Amnesty that is organised around doing its own research in London also become a truly global membership-based activist and advocacy movement? This has been the question since at least the 1980s, and the answer has hitherto been 'yes' in principle and 'no' in practice. Secretary General Salil Shetty's 'Blueprint' for organisational change, subtitled 'closer to the ground', aims to change that.<sup>32</sup> It remains to be seen whether the final answer to the dilemma of growth and development will disband the central research capacity, perhaps even use the research of other organisations to campaign, or disavow the use of in-depth research altogether in favour of collective protest and campaigns.

In other words, and to bring the four themes together, to increase members and money, the current leadership of Amnesty has concluded it needs enhanced investment outside the West, and that means reorganising the IS. Growth has subsumed development. Pierre Sané, Irene Khan and now Salil Shetty – the last three Secretaries General, all of whom came out of the broader international NGO community (rather than having Amnesty

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<sup>31</sup> Another explanation is that there is a limit to how appealing an organisation like Amnesty can be outside the Christian West. The latter seems a possible alternative answer to why there has been no development in India, China, Brazil, Indonesia, Nigeria and Bangladesh for example. In many ways the most noticeable failure is the absence of a larger membership in South America – a strongly Christian continent that has historically been a cradle for human rights activism and a critical area of concern for Amnesty. Is it possible that the continuing presence of the Christian church, especially the growth of evangelical Protestantism and Pentecostalism, occupies the niche that the Amnesty brand of human rights would otherwise occupy?

<sup>32</sup> 'Making Amnesty International a truly global movement for human rights', *supra* note 1.

experience beforehand), and, in the case of Khan and Shetty, had experience within the UN bureaucracy – and countless reforming IEC members have tried for more than two decades to change the culture and structures through which Amnesty has worked, as this, they believed, was a major impediment to change.

There have been three main aspects of movement reform in the years since 1992. The first was to weaken the Mandate – or eventually abolish it (which took place as Irene Khan who took over the Secretary General position in 2001 thereby opening the door for Amnesty to work on any human right, rather than just on a narrow range of rights that had made their way through Amnesty’s labyrinthine policy and approvals process.<sup>33</sup> The second change concerned working methods; there was a move away from intensive work on individuals (e.g., on POCs) and countries, towards thematic concerns especially in areas like poverty. In other words, Amnesty worked to achieve wider and more global goals rather than the older, narrower and more territorial goals. This dictated a more strategic approach to the investment of time and resources.

The third aspect of reform was weakening the influence of the IS in the movement, particularly the power of the researchers and the “research culture” they represented. This required a series of steps; new working themes and methods were established – this was done throughout the decade 2001-2010 via movement-wide Integrated Strategic Plans and, later, IS Operational Plans that mirrored them. A further step was taken by giving more power to section staffs – a key CCC recommendation in 1977 – and the creation of global management networks that were less vertical and more horizontal. Professionalisation within the IS was met by professionalisation in sections, forums of section directors and chairs, and these ongoing collaborations between professionals from

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<sup>33</sup> For a detailed account of the Mandate, the key operational guide to Amnesty’s research work monitored closely from London, see HOPGOOD, *op.cit.*, p. 92-96.

influential sections has created a more or less permanent management strata within the movement, one that includes the Secretary General and Senior Leadership Team, but *not* other members of the IS and certainly not the most senior researchers. Examples of this include the Global Management Team (comprised of the Secretary General and directors of larger sections) and a Global Governance Taskforce established by the IEC to propose reforms to the way Amnesty is run on a global basis.

The search for a truly global membership has become the primary goal of Secretary General Salil Shetty. To be 'ahead of the curve', he argued, Amnesty must confront four factors that have fundamentally altered the context within which Amnesty is working: the rise of the BRICS (Brazil, Russia, India, China and South Africa) and other emerging countries, and the relative decline in new non-paying members in the global North; increased political openness especially with the revolution in communications technology; powerful people's protest movements like those in the Middle East and North Africa; and more freedom for Amnesty to do human rights work anywhere in the world in relative safety. To do this global human rights work, Shetty says research and campaigns need better integration with growth and communications.<sup>34</sup> 'Closer to the ground' and supporting 'the movement in the frontline' give a sense of what is proposed. 'International solidarity' is, he adds, what Amnesty has always stood for, that and 'speaking truth to power'. His introduction to 'Blueprint' concludes:

Our research remains world class as we amplify the voices of those whose rights are being violated. We will know when our membership is consistently growing and more active, when we are the organization of choice for staff. Our goal will be to build on the legacy of the past and create a compelling future for our movement. We have the reach, the scope, the expert knowledge,

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<sup>34</sup> 'Making Amnesty International a truly global movement for human rights', *supra* note 1, p. 4.

and the strategic partnerships to make this happen. We are going to join them up, respond to the changing political picture and create that global influence [...] And we can only do that if we are not divided as the IS and the sections, as researchers and growth experts, as governance and management but behave and act as one united Amnesty International. Focused on our common cause: together for human rights, united against injustice.<sup>35</sup>

What does this mean in practice for the IS? By far the most important change, and one that has been central to movement growth and development analyses since the 1980s, is to “deconcentrate” from London by moving at least 100 posts into regional hub offices (proposed sites range from Dakar to Delhi, and from Bangkok to Bogota). This is likely in practice to mean moving many research posts to the regions, the ‘Blueprint’ arguing that research capability will be enhanced by ‘moving elements of the function closer to where violations are happening, increasing the frontline research and action posts overall’.<sup>36</sup>

This organisational shift is in addition to investment in various parts of the South and East to increase Amnesty’s presence (particularly the BRICS). In a letter to section directors in August 2010, Salil Shetty stressed that ‘growth has no purpose other than to enhance AI’s human rights impact’.<sup>37</sup> The countries in the vanguard of this new thrust are Brazil and India. In India, for example, Amnesty is undertaking ‘brand testing’ to see whether it has a reputational problem to overcome before it launches a major initiative to increase its presence. Over the next five years, it proposes to spend 5 million EUR in India, 3 million EUR in Brazil and 4 million EUR in Africa in order to try to create not the conventional membership-based governance model, but ‘to move in

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<sup>35</sup> ‘Making Amnesty International a truly global movement for human rights’, *supra* note 1, p. 6. This quotation is in italics in the original.

<sup>36</sup> *Ibidem* at p. 8.

<sup>37</sup> AMNESTY INTERNATIONAL, ‘BRICS Human Rights initiative’, 26 August 2010, ref: OSG 2010.049.

that direction once we have a strong local body of work and organisation in place'.<sup>38</sup> Essential to this process is developing projects "on the ground" with human rights experts, activists, "rights-holders and partners in people's organisations", like-minded NGOs and representatives of governments. Here is where "deconcentrated" research comes in.

These changes touch directly on the question of the IS's role in the movement and threaten, once and for all, to fragment researcher power and decentre it from its historical position as the central driver of all other organisational functions. Unsurprisingly, there is resistance from within the IS. In a letter to the senior leadership and representatives of Amnesty as a whole, 168 members of IS staff sounded a note of caution.<sup>39</sup> In suggesting the evidence was not clear that such a costly change was wise or necessary and that much risk was involved, they wrote:

The implications would also be inestimable for Amnesty International's reputation and relevance to the outside world. While it is clear that Amnesty International's authority has been established through decades of high-quality and relevant research used to underpin its campaigning and advocacy work, it is unclear how the capability of Amnesty International to speak as *one authoritative* voice will be retained once the proposal will be implemented.<sup>40</sup>

Their many concerns were echoed in an 'Open Letter' to Secretary General Salil Shetty, posted around the IS in early August 2011. The latter voiced fears about quality control of research, lack of evidence of the need for change, anxiety about infrastructure, security and

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<sup>38</sup> *Idem.*

<sup>39</sup> 'Statement on the "Blueprint for an integrated and results-driven IS, closer to the ground" (ORG 30/011/2011) from 168 members of staff at the International Secretariat of Amnesty International', August 15 2011. For parallels and IS resistance to what many considered to be ill-advised change see HOPGOOD, *op.cit.*, passim.

<sup>40</sup> *Ibidem*, p. 1. Italics in original.

communications, uncertainty about accountability and indicators of success, and an overall sense that the changes were being rushed through.

Proposals for the reform of AI's global governance, produced in October 2010 by the Global Governance Taskforce, aim to make real the rhetorical vision of *One Amnesty* by 'moving from a loose international federation to a sophisticated, more effective, multi-centred organisation which is effectively integrated for maximum impact and linked closely to those with whom we work'.<sup>41</sup> A whole series of specific themes and proposals stress the management relations between all facets of Amnesty, from section heads to the Secretary General to major sections and the IEC (to be renamed the Amnesty International Global Board). Emphasis is put on reducing complexity and enhancing brand control, and on becoming more outward focused and less inward looking. The word research is hardly used. This move away from the pivotal importance of research is the culmination of two decades of change. One paragraph in the Global Governance Reforms holds that, 'in 5-10 years' time, AI is likely to change from being a 'London-centred organisation to one with substantial memberships, operations, and offices in countries in both the Global South and the Global North'.<sup>42</sup>

In a PowerPoint presentation of the growth strategy for 2010-2016, distributed by the IEC for comment, the first slide is headed: 'Why does Amnesty International need to grow?' The answers given are: 'To be a truly global movement, to increase our legitimacy and credibility, to represent the diversity of people and approaches, to grow the human rights movement, to contribute to increased human rights impact'. What Amnesty is known for worldwide is its research, often quoted – for example by human rights scholars – as one of the few reliable sources of information about the human rights situation in many countries of the world. For two decades it has been

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<sup>41</sup> AI Index: One Amnesty ORG 10/008/2010.

<sup>42</sup> *Idem.*

locked into a struggle with other organisations – Human Rights Watch obviously, but also newcomers like International Crisis Group – to be the first port of call for trustworthy details about human rights abuses and violations. The PowerPoint slide makes clear that Amnesty's research is not its future – it is aspiring to be a global activist organisation, whose credibility and legitimacy comes not from its research, but from the size and diversity of its membership. It aims to be a force for democratic pressure and protest worldwide. To do this, it does not need to do its own research, especially when, if the BRICS initiative is successful, the people protesting will be those actually suffering from human rights violations and, thus, able to speak for themselves without going via the IS in London.

## **5. CONCLUSION**

And so fifty years of growth and development has come to this pivotal moment. Amnesty started as a centralised, London-based research operation sending cases to Western Europeans who wrote letters and raised money to help prisoners of conscience. The Program Directors who head Amnesty's regionally-focused research teams now report to Senior Directors who are not regional experts or experienced researchers. Once the IS's research function is fragmented it is unlikely to be recentralised. Campaigns and communications, along with law, strategy and policy, will be Amnesty's main driving forces based in London. The difficulty of running a global movement *and* fully investing in research of the highest quality worldwide is likely to prove intractable, and it seems clear, in my opinion at least, from the emphasis on movement growth and activism that it is serious research that will have to go. With Human Rights Watch currently engaged in a huge expansion of its research capacity with a multi-million dollar grant from George Soros, and without a movement of members to worry about, its edge over Amnesty in terms of research coverage and quality will only

increase. More likely than AI being the organisation of choice for research staff will be that the most experienced researchers move to Human Rights Watch.

What does this move away from prioritising research mean for Amnesty? In some ways it would fulfil the growth and development logic which was always to be a movement. But Amnesty's 'brand' in the West is heavily linked to its reputation as an eyewitness of record about human rights abuses. Furthermore, why will activists in the South join Amnesty? What does it offer an Indian human rights activist that he or she cannot get from establishing her own local human rights group, and applying for money from an international foundation? The real bet being made is that 'Amnesty' is a brand that will sell in the South. My personal view, highly contestable, is that Amnesty's style, brand image, icons (especially the candle in barbed wire and POC), working practices, let alone its history, all mark it out as a thoroughly Western, even European quasi-Christian form of moral activism, that will not secure serious membership in any of the BRICS, or elsewhere, that even approximates the 1 in 50 Dutch citizens who belong to it. It may even risk alienating some of them, or lead to effective breakaways by some European sections. Amnesty has had an extraordinary fifty years, but is struggling to find a feasible strategy for surviving fifty more. If Amnesty did not already exist in 2011, would we invent it? My answer is an emphatic 'no'. We would accept that research (Human Rights Watch) and activism (Tunisian and Egyptian democratic protests) are friends who need not be married and who may well have very different interests. We would also accept that true international solidarity in a world driven by such deep material and ideological inequalities as ours is nothing more than an illusion.

# AMNESTY INTERNATIONAL: FIFTY YEARS OF REFUGEE WORK

PETRA CATZ and ASHLEY TERLOUW

## 1. INTRODUCTION

Amnesty International (Amnesty or AI) is not a refugee organisation. When it was founded in 1961, the work of the organisation was restricted to working for the release of prisoners of conscience, people who have not used or advocated violence and who are in prison purely because of their conscientiously held beliefs, their origin or colour. In addition to its work on behalf of prisoners of conscience, Amnesty was dedicated to the cause of obtaining a fair trial for political prisoners, people who are in prison because of their political views, including those who have used or advocated violence. Further, Amnesty opposed cruel, inhuman and degrading treatment of all prisoners, as well as torture and the death penalty.

At first, the word refugee did not feature in Amnesty's mandate. Fairly soon though, the organisation came to realise that it was logical to work for refugees as well. Refugee work was in first instance based on the so-called "methods-article" in the statutes. This article describes the way in which Amnesty can operate to achieve its goals. It stipulates for instance that Amnesty can provide financial or legal help to (former) prisoners of conscience or to those who can reasonably expect to become prisoners of conscience.

Amnesty's refugee work is really "preventive work". By assisting refugees in opposing their forced return to their country of origin if they risk persecution there, Amnesty prevents human rights violations. In doing so, Amnesty had to consider in which kinds of potential pending human rights violations the organisation should support an asylum request. Amnesty opposes the expulsion of a

person to his home country if that person can reasonably expect to become a prisoner of conscience or victim of torture or if that person would likely face the death penalty. A pending unfair trial of a political activist, who had used violence, was not considered to be a reason for Amnesty to resist his forced expulsion.

The world has changed dramatically in 50 years, and the reasons people flee their countries are no longer the same as they once were. Nevertheless, people still flee for fear of human rights violations and serious violence. Whilst in the 1960s and 1970s, most refugees left their countries under dictatorship on an individual basis, because they were likely to end up behind bars, in the 1980s and 1990s, millions of people in Africa, Asia, and Latin America were made to flee because of civil wars and political unrest. An element in this changing dynamics was that it became easier to travel and seek protection in faraway countries. The number of refugees who came to Europe grew enormously, which changed asylum application procedures as well as the reception conditions for asylum seekers. Furthermore, political, legal, and social views concerning the question of who should be granted refugee status changed, as well as the views on the kind of protection they should actually receive. In particular, it became increasingly difficult to be recognised as a refugee due to the additional requirement that the asylum seeker would have had to have been individually singled out for persecution by the authorities. Moreover, countries tried to shift their responsibility for asylum seekers and refugees to other States, and European States became increasingly reluctant to provide durable protection to refugees.

Each EU Member State feared becoming too attractive to asylum seekers because of a relatively lenient asylum policy. Therefore, states copied restrictive measures and principles from each other. This resulted in a downward spiral and a gradual breakdown of provided protection. Reacting to this tendency, the EU decided to harmonise asylum policies. However, that same harmonisation resulted in agreements which made it more difficult for asylum seekers to enter Europe. These developments resulted that

the meaning the 1951 UN Convention Relating to the Status of Refugees (the Refugee Convention), the basis of international refugee law, was being forced into the background.

The Refugee Convention is celebrating its 60th birthday this year. Amnesty is celebrating its 50th birthday. The number of refugees has not decreased in all of these years; quite the opposite, but their situation has changed dramatically all over the world. And, AI, and its work for refugees, has changed with it.

In this contribution, we will describe the history of Amnesty's refugee work and go into the development the "offshoot" of the organisation has gone through. First, we will show how, on the one hand, this particular field of work results from the larger field of Amnesty's activity, the mandate, under the motto "prevention is better than cure", while, on the other hand, it has also been clear from the start that the connection with international law is essential, meaning that in refugee work Amnesty's mandate could not be followed in all respects. Second, we will show the interaction between, on the one side, the changes in the world, the context within which people flee and the changing political reality in the countries that should provide protection, and, on the other side, the development of Amnesty's refugee work. We distinguish three periods. The first period runs from the beginning of Amnesty's work until the mid-1980s. The second period runs from the mid-1980s until 2001. The third period includes the time from 2001 until the present. In the conclusion, we will give our vision on Amnesty's work for refugees after 2011.<sup>1</sup>

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<sup>1</sup> Because we have both worked for the Dutch section of Amnesty, we shall discuss mostly Dutch and European developments in this article. Since the sources at our disposal were few, we had discussions with Kees Bleichrodt, Daan Bronkhorst, René Bruin, Annemarie Busser, Marc Stolwijk and Alessandra Ricci Ascoli, all connected to Amnesty now or in the past. We would like to thank them for the valuable information they provided.

## **2. THE FIRST TWENTY-FIVE YEARS, FROM SCAFFOLDING TO BUILDING (1961-1986)**

A number of sections of Amnesty began to offer help to refugees at an early stage, such as the Dutch section, founded in 1968, and the German and Swedish, the Swiss and, later, the British section. The sections were still small. Small groups of people made an effort to build the organisation, at first on a voluntary basis, and gradually a few paid coordinating positions were created. They saw the asylum seekers as they came knocking at the door and felt that help had to be offered.

At that time, asylum seekers were mostly people who had been prisoners of conscience – whether or not they had previously been supported by Amnesty – who came from countries under dictatorships. They were individuals which fell under Amnesty's mandate, and whose primary need was some form of reception.

In post-war Netherlands, it was mostly private organisations, often with a religious background, that provided assistance and care to refugees. Their work was mostly uncontroversial. The Cold War meant for example, that it was considered rather obvious that Czechs (1948 and 1968) and Hungarians (1956) were offered private housing and the authorities were rather generous in their cooperation. This attitude began to change when refugees from Portugal, Greece, and Spain came to the Netherlands around 1970. This was the point at which Amnesty in the Netherlands also started to work for refugees.

From the beginning, there were discussions about what Amnesty should and should not do for refugees. What does the mandate say and which criteria should be used to determine who gets Amnesty's support? The connection with international law, especially the 1951 Refugee Convention, was an essential principle for developing the work. The Convention stipulates that no one is to be returned to his or her country if he or she has well founded fear for persecution there, the so-called principle of non-refoulement. How and when does someone become a refugee? At a certain moment, someone decides to leave a situation he finds threatening.

He weighs his chances, decides that the situation becomes too hot for him, and leaves his country to seek asylum elsewhere. Therefore, the question that follows is: what will happen to this person tomorrow if he is forced to return? Will something bad happen to him, or perhaps not as bad as he fears? The person assessing an asylum request has to look into the future, and predict future risks on the basis of occurrences and facts in the past or events that have taken place since he fled. Is there information available about other people in similar situations? Does he know himself what happened to others who were in a similar situation to his own, whether other people have been arrested or released, whether his name is known to authorities, whether he is suspected of something he did not do or will be arrested for something he said? How does his government usually treat people like him?

Although the Refugee Convention, later supplemented by other treaties, and the developing jurisprudence are important guidelines for Amnesty, Amnesty's mandate was, and has remained, the guiding instrument for its work. This means that Amnesty worked for people who were at risk of becoming prisoners of conscience upon their return, who were at risk of falling victim to torture, who risked facing the death penalty, or who would be killed by or on behalf of their government in another illegal way by extrajudicial executions or "disappearances". This mandate, however, would continue to give rise to debate.

Although no longer as welcoming as it had been to the Hungarians and the Czechs, the attitude of the European governments, for example the Dutch, at the beginning of the 1970s was hospitable and open, especially towards Latin American victims of persecution. Thus, Chileans, Argentineans, Bolivians, and Uruguayans fleeing dictatorial oppression were welcomed. In the Netherlands, an international programme was even set up for Chilean prisoners who were granted permission to go into exile, and for the first time in history the Dutch government sent a committee to Chile to identify people in detention centres; high profile political and

intellectual activists, who were allowed to come to the Netherlands.

At that time, governments had set up very little in the way of reception facilities or support for asylum seekers, so this largely came down to private initiatives. In a number of countries, individuals and groups of Amnesty became active in this field. This happened, for example, in the Netherlands where Amnesty volunteers accompanied refugees to the immigration authorities and tried to provide them with living quarters in churches or foster families.

Quite soon, Amnesty sections began to realise that besides reception facilities, legal support was even more important. The main issue for asylum seekers was, indeed, to obtain durable protection from being returned, which meant obtaining a residence permit. In many countries in Europe at that time, Amnesty played an important role in developing a well-functioning system of legal protection. Legal-aid lawyers began to specialise in asylum law and working groups of lawyers, scholars, churches, and non-governmental organisations were formed.

This dynamic of cooperation between organisations resulted in the coming into being of specialised refugee organisations, the Refugee Councils. Amnesty sometimes played a crucial part in the merging process and often joined as a founding and managing organisation, but never really got fully immersed in such an umbrella organisation. The power of Amnesty's position lay precisely in its independence, coupled with the unity of the international organisation and the strong ties to the mandate. Thus, there was always a tension between the necessity of independence and the strong desire to collaborate with other organisations working for refugees.

In 1979, in the Netherlands, the Dutch Refugee Council (*de Vereniging Vluchtelingenwerk Nederland*) was founded, which was a merging of several church and social organisations. Amnesty was closely involved in its foundation and participated in the board, but, at the same time, remained independent and active on behalf of refugees under its own name and its own mandate.

In Denmark and France in the late 1970s, Amnesty participated, in a similar way, in umbrella organisations. Germany had one of the most active sections of Amnesty in the field of refugee work and had an extensive network of people in different parts of the country. Under the immediate responsibility of a member of the board, these Amnesty volunteers offered legal help to asylum seekers. Similarly, in Canada and the United States, Amnesty became active for refugees. There, the sections gave legal support in individual cases and endeavoured to make an impact politically, concerning the passage of better legislation.

In the Netherlands, the newly established Refugee Council focussed on the reception of refugees, while Amnesty, as in most other European countries, focussed on assisting asylum seekers in their asylum procedure and on supporting the legal profession. Deciding whether someone falls under the scope of the mandate, and if, in Amnesty's view, he or she should be granted refugee status in the Netherlands, is, as mentioned earlier, a complex process. The process carried out by Amnesty was as follows: Amnesty would independently make an assessment of the risk the asylum seeker would run if expelled to his country of origin, by placing the applicant's story in the context of what Amnesty knew about the situation in that country. In this assessment, the question of credibility would also be dealt with, in other words: was the asylum seeker telling the truth?

The entire assessment requires specialist knowledge coupled with a level of detachment. Too much personal involvement can be an obstacle to proper legal assistance. The work was, therefore, done by people who worked at the national offices of Amnesty who specialised in this field. Amnesty groups were not actively involved. In the Netherlands, members who wanted to do something for refugees personally joined the groups of the Refugee Council. On rare occasions, an asylum seeker would knock on the door of an Amnesty group. Such a group would be easily moved by the situation in which the asylum seeker found himself and would lend support without sufficient distance and without being capable of a

proper assessment of the relevant issues in that particular case. When all went well, the Amnesty groups would then refer that asylum seeker to the Dutch Refugee Council.

As outlined above, Amnesty supported individual asylum seekers in the procedure. If, after studying the file and often after talking extensively with the person involved, the organisation was of the opinion that the asylum seeker should be recognised as a refugee, Amnesty would plead with the authorities to grant this “client” refugee status. These pleas carried great weight because of the reliability and independence of the organisation. In fact, in the 1970s and 1980s, the Dutch Ministry of Justice always granted the appeal for asylum if Amnesty submitted a particular case. Later on, it became more difficult. However, in the Netherlands, clients of Amnesty have never been returned to the country where, in Amnesty’s opinion, they would fear persecution.

Amnesty’s power did not reside solely in individual legal support. The main task of the researchers at the International Secretariat (IS) was to collect information about human rights violations worldwide. This information was essential to the assessment of asylum appeals. Amnesty’s refugee coordinators asked the researchers for specific background information that might be of help in certain cases. This might be information on individual cases, but could also be background information on occurrences in a particular part of the country or about human rights violations against a particular group. This gathering and presenting of country information specific to the background of refugees was to become an increasingly important and specific task for Amnesty in the years to come.

There were differences in the organisation and scope of the refugee work between the various Amnesty sections, but the nature of the work and the kinds of activities they engaged in hardly differed at all. In many countries, including the Netherlands, Amnesty cooperated closely with lawyers and legal scholars. Asylum law was in its infancy, and lawyers were beginning to study and clarify the stipulations in the Refugee Convention, national

regulations, and growing jurisprudence. In the Netherlands, scholars, lawyers, the Refugee Council, Amnesty, and other organisations all collaborated in permanent networks. As asylum issues increasingly became a subject of discussion in politics, and as new policies and regulations were made, Amnesty began to focus on influencing the political and social debate, which meant developing public information as well as lobbying activities.

As stated earlier, refugee work was not the core issue of Amnesty's mandate. For this reason, work on refugees had never been precisely defined. However, now that sections were becoming more active in this field, the need for clarity on the principles grew. At the end of the 1970s, for the first time an international meeting was held where the content, questions, and dilemmas of refugee work were discussed. This discussion resulted in internal guidelines for Amnesty's refugee work. The customary principles were defined, namely that Amnesty should prevent a person from being forcibly returned to a country where he or she is at risk of becoming a prisoner of conscience, of being subjected to inhuman or degrading treatment or torture or of facing the death penalty. Also, it was decided that the organisation will oppose the detention of an asylum seeker if the detention is discriminatory or if the detention frustrates effective access to a fair asylum procedure. Further, it was stipulated that Amnesty, in cases of urgent need, can assist people to leave the country where they are held as a prisoner of conscience or risk becoming one. In such cases, a national section can urge its own government to invite these people to the country and offer them asylum. Finally, it was decided that Amnesty can help with the family reunification of refugees who fall under its mandate. The guidelines formalised the division of tasks between the IS and the sections and gave a basis for determining Amnesty's position on cooperation with other refugee organisations at a national level.

Amnesty always wanted to present itself with one voice, a principle which had given the international organisation a lot of authority. Researchers at the IS in London normally publicised

their findings on concrete violations which had taken place in a country as “Amnesty’s position”. But now, the researchers were asked by the refugee coordinators of the national sections to make an assessment of the risk an individual asylum seeker would face if forced to return to his country of origin, or what the risks would be for a particular group. These questions relate to more than simply concrete facts. Such an assessment requires an analysis of a personal story in the light of the general situation. The case would be examined closely, sometimes further questions were asked, and there were often consultations on the telephone. Thus, in hundreds of individual cases a year, the researchers provided tailored advice which enabled the sections to support the refugees. In this way, Amnesty could purposively bring forward information in asylum procedures to the deciding authority, normally the government, or to courts or advisory boards. In cases with broader implications, which could have an impact on policies regarding a particular group, politicians would be approached, as well.

These consultations could concern developments in asylum law, such as the question of whether Amnesty could plead for refugee status in the case of a conscientious objector facing three years of imprisonment. Is any punishment for conscientious objection in itself sufficiently serious to merit refugee status, or should the punishment be disproportionate, and if so, what would constitute disproportionality? Amnesty made its own analysis and assessment, but normally followed the interpretation of the Refugee Convention as formulated in the UNHCR Handbook.<sup>2</sup>

Another concern was the interpretation of country information specifically for asylum cases. At the beginning of the 1980s, for example, when the civil war in Sri Lanka raged with great intensity, the question came forward whether the situation there was

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<sup>2</sup> Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, HCR/IP/4/Eng/REV.1, reedited, Geneva, January 1992, UNHCR, 1979.

of such a serious nature that Amnesty should oppose the expulsion of Tamil asylum seekers to their country. Such a question not only requires insight into, and a great deal of information about, the human rights situation in that country, but implies a translation of that knowledge into the terms of asylum law as well. When is a situation so serious for a particular group of people that forcible return cannot be considered? And, of course, it was necessary for Amnesty to have an internationally consistent view on this, ensuring that Amnesty's view in Swedish asylum application procedures would not diverge from Amnesty's point of view in the Netherlands.

It was essential that in refugee work too, the organisation spoke with one voice. Therefore, there was a need for good cooperation, exchange of thoughts and coordination of points of view. Who decides whether Amnesty will support a refugee or a group of refugees? About what issues can or should the sections consult with the IS, and also how many specific questions concerning individual asylum seekers are the researchers at the IS actually able to handle? The cooperation and relationship between the IS and the sections became a subject of discussion. There was no fixed hierarchy between the IS and the refugee coordinators in the sections, nor a formal approval procedure. The sections were responsible themselves for the refugee work and would remain so. For practical reasons alone it would be impossible for the IS to take that work on. All parties concerned were, however, expected to show attentiveness to ensure that the organisation's point of view was on the same wavelength in the various countries. The sections were alert if other sections' might need to be informed on a certain matter, but also the researchers kept track of whether similar questions were coming from the different sections.

In 1985, the IS decided to create a (part-time) position for the coordination of refugee work, a lynch-pin among the refugee coordinators of the sections and the researchers and the legal department at the IS. A full time position was later added to this part-time position. This refugee team at the IS was informed on all matters from different angles and functioned as a focal point. It

published a newsletter about ten times a year, exchanging information and facilitating coordination. For the first time, refugee coordinators meetings were organised, where information was exchanged about the human rights situations in countries of origin, and about the groups of refugees who applied for asylum in the various countries, and where topical legal and political developments were discussed.

In the mid-1980s, as the number of refugees and internally displaced persons in the world grew, and as a consequence the number of people seeking asylum in Europe grew considerably, the political debate in all European countries sharpened and political lobbying became an important part of Amnesty's work, and not just on a national level. European countries were in the process of making plans for a common asylum system within the European Community, making it necessary to lobby also in Brussels on asylum issues. In 1986, these developments led to the creation of a special position at Amnesty's European office in Brussels to closely follow and influence European asylum developments.

### **3. 15 YEARS OF STANDING UP FOR REFUGEES (1986-2001)**

Much changed for refugees in the mid-1980s. The number of asylum seekers searching for protection in Europe grew exponentially. The asylum seekers were no longer the individual Latin American, Southern and Eastern European political activists, conscientious objectors, and intellectuals. The Western world was now being confronted with both individuals and groups of people from parts of Asia and Africa who were fleeing brutal wars, terror, and arbitrary violence. As a result, Europe saw asylum seekers coming from all over the world, for example, from Turkey and countries in the Middle East; Iran, Iraq and Syria, many political activists, but also Kurds and Syrian Orthodox Christians. From Africa came Ethiopians, Eritreans, Nigerians, and Ghanaians. Asian asylum

seekers included Pakistanis, Sri Lankans, Afghans, and Vietnamese. Asylum seekers also come from Latin America, especially Chile. These developments led to major changes in political and public opinion. Each country was concerned about pursuing a policy that was too favourable and as a consequence would result in even more asylum seekers at their borders. The public and politicians started differentiating very rigorously and all too easily between political refugees on the one hand and economic migrants, nicknamed profiteers or fortune-hunters, on the other. Not much attention was paid to the fact that by far the largest number of refugees stayed behind in countries in their region of origin.

Amnesty sections continued to work on individual cases, but could clearly not support all asylum seekers who came knocking on its door for help.<sup>3</sup> In many countries the refugee department consisted of one or two paid staff and often a number of volunteers. In the Netherlands, Amnesty had a comparatively large team, with four paid staff members at the end of the 1980s (by the end of the 1990s this had grown to six paid staff) and around 15 volunteers.

Most sections, including the Netherlands, continued over the years to support individual cases, albeit a very small number. Following extensive interviews, assessment of the file and, finally, an assessment of the entire flight story read in light of refugee law and the mandate, a letter could be written on behalf of an asylum seeker to the minister or to the court. In this letter, the individual story was set out in the context of what Amnesty knew about the background of the asylum seeker and about the situation in the country of origin, and Amnesty argued for the individual to be granted a status.

Criteria were used to select cases, such as: was the asylum seeker already known to Amnesty before; had Amnesty had

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<sup>3</sup> Apart from a very few exceptions, the IS did not take up individual asylum cases. The sections have always done that work. In the UK it was done by the British section.

campaigned for him in the past when he was still in his country of origin; is it a serious case which is likely to be lost and in which Amnesty could make the difference; does the section, and possibly even the researcher, want to know more about the individual and his background; and could the case, if it were won, possibly serve as precedent for others? By keeping tabs on how the individual's case progressed, Amnesty was also able to monitor the practice of the asylum procedure.

Other activities were much broader and had a great impact. Country information gathered by Amnesty and made available to lawyers acting for asylum seekers was particularly important. The lawyers ensured that this information came to the attention of the courts. The State also brought in background information, often originating from the Ministry of Foreign Affairs, to serve as basis to reject the case. This information, which usually stated that conditions in the country of origin were not so bad for the particular asylum seeker, was weighed in court against Amnesty's country information, which described in detail how serious the human rights situation was. Thus, Amnesty's information put pressure on States to ensure that the information they used to assess asylum cases was complete, accurate, and objective.

In the Netherlands, in 1990, Amnesty organised a seminar about the role of information provided by the Ministry of Foreign Affairs. Attended by all relevant stakeholders, including members of government, civil servants, and members of the judiciary, the event led to much improvement in the accuracy, transparency, and verifiability of the reports of the Ministry of Foreign Affairs on asylum seekers' countries of origin.<sup>4</sup>

A number of sections, for example, the British, Danish, and Dutch, had started in the 1970s to involve doctors in asylum procedures. They asked them to produce medical reports on asylum seekers' physical or psychological experiences. The aim of the

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<sup>4</sup> AMNESTY INTERNATIONAL, *Het nadeel van de twijfel. De rol van informatie in de Nederlandse asielpcedure*, Uitgeverij Jan Mets, Amsterdam, 1990.

examination was to establish whether there is a link between the medical findings, on the one hand, and the story told by asylum seeker in the procedure, on the other. This way of supporting an asylum case has grown significantly over the years and has become increasingly important. One of the reasons for this success is that governments assessing asylum requests, were very reluctant to carry out such investigations themselves. Many cases, in which a medical report written by an Amnesty doctor was provided, were granted a positive decision.<sup>5</sup> From the 1980s, around 30 doctors have been active for Amnesty in the Netherlands, carrying out, on average, about 50 examinations every year. In the United Kingdom, since the end of the 1990s, this work was carried out independently from Amnesty with the establishment of the Medical Foundation for the Care of Torture Victims.

Amnesty followed developments at the national level scrupulously. All countries experienced continuous changes in legislation. The sections were active in all sorts of different ways, addressing politicians and administrators, commenting on bills, ensuring press attention and sometimes making a lot of noise, creating briefing materials, campaigning, and training various involved parties. For instance, Amnesty in the Netherlands was asked to play a part in special refresher courses on asylum for judges and civil servants.

New legislation and policy was established in all Western countries, partly prompted by developments in Europe. With coming into force of the Schengen Agreement, West-European countries decided to abolish internal borders. However, they did not want asylum seekers to start “asylum shopping” and asking for protection in country after country, and, therefore, they agreed on a system of sharing responsibility for dealing with asylum applications. The next step was to work on agreements on shared criteria for offering

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<sup>5</sup> STOLWIJK, M., ‘Medisch onderzoek als steunbewijs: een onderzoek naar de beslispaktijk’, *Asiel & Migrantenrecht*, Vol. 25, No. 1, 2010, pp. 17-28.

protection, and to attune asylum procedures. All this can be considered as the process of harmonisation of European asylum law. These shifts raised legal and humanitarian questions, all around the core issue: Is there still enough of a guarantee that someone who fears persecution will not be sent home? Amnesty was actively involved in the debate and did everything possible to ensure that the legal protection afforded to asylum seekers was upheld and the core values of international law on refugee protection would not be undermined. The organisation opposed a shorter asylum application procedure which would mean less time for effective legal protection, as well as the introduction of concepts such as “safe third countries” which meant that asylum seekers could easily be sent back to countries in their region if they had travelled through them as part of their journey.

Lobbying was not only aimed at the national level. Amnesty was as an international organisation active in the international arena, working together with UNHCR and trying to influence this organisation as well as the countries and the international community, which together defined the policy of this UN organisation. In addition, Amnesty linked with other organisations that worked for the enormous numbers of refugees in countries in the region, often in refugee camps, such as *Médecins sans Frontières*. Amnesty took part in international opinion-forming about new questions of refugee law, such as what legal kind of protection could or should be offered to people who fled from violence, but stayed within the borders of their own country (internally displaced persons).

The refugee team at the IS consisted, by that time, of three people. The international meetings were held annually from the end of the 1980s and were attended by as many sections in Europe, which did some form of refugee work, as possible – after the fall of the Berlin Wall this included also the Eastern European sections – and also by the refugee coordinators from the United States, Canada, Australia, and New Zealand as well as the staff member of the Amnesty EU office who was responsible for the coordination of the

refugee work at EU level attended. The IS participated with the IS's refugee team, and there were always a number of researchers present.

The meetings were used for information exchange, determining positions and attuning political lobbying activities. The participants discussed the groups of asylum seekers from different countries, the policy in respect to these groups, how the risk of persecution on return should be assessed, and how the country information was being interpreted by the respective States. They also talked about questions of law and policy such as asylum seekers detention, specific policy on women asylum seekers who had been raped, or the position of unaccompanied minors. Together with the IS, they formulated policies which could be used for lobbying at the national level.

Within Europe, a large number of organisations concerned with refugees had started to work together in an organised fashion. The European Council for Refugees and Exiles (ECRE), which started in 1974 as an informal platform for a couple of organisations, grew in the 1980s into an important forum for consultation and lobbying for around 60 organisations. Amnesty, both the IS and most European sections, was actively involved in this organisation.

In 1997, for the first time, Amnesty ran a large international campaign for refugees entitled 'Refugees: Human rights have no borders'.<sup>6</sup> This was the moment Amnesty chose to present its opinions and recommendations right across the board. For many sections in Asia and Africa, the preparation for this was the first time they properly engaged in refugee work. Regional training events were held in Africa and Asia, involving coordinators from European sections and the IS as trainers. Amnesty sections in those parts of the world lobbied for refugees for the first time, and made contact with the UNHCR and refugee organisations which were active in their countries. Specific recommendations were formulated for the campaign, aimed at countries where asylum seekers ask protection.

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<sup>6</sup> AMNESTY INTERNATIONAL, 'Refugees: Human Rights have no borders', Amnesty International, 1997, AI Index ACT 34/04/97.

These recommendations did not just touch on access to and quality of the asylum application procedures, but also addressed, for example, the rights of refugees in situations of mass exodus as a result of civil war. Recommendations were also aimed at the international community. Amnesty argued for international solidarity and burden sharing, and insisted that States should take more responsibility for both international protection and the protection of internally displaced persons.

During the 1990s, Europe pursued further harmonisation of European asylum law. The closing of external borders led to the use of the term “Fortress Europe”. Increasingly, severe measures were taken to make it as difficult as possible for asylum seekers to reach the European external borders, and, if they did manage to get in, they were confronted with EU Member States which had restricted their legislation in order to grant a residence permit to as few people as possible.<sup>7</sup> Amnesty’s European office, and the European sections, campaigned against the joint visa policy, against penalties that had to be applied to airlines if they transported undocumented asylum seekers, against returning asylum seekers all too easily to other countries in their region, and against detention of asylum seekers. Amnesty raised questions about the practice whereby countries outside the European borders were persuaded to enter into so-called re-admission agreements with the EU or one of the EU member states. These agreements made it possible for the European countries to send asylum seekers quickly and easily from Europe to these third countries which, whilst they were parties to the Refugee Convention, had very little experience with, nor structures in place for, the proper handling of asylum applications. Amnesty also raised objections to the introduction of the concept of *safe countries of origin*. This concept means that when a particular country of origin is labelled as ‘safe’, a State dealing with an asylum request of a person from that country will no longer carry out a careful consideration of whether

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<sup>7</sup> Cf. VAN ES, A., *Schengen, of De nieuwe deling van Europa*, Van Gennep, Amsterdam, 1991.

that persons might face persecution. Moreover, the political process of changing the fixed list of “safe countries of origin”, deciding which countries should be put on or taken from this list, does take considerable time, while the human rights situation in a country can deteriorate in a very short period.<sup>8</sup>

#### **4. TEN YEARS OF WIDENING AND WEAKENING (2001 - 2011)**

The beginning of the twenty-first century was marked by the attacks on the Twin Towers in New York on 11 September 2001. Following this event, the “war on terror” dominated everything, and migrants, already no longer all that welcome, were viewed with even more suspicion. People who would previously have been called freedom fighters were suddenly considered to be terrorists. The influence of the extreme right in various European countries, which had already become increasingly and painfully obvious since the 1990s, grew following the attacks in New York and led to more negative attitudes towards migrants, particularly those from Muslim countries. Fear of attacks led to the passage, in various Western countries, of legislation which made it harder for migrants to get access to and residence in these countries. The political climate for asylum seekers and refugees also worsened.<sup>9</sup> In the Netherlands, this tendency was further strengthened by two murders. The first occurred in May 2001 and

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<sup>8</sup> The idea of safe countries of origin is that some countries comply so well with human rights that it is unthinkable that somebody fleeing that country meets the criteria of the definition of a refugee. Since the so-called “Aznar Protocol”, it is assumed that EU member states are by definition safe. The Aznar Protocol was adopted in the Treaty of Amsterdam in 1997 on Spain’s initiative. See: OJ 2010 C 83/305 for the protocol text.

<sup>9</sup> Cf. VAN DER WOUDE, M.A.H., *Wetgeving in een veiligheidscultuur; Totstandkoming van antiterrorisme wetgeving in Nederland bezien vanuit maatschappelijke en (rechts)politieke context*, Boom Juridische Uitgevers, Den Haag, [diss., Leiden] 2010.

concerned the right-wing populist and charismatic politician Pim Fortuyn, although the murder itself had nothing to do with migrants or with Islam. The second concerned the killing, in 2004, of the controversial film-maker Theo van Gogh, who explicitly attacked the core of Islam.

Meanwhile, the 35 years in which Amnesty had been active on behalf of refugees had borne fruit. Information about refugee countries of origin had become much more thorough and comprehensive. In many countries, partly thanks to Amnesty, other refugee organisations had come into being. All sorts of training activities had been developed for lawyers, legal aid workers and even immigration officers or sometimes judges. For Amnesty itself, however, it seemed more difficult to work for refugees. We see a number of interconnected reasons for this.

First, the political-legal-social reality had changed. The legal and policy issues which arose around refugee protection were becoming increasingly complex, and were, moreover, much more interwoven with the wider globalised political reality than previously. How should the world respond to the threat of terror, and within that context, how should Amnesty deal with the resultant tendency to (perhaps all too easily) bar or detain people looking for protection? Not only in public discussions, but also in discussions at the political level the importance of the fundamental principles of refugee law were thrown open for discussion and, consequently, undermined. The old mandate, which had for years made it possible for Amnesty to have a strong presence, could no longer offer enough power or purchase to give a strong response, nor could it prevent the refugee, the individual who needed and had a right to protection, from disappearing from sight. Refugee law alone, legally speaking, is problematic because the core of it, the definition of a refugee in the Refugee Convention, is not explicitly defined. This means that a constantly changing and not always transparent reality leads to questions and legal obscurity. The specific expertise which is needed for this international legal debate on refugees is lost if the subject matter gets broader and if it turns into a general debate about

migration in which all migrants are lumped together in one category. As a result, there is a real threat that knowledge about refugees' specific needs for protection and the sense of urgency will disappear.

The second reason, interestingly, emerged from the fact that a broadening of the mandate was taking place within Amnesty, something which had been talked about since the end of the 1990s. In broadening its mandate, now called its "mission", Amnesty took the view that human rights are not only political and civil rights, but also economic, cultural and social rights. These should all be seen as an inseparable whole. From this viewpoint, Amnesty sees migration in a much broader framework and concentrates on migrants' rights in general, fighting against issues like poverty, illegality, and discrimination. Such a stance no longer has a clear connection to principles of classic refugee law where the issue, even in the twenty-first century, is still the protection of people who face persecution, prison, abuse or torture on return, or who have reason to fear being killed because of who they are or what they believe in. By extending attention to economic, social and cultural rights, the notion of a refugee became fluid for Amnesty. Work crumbled. Researchers' work changed at the IS. Reports that were published were about migrant rights in general and about detention of migrants. The people on the refugee team previously known as refugee coordinators were now refugee and migrant coordinators.

The consequence of the extension of the mandate was the disintegration of the organisation's refugee work, and reduced attention to the subject of refugees. The sections remained active and tried to ensure that the complicated questions of refugee law would remain in the picture for Amnesty. The Dutch section, for example, released a number of publications in the first years of the new millennium, some of which had an explicitly international character. They published, for instance, a book about reception in the region.<sup>10</sup>

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<sup>10</sup> AMNESTY INTERNATIONAL, 'Niemandland, Opvang van vluchtelingen in de regio', Amnesty International, 2003.

Amnesty in the Netherlands worked together with other organisations on a project aimed at international adoption of a protocol for guidelines for medical reports in cases where someone has been subjected to torture. The IS, however, was not involved in such projects and published no more reports on the big issues of refugee law which were arising in this period. Amnesty was no longer a pioneer and no longer had an important voice in debates and initiatives in the field of international refugee work.

The question arises whether Amnesty nowadays perhaps has less specific expertise to offer in the area of refugees, not only due to its own developments, but also to external factors. Governmental country information, partly thanks to activities Amnesty and other organisations have carried out over the years, has improved greatly. Also other non-governmental organisations, such as Human Rights Watch in particular, contribute significantly to such information. Worldwide, numerous good, active, specialist refugee organisations have come into being, nationally and internationally. Medical examinations are carried out these days by other organisations as well.

The reduced focus on refugee work within Amnesty resulted in the situation where the staff members, who are involved with refugees, have become in some senses “the odd ones out”. In a number of Amnesty sections, persistent refugee coordinators work steadily on with their small teams, within their own networks and building on their years of expertise. Sometimes, however, the decision is taken to stop with refugee work that has been built up over 30 years. In the Netherlands, in 2008, the whole refugee department of six paid staff and fifteen volunteers was closed. There are still some staff working on refugees, but they are concerned with broader themes which affect all migrants such as illegality, discrimination, and immigration detention. Within the section there is no longer a separate department where opinion-forming and policy development can take place on the developments in the still topical and politically important area of asylum policy. Although the political debate in broad terms is still followed and the subject is

included in Amnesty's general political lobbying, the cohesion of activities which the department carried out for years has come to an end. The work of the medical examination group will soon be taken up by the independent Institute for Human Rights and Medical Examination (Instituut voor Mensenrechten en Medisch Onderzoek). Amnesty no longer plays a meaningful role in the Dutch asylum procedure, the organisation hardly participates any more in the asylum network or in national policy developments, and, additionally, there is no longer a role set aside for Amnesty Netherlands in the wider refugee debate at the international level.

Is that a problem? We feel it is. First, and foremost, there remains a need for accurate information about refugees' backgrounds and, therefore, also for research specifically aimed at that. Amnesty's keen legal and strategic mind could still make an important and very meaningful contribution to the current complex legal and political questions about refugees in the world.

The political and social climate for refugees becomes gloomier year after year, but where Amnesty used to be able to deploy its strength and expertise effectively, the candle has now been blown out on refugee work. Unlike most other organisations who are involved with refugees, Amnesty is completely independent, has a worldwide network and is an authoritative interlocutor for States or international organisations. In the Netherlands, much expertise will be lost. Now that only very few volunteers still work for refugees in the Dutch section of Amnesty, a unique asylum training institute will be gone. Volunteers have made an important contribution, and not just for Amnesty. Every year, around 30 people doing their voluntary work received very specialised training, so thorough that later many of them reached important positions. They became policy advisors or asylum officials for the government, employees of the courts, sometimes judges, or they gained positions at the UNHCR or other international organisations. This was good for the world because they knew the fundamental principles of refugee law and the importance of human rights, through and through. It was also good for Amnesty and other NGOs because they made up a formidable network.

With these trusted partners, Amnesty had an easy way in to many different organisations. For the effectiveness of national or international lobby work, direct contact with trusted ex-colleagues in key positions is of an importance which should not be underestimated. This has all been given up too easily.

Amnesty's roots are to be found in standing up for individuals who are victims of serious human rights violations. Similarly, in its work for refugees, the individual, the asylum seeker, has always remained important. Alongside the broad approach, such as making relevant country information available, carrying out political lobbying activities, or submitting comments on legislation, the individual has never disappeared from sight. Within Amnesty, it was always clear that, ultimately, the core issue is the life of an individual who might face serious persecution.

We have tried to sketch the history of the refugee work of Amnesty as a broad movement, in the light of a world which has changed significantly over the past 50 years.

A lot has been done and a lot has been achieved. For a long time, Amnesty has shown a very strong presence in the refugee debate, both in national situations and at the international level. It was strong particularly because of its independence, international unity, quality of its country information and legal perspective, and because of its clear mandate. In the 1970s, while asylum procedures were not yet very developed and asylum law was still in its infancy, Amnesty championed the subject, and it brought about standard setting by introducing and often successfully defending certain norms, criteria, and principles.

Amnesty's refugee work has reached a crucial point. Is there a job to do in this area in the future, and if so, how can Amnesty tackle it effectively?

It is a matter of choice. Who tries to do everything, ends up doing nothing well. Through the broadening of the mandate, refugees and other migrants run the risk of being seen as one subject for Amnesty that can be treated with one common approach: one in which rights of travellers in the globalised world are central. Refugee

law and questions around refugee situations in the world are, however, too specific and too complex to be dealt with in that broad context.

Amnesty should reflect and ask itself whether it still wants to do something for refugees and the further development of refugee law. Does the organisation want to remain a credible, well-informed, and alert partner for others in the field, such as academics, the UNHCR, and refugee organisations? Does Amnesty want to continue playing its pioneering role in the debate, by influencing international discussions with clear, refreshing points of view?

We are convinced that Amnesty can still be effective in this area in the future, but there is more to it. Precisely because of the bleak refugee situation and the complexity of the debate, Amnesty is actually indispensable, with its sharp way of thinking, its knowledge about human rights and about the developments in the world, and its expertise in taking a strategic approach.

We feel it is time for a debate both within the organisation itself, with concerned parties at the IS and with the sections, but also with the external world, with national and international refugee organisations, with the UNHCR, and with lawyers and academics, about how Amnesty can contribute to new positive developments in refugee law over the next ten years. Should or could Amnesty remain active in different countries, in individual asylum cases or in continuing making very precise information available about the situation in countries of origin? If Amnesty would decide to remain involved, we feel that it could still make a real difference. Perhaps Amnesty could develop expertise about the role and significance of the broad spectrum of human rights treaties for the protection of refugees? Or perhaps it is time for a second major Amnesty refugee campaign, encouraging many people outside Europe and North America too to continue to think about and work for the very difficult and specific situation of asylum seekers and refugees in the world.



# AMNESTY INTERNATIONAL'S WORK ON INTERGOVERNMENTAL ORGANISATIONS: A NEW YORK PERSPECTIVE

YVONNE TERLINGEN

## 1. INTRODUCTION

When the UN Security Council adopted Resolution 1973 on 17 March 2011, authorising robust action to protect civilians under attack in Libya, it placed human rights at the centre of its decision making. The far-reaching resolution demands an end to attacks against and abuses of civilians and authorises strong action to enforce it by imposing a “no-fly-zone” and permitting States ‘to take all necessary measures [...] to protect civilians’ (including the use of military force<sup>1</sup>).<sup>2</sup> The Security Council specifically condemned ‘the gross and systematic violation of human rights, including arbitrary detentions, enforced disappearances, torture and summary executions’.<sup>3</sup> Moreover, the Security Council decided that the widespread and systematic attacks against civilians may amount to ‘crimes against humanity’ and that those responsible ‘must be held to account’.<sup>4</sup> UN Secretary-General Ban Ki-moon rightly called adoption of this resolution, affirming the international community’s responsibility to protect civilians, ‘historic’.<sup>5</sup>

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<sup>1</sup> Amnesty International does not advocate action that involves the use of force.

<sup>2</sup> UN Security Council Resolution 1973, S/RES/1973, 17 March 2011.

<sup>3</sup> *Idem*.

<sup>4</sup> *Idem*.

<sup>5</sup> On 17 March, the UN Secretary-General stated: ‘The Security Council today has taken an historic decision. Resolution 1973 (2011) affirms, clearly and unequivocally, the international community’s determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own Government. The resolution authorises the use of all necessary measures,

The measures in resolution 1973 bind all States, as they were taken under Chapter VII of the UN Charter. Surprisingly, neither China nor the Russian Federation exercised their right to veto. Normally, they would be worried that such strong human rights language in country-specific resolutions would constitute a precedent and could eventually be used by other States to criticise abuses in their own backyards – such as in Tibet and Chechnya. However, they permitted adoption of the resolution.<sup>6</sup> For these States as well as for the US administration, it was particularly important that a key regional organisation, the Arab League, had explicitly backed the idea of a “no-fly-zone”. Equally significant was the Security Council’s unanimous adoption of resolution 1970 (2011), three weeks earlier. “Deploring the gross and systematic violations of human rights” in Libya, the Security Council decided in that resolution to refer the situation in Libya since 15 February 2011 to the Prosecutor of the International Criminal Court (ICC), marking only the second such referral by the Security Council to the ICC in its history.<sup>7</sup> It also imposed an arms embargo and a travel ban and

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including a no-fly zone to prevent further casualties and loss of innocent lives’ (SG/SM/13454).

<sup>6</sup> The Security Council adopted Resolution 1973 (2011) by a vote of 10 in favour to none against, with 5 abstentions (Brazil, China, Germany, India and the Russian Federation). Voting in favour were Bosnia and Herzegovina, Colombia, France, Gabon, Lebanon, Nigeria, Portugal, South Africa, the United Kingdom and the United States of America.

<sup>7</sup> UN Security Council Resolution 1970, S/RES/1970, 26 February 2011. The blot on that Resolution is operative paragraph 6, which seeks to exempt nationals from countries that are not party to the Rome Statute of the ICC – which establishes the ICC – from the ICC’s jurisdiction. Brazil, to its credit, opposed that provision, saying it was a long-standing supporter of the integrity and universalisation of the Rome Statute, and that initiatives aimed at establishing those exemptions for specific Member States ‘were not helpful to advance the cause of justice and accountability’ (Security Council, 6491st Meeting, SC/10187/Rev.1). On 27 June 2011, Pre-Trial Chamber I of the International Criminal Court (ICC) issued three warrants of arrest respectively for Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi for crimes against humanity (murder and

assets freeze on Colonel Gaddafi's family. Both Security Council resolutions specifically cited the principle agreed to at the 2005 UN World Summit: Libya had the "responsibility to protect" its population (namely from genocide, war crimes, ethnic cleansing, and crimes against humanity, and that, as a last resort, the Security Council could act should national authorities manifestly fail to provide such protection).<sup>8</sup> At that point in time, this was still a controversial concept, viewed with suspicion by some governments. In particular, governments in the South feared that it interfered with sovereignty and could constitute a pretext for military intervention.

The consequences of the adoption of Resolution 1973 were immediate and stark: jubilation broke out in Libya's eastern city of Benghazi immediately after the vote in the Security Council was taken. The Security Council's voting session was broadcast live on a huge screen for all to see in the city's square. Shortly afterwards, helicopters and planes from France, the UK and the US started to enforce the "no fly zone" and to take military action to protect civilians in Benghazi, which was specifically mentioned in the Resolution and under immediate threat of attack by Gaddafi's army. This article does not review whether the actions taken by several NATO countries, backed by the US, fell within the broad mandate granted by the Security Council to protect civilians in Libya, actions about which critical questions have been asked. However, unlike its inexcusable inaction earlier in the face of massive and grave human rights violations in Rwanda, Bosnia and, more recently, in Gaza/southern Israel and Sri Lanka, the Security Council has demonstrated its capacity to take action to protect civilians when grave human rights violations are threatened or committed. Furthermore, the Security Council has repeatedly stressed that there must be accountability for war crimes, crimes against humanity, and

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persecution) allegedly committed across Libya from 15 February 2011 until at least 28 February 2011.

<sup>8</sup> As follows from the 2005 World Summit Outcome (A/RES/60/1), paragraphs 138-139.

genocide. It is now clear that it is willing to make accountability a reality, even for Heads of State, by referring specific situations to the ICC Prosecutor. Such bold Security Council action in the face of international crimes was inconceivable when Amnesty International (AI) opened its office at the UN in 1977, when human rights were not even part of the Security Council's lexicon. It surprised observers: the post 9/11 climate at the UN was simply considered too hostile to human rights and the North-South divisions, prompted by the US's 2003 invasion of Iraq, were too stark for the Security Council to be expected to reach agreement to authorise States to "take all necessary means to protect civilians" in a country.

The actions taken by the Security Council do not mean that the Libya precedent will be followed in other comparable situations, such as Syria (although it did trigger a further Security Council call to protect civilians by 'all necessary means' in Cote d'Ivoire).<sup>9</sup> Nor does it imply that the Security Council will adopt a more human rights friendly policy in the future. As always, there was a highly specific set of factual and political circumstances that set the scene for the far-reaching Security Council action on Libya: it is an oil-rich country, the Libya crisis developed as part of the surge of peaceful protests that started in Tunisia, brought down its government, and a few weeks later the nearly thirty-year-old Mubarak regime in Egypt. Indeed, waves of similar protests swept through many Middle Eastern and North African countries where demonstrators against

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<sup>9</sup> UN Security Council Resolution 1975, S/RES/1975, 30 March 2011, which authorises the UN mission in Cote d'Ivoire (UNOCI) 'to use all necessary means to carry out its mandate to protect civilians under imminent threat of physical violence [...] including to prevent the use of heavy weapons against the civilian population'. Interestingly, the Security Council resolution welcomes a resolution previously adopted by the Human Rights Council (A/HRC/16/25) to establish an international commission of inquiry into allegations of serious human rights violations and abuses in the country. Generally, the Security Council has been reluctant to refer to the outcome of human rights discussions by the Human Rights Council in Geneva in its decisions.

repressive regimes argued their leaders had long overstayed their welcome.

Crucially for the Security Council, key regional organisations such as the Arab League, the African Union and the Organisation of the Islamic Conference (OIC) had all condemned the serious violations of human rights and international humanitarian law committed by the Libyan government and called for decisive Security Council action, especially after Gaddafi's blatant incitement to violence against Libyan civilians. Following his threats, there was an acute sense that protesters and suspected opponents of the regime were about to be massacred in eastern Libya and that the international community – through the Security Council as an international body capable of taking binding action – could not stand idly by, as it had done previously in Rwanda on the brink of genocide. Moreover, Libya's own diplomatic representatives in New York had abandoned their posts to support the protesters and called for firm Security Council action to protect civilians. The Human Rights Council in Geneva convened a Special Session at which it decided to promptly send an Independent Commission of Inquiry to Libya to investigate all alleged violations of international human rights law.<sup>10</sup> Just after that, on 1 March 2011, the General Assembly, taking its lead from the Human Rights Council resolution just adopted in Geneva, invoked for the first time in its history a special provision and suspended Libya from membership of the Human Rights Council on grounds that it had committed 'gross and systematic violations of human rights'.<sup>11</sup> That set an important

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<sup>10</sup> Human Rights Council Resolution A/HRC/RES/S-15/1, adopted on 25 February 2011, 'Situation of human rights in the Libyan Arab Jamahiriya', paragraph 11. For the Commission of Inquiry's report of 1 June 2011, see A/HRC/17/44.

<sup>11</sup> General Assembly Resolution A/RES/65/265, adopted by consensus on 1 March 2011. The Resolution built upon Resolution A/HRC/RES/S-15/1 which, in paragraph 14, recommended 'that the General Assembly, in view of the gross and systematic violations of human rights by the Libyan authorities, consider the application of the measures foreseen in paragraph 8 of General

precedent: human rights standards must be upheld by members of the Human Rights Council.

It is unlikely that these bold UN actions taken by the Security Council, the General Assembly and the Human Rights Council in the name of protecting civilians from gross and systematic human rights violations, and holding the perpetrators thereof accountable, could have materialised were it not for the long-term, painstaking and persistent efforts by various actors to advance human rights protection at the UN. Key to these achievements were the efforts of some notable UN officials, some skilled, committed diplomats and their governments, and in particular NGOs. AI played an important role in these processes because of its expertise, its lobbying capacity by its national sections in their capitals worldwide, and its willingness to make long-term commitments and see them through. Together, these actors have worked to set solid human rights standards, to create and strengthen the UN's human rights machinery, and to raise the profile of human rights in the day-to-day work of the UN's Secretariat and the above mentioned UN political bodies, which are often reluctant to do so. We focus on AI's role in these processes below. However, AI's work is only part of joint efforts carried out in partnership with others. It takes place in a highly context-specific setting.

This article reflects a view from New York, where the author worked as AI's Head of Office and Representative at the UN from July 2001 until May 2010.<sup>12</sup> It focuses on two New York-based

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Assembly resolution 60/251'. That paragraph provides that the General Assembly 'may suspend the rights of membership in the [Human Rights] Council of a member of the Council that commits gross and systematic violations of human rights'.

<sup>12</sup> The AI UN Office in New York had three professional staff throughout this period. This article does not review all areas of work on the UN carried out by the office, nor does it cover the substantive body of work on the Geneva-based Human Rights Council (formerly the Commission on Human Rights) and the UN human rights treaty bodies, carried out by the AI UN Office in Geneva

political bodies of the UN: the 15-member Security Council as well as the General Assembly, the latter reflecting the entire UN membership. Furthermore, the constructive role played by some AI national sections is highlighted.

## **2. THE EVOLVING ROLE OF AMNESTY INTERNATIONAL'S WORK AT THE UN IN NEW YORK**

AI started working at the UN in the basement of a historic New York house in Manhattan's Greenwich Village in 1976. A member of AI's International Executive Committee, responsible for work at the UN, recommended from that place that AI needed to establish a regular and full-time presence at the UN. After a one-year trial run, AI established its office at the UN in New York in 1977. The basis of AI's work at the UN is the UN Charter which requires all UN Member States to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction' and 'to take joint and separate action in co-operation with the Organisation' to achieve that aim.<sup>13</sup> The AI UN Office's role developed through the years. It now covers informing the UN Secretariat and New York-based diplomats at the UN through AI's independent and authoritative fact-finding of the human rights situation on the ground, pushing for human rights provisions in the UN Charter to be transformed into effective measures to protect

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and by AI's International Organisations experts at its International Secretariat in London.

<sup>13</sup> Articles 55 (c) and 56 of the Charter of the United Nations. 'Promoting and encouraging respect for human rights and fundamental freedoms for all without distinction' is in fact recognised in Article 1 as one of the Purposes and Principles of the United Nations, a position reinforced in 2005 at the World Summit, when all heads of State and government assembled in New York and agreed that human rights is one of the three pillars of the UN, next to peace and security and development (A/RES/60/1, paragraph 9).

human rights and emphasising the need to provide remedies to victims.

The AI UN office established in New York was the first outpost created by the organisation outside the International Secretariat in London. The office was then made responsible for following the UN both in Geneva and in New York as well as intergovernmental operations in Washington, DC (such as the World Bank and the Organisation of American States).<sup>14</sup> As an independent resource for human rights violations in all regions of the world, AI was virtually the only show in town, although AI worked closely with other NGOs that had programmes of work at the UN (initially for example, the International Commission of Jurists, the Quakers and the World Council of Churches). The office started as a – highly professional – one woman operation. Work concentrated on influencing the General Assembly<sup>15</sup> as well as diplomats at UN missions and key actors in the UN Secretariat, including the UN Secretary-General.

From a logistics point of view the early days were not easy. There was no e-mail, no fax and no photocopying machine. Much time was spent in copying and distributing UN reports and resolutions to the International Secretariat in London – which still has one of the best collections of early UN human rights documents anywhere – and share them with others, including small diplomatic missions at the UN who lacked resources. AI was valued and respected for the accuracy and quality of its information. Very few diplomats knew much about human rights in the 1970s and the new office played an important educative role. In the words of the then AI Representative, it acted sometimes as a “marriage broker” bringing diplomats, UN officials and NGOs together. AI created crucial space to discuss human rights and strategies to establish effective remedies

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<sup>14</sup> Later, AI established a second UN Office in Geneva to deal mainly with the Commission on Human Rights and its successor, the Human Rights Council, as well as the human rights treaty bodies and the Office of the High Commissioner for Human Rights.

<sup>15</sup> The Economic and Social Council, the Committee against Apartheid, and the Trusteeship Council were also covered.

to protect human rights. Sometimes AI gave practical advice to national NGOs for whom it was difficult to access the complex system in New York, and continues to do so now. The AI UN office is in a privileged position. It has access to the UN building and UN processes because it was one of the first NGOs to get, in 1964, “consultative status” with the UN’s Economic and Social Council (ECOSOC). This allows AI to circulate short written statements and attend some public UN meetings, although with important restrictions.<sup>16</sup>

The latter part of the 1970s provided a new impetus to push human rights on the UN agenda. The two major human rights treaties, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) with its Optional Protocol, had finally come into force in 1976. In 1977, the Human Rights Committee started to monitor compliance by State Parties with their obligations under the ICCPR, and to hear complaints by individuals of violations of rights guaranteed in the covenant under the Optional Protocol.<sup>17</sup> AI concentrated on the “non-derogable” human rights, namely those that every government everywhere must protect even in times of emergency, such as the right to life and the freedom from torture.<sup>18</sup>

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<sup>16</sup> ECOSOC Resolution 1996/31, updating Resolution 1296 (XLIV) of 23 May 1968, both based on Article 71 of the UN Charter which enables ECOSOC to ‘make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence’. AI has Category II consultative status. It is unfortunate that NGOs with such status, who have a great deal of access to the UN’s Human Rights Council, are still unable to present written or oral statements to the General Assembly in New York, to leave documentation at the General Assembly hall, or to attend its meetings as officially credited observers.

<sup>17</sup> Later, other expert treaty bodies were established to supervise other human rights treaties on, for example, racial discrimination, discrimination against women, the rights of the child, and torture.

<sup>18</sup> Article 4 of the ICCPR prohibits any government to derogate from its obligation to protect the rights guaranteed in Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18.

Therefore, AI's concerns were all the more difficult to ignore. That same year in Geneva, a competent and outspoken new Director of the UN's Division of Human Rights was appointed, marking a new era of cooperation with NGOs. In political terms, the controversial Vietnam War had ended, and US President Jimmy Carter announced a human rights policy (see below). In that climate and given its role, it was perhaps not surprising that AI received the Nobel Peace prize in 1977.

AI at the UN has become both a watchdog and a critical voice, which prods the conscience of governments into taking action by carefully documenting human rights violations of individuals and reminding UN Member States of their responsibilities under the UN Charter. A diplomat remarked at a reception that "you keep us on our toes". Of course, due to its critical lobbying role, and its determination to criticise human rights violations wherever they occur, AI is not always popular. In 1986, AI's first Representative concluded that, although AI Office's work had gained a lot of respect over the past ten years, NGO activities in the human rights field were not always welcomed by governments. In contrast to NGOs with a humanitarian agenda, which diplomats view as far less threatening and more as a partnership, this still holds true today. Human rights remain an extremely sensitive issue at the UN. Pushing human rights onto the agenda and into appropriate discussions and processes remains a constant battle.

### **3. STANDARD SETTING**

AI has played an important independent expert and lobbying role in the creation of new ways to combat human rights violations, not least by carefully documenting what happens on the ground. AI first raises awareness about specific violations, often by its impartial reporting using the powerful tool of describing how individuals are affected by human rights violations. This forms the basis for objective discussion of the facts. AI then presses for achieving the highest human rights

standards and best mechanisms to combat specific human rights violations. This includes working for the strongest human rights language in new legally binding instruments and then lobbying worldwide for their adoption, ratification and, finally, their effective implementation into domestic human rights policies. AI's national sections with their lobbying capacity in their capitals play an important role in these processes. A few examples follow below.

- **Torture**

AI mounted its first world-wide campaign on torture in 1973, and worked with governments pushing for the adoption of a Declaration on Torture by the General Assembly two years later.<sup>19</sup> Torture remained an important theme for the UN office in New York. Based on authoritative reports documenting torture in numerous countries, provided by the International Secretariat in London, AI lobbied hard for the adoption of a binding treaty, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which materialised in 1984. Earlier that year, AI had renewed its campaign to end torture with an authoritative 12-point programme for its abolition, based on international human rights standards. That same year, AI had started to exploit more systematically the organisation's unique asset for work at the UN: its capacity to lobby governments through direct actions by its members in many capitals all over the world. AI's first lobbying circular to its sections – now standard practice at its UN offices in New York and Geneva – was written in 1984 with a model letter to governments, in order to lobby for the adoption of a human rights treaty of global scope, namely a strong convention against torture. AI sections also lobbied for the creation of a UN mechanism

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<sup>19</sup> The Declaration on the Protection of All persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly on 9 December 1975 in its Resolution 3452 (XXX).

to document and make recommendations to combat torture, and, in 1985, a UN Special Rapporteur on torture was created.

AI started its third campaign against torture in 2000. Unfortunately, it failed to marshal its major campaigning resources to counter the worldwide backlash against human rights – a result from the US-led efforts to combat terrorism in the wake of the Al Qaeda attacks, which killed thousands of civilians in New York and Pennsylvania in September 2001. Even the once considered sacrosanct, internationally accepted, absolute prohibition of torture was openly challenged in the US. This opened the door, as we were often told by diplomats in New York, especially from the South, to similar attacks on the prohibition of torture elsewhere in the world. Those governments argued that human rights were an “unnecessary luxury” when faced with the need to combat terrorism. AI, however, campaigned forcefully against torture and secret detention of terrorist suspects by the US and its allies. It later worked closely with other NGOs, especially the Association for the Prevention of Torture (APT), and key governments to reinforce the international prohibition of torture, which contributed to the adoption, in December 2002, of a strong Optional Protocol to the Convention against Torture. Furthermore, AI pushed for its ratification by the required number of States. The Protocol, which entered into force in 2006, establishes a worldwide system of investigative visits to all places of detention in States that are party to the Optional Protocol. This can help stop and prevent torture.

- **Enforced Disappearances**

Another example is AI’s longstanding work at the UN against enforced disappearances: the disturbing State practice of abducting government opponents, with officials refusing to acknowledge their arrest or whereabouts. When international concerns grew about widespread enforced disappearances in a range of Latin American countries, most notably Guatemala, Chile, and Argentina, the

General Assembly responded by adopting its first resolution on Disappeared Persons in December 1978 (resolution 33/173). The General Assembly expressed concern about the practice and asked the Commission on Human Rights to make recommendations. In turn, the Commission on Human Rights established its first thematic human rights mechanism, the Working Group on Enforced or Involuntary Disappearances, in Resolution 20 (XXXVI) of 29 February 1980. Consisting of five independent experts, the group started to “examine questions” relating to enforced disappearances, and to clarify their fate or whereabouts. The Working Group’s authoritative reports and case studies, which remain on its books until a “disappeared” person is found dead or alive, continue to be a thorn in the eye of governments that resort to this appalling practice. In June 1980, when the working group was about to start work, AI US organised a retreat in Racine, Wisconsin in order to bring together information and expertise gained on enforced disappearances worldwide. Human rights activists, UN experts and AI’s own researchers participated. They analysed what exactly constitutes a “disappearance” and who the perpetrators were. They traced its origins to 1941 as an acknowledged State practice in Nazi Germany, reviewed case studies in the Americas, Africa and Asia, as well as the reaction by the UN and regional bodies, and proposed a range of specific recommendations. The authoritative report resulting from the Racine retreat still serves as a model for effective AI influence into UN human rights work.<sup>20</sup> Occasionally, AI followed the same approach when tackling new areas of work on, for example, extrajudicial executions, discussed below.

As part of its 1981-1982 campaign against enforced disappearances, AI sections successfully lobbied the Commission on Human Rights by presenting nearly 200,000 signatures in a petition to renew the mandate of the Working Group on Enforced or Involuntary Disappearances. This action came at a critical time

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<sup>20</sup> MARTOS, B.B. (ed.), ‘Disappearances – A Workbook’, Amnesty International USA Publication, New York, 1981.

considering that some governments of countries where enforced disappearances had occurred threatened to end the group's mandate and cut its staff. In 1993, AI decided that the climate was ripe to start working for a legally binding convention on enforced disappearances and started preparing the ground, closely collaborating with families of the "disappeared". The organisation's experts were closely involved when it came to the actual drafting of the text for a convention, which was concluded in a record time of four years. In 2006, the General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance (Disappearances Convention). The Convention is one of the strongest human rights texts the UN ever adopted, and aims to establish the truth about enforced disappearances, punish the perpetrators, and provide reparations to victims and their families. It is also an important tool to prevent people becoming victims of enforced disappearances. AI section lobbyists worked hard to ensure the adoption of the Disappearances Convention in the General Assembly, and later lobbied in capital cities around the world to get the necessary 20 States to ratify the Disappearances Convention. After 17 years of AI efforts to achieve this, in December 2010, the Disappearances Convention entered into force.

- **New standards recently adopted**

Reflecting AI's commitment to the protection of all human rights, AI also participated in the drafting of the Optional Protocol on Economic, Social and Cultural Rights. AI worked closely with a new range of NGOs and lobbied vigorously for its adoption in order to strengthen the legal enforcement of economic, social and cultural rights that is now part of its Demand Dignity campaign, initiated in 2009 to fight human rights abuses that keep people poor. The Optional Protocol grants individuals the option to petition the UN about violations of rights guaranteed in the ICESCR and can help address poverty and discrimination. Concluding a process started by

the UN already in 1993, the General Assembly adopted the Optional Protocol to the ICESCR in December 2008, 42 years after the (first) Optional Protocol to the ICCPR. This long interval no doubt reflects the ongoing debate in some northern countries about whether economic, social and cultural rights are legally enforceable in the first place.

Furthermore, AI sections and the AI UN office in New York promoted the adoption of the UN Declaration on the Rights of Indigenous Peoples – which took no less than 25 years to negotiate – by the General Assembly in September 2007.<sup>21</sup> AI also provided expert input into implementation mechanisms to the Convention on the Rights of Persons with Disabilities during negotiations in New York, and lobbied for its adoption, which happened on 13 December 2006. The convention was drafted swiftly – in four years – and is a model because of the unprecedentedly close involvement of persons with disabilities themselves in the drafting process. That could mark an important precedent for effective participation by stakeholders in future human rights drafting processes. Last but not least, AI is involved in a major, longstanding and ongoing campaigning effort at the General Assembly to adopt a strong Arms Trade Treaty, an international legally binding instrument that would halt transfers of arms and ammunitions that fuel conflict, poverty and serious violations of human rights, and international humanitarian law. AI works with both governments in the south and the north, and with sister NGOs OXFAM and IANSA in the “Control Arms” campaign, sometimes using New York rickshaws to deliver campaigning material to UN missions to attract attention as well. Its campaigning effort started in 2003 and is far from completed. Successful campaigning for strong human rights standards takes a lot of expertise, some bold imagination, and, above all, stamina.

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<sup>21</sup> Unfortunately, Australia, Canada, New Zealand and the US voted against the Declaration, something which rarely happens when the General Assembly adopts new human rights standards.

- **The death penalty**

As for standards to protect the right to life there is no doubt that AI, which has campaigned against the death penalty for decades, played a key role in the adoption of a highly contentious General Assembly resolution calling for a world-wide moratorium on executions. For a long time, it seemed impossible for the General Assembly to adopt a resolution on the issue, because people and governments passionately hold opposing views. The General Assembly had already seen European Union efforts twice defeated, first in 1994 and again in 1999. That ill-fated attempt was led by Finland, which later, embarrassingly, had to withdraw its draft resolution. AI had campaigned against the death penalty at the Commission on Human Rights for years, laying the groundwork for an initiative at the General Assembly. In a surprise move, Italy pushed the EU in 2006 for a statement calling for a moratorium on executions (which was presented to the General Assembly in December by 85 countries). The next year, Italy argued for a draft resolution at the General Assembly. The sense was that the amateur video showing the humiliation and brutality of Saddam Hussain's execution, in January 2007, had caused revulsion and created a more positive climate for such an initiative to succeed at the UN in New York. For instance, the newly appointed Secretary-General, Ban Ki-Moon, reversed his earlier position towards the death penalty – he suddenly took an opposing stance – a day after he seemed to have washed his hands of it by declaring on 2 January 2007 that 'the issue of capital punishment is for each and every Member State to decide'.<sup>22</sup>

AI decided to throw its expert knowledge and campaigning resources behind the move for a General Assembly resolution. AI worked together with some key governments from various regions favouring abolition, stressing this had to be a cross-regional

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<sup>22</sup> UN News Centre, 'Ban Ki-moon takes over as UN Secretary-General, calls for common action to face crises', 2 January 2007, *available at*: [www.un.org/apps/news/story.asp?NewsID=21137&Cr=ban&Cr1=ki-moon](http://www.un.org/apps/news/story.asp?NewsID=21137&Cr=ban&Cr1=ki-moon).

initiative. As partner of the World Coalition against the Death Penalty, AI presented with NGO partners over 5 million signatures calling for a moratorium on executions to the President of the General Assembly in November 2007. AI repeatedly bombarded UN diplomats with timely arguments on the issue. Based on a detailed analysis by its death penalty expert of previous attempts to derail a death penalty resolution at the General Assembly, AI sent a closely argued Aide Memoire to all governments on the reasons why possible amendments to the draft text – which, if successful, would have killed the draft resolution – were unacceptable.<sup>23</sup> The organisation stressed that the death penalty was a human rights issue and not a political issue within the domestic jurisdiction of States. AI was later told by several diplomats that its detailed arguments had been persuasive in the subsequent vote. Simultaneously, AI sections lobbied key countries that could be persuaded towards a more positive vote in their capitals. AI's researchers travelled to New York to lobby diplomats before the vote. Furthermore, AI hosted a public meeting at the UN at which survivors who had spent years on death row movingly spoke about their experiences. Three main factors were essential to the eventual successful adoption of a resolution; African countries were split on the issue<sup>24</sup>; the EU abandoned its “ownership” of the issue and agreed that this had to be a cross-regional initiative; and the resolution's main demand was scaled down from the abolition of the death penalty per se to a call for a moratorium on executions. After an acrimonious debate in which all attempts to bring many amendments to the resolution were defeated in the presence of numerous Ambassadors in the Third Committee – their unusual presence in the Committee marking the high importance governments attach to the issue – the General Assembly

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<sup>23</sup> Amnesty International Aide-Memoire on Possible Amendments to Draft Resolution on Moratorium on Executions before the General Assembly, 8 November 2007.

<sup>24</sup> An increasing number of African countries oppose the death penalty and Gabon was one of the strongest advocates of the resolution in the General Assembly.

adopted a landmark resolution calling on States maintaining the death penalty ‘to establish a moratorium on executions with the view to abolishing the death penalty’.<sup>25</sup>

#### **4. GROWING LEGITIMACY AND NEW MECHANISMS TO PROTECT HUMAN RIGHTS**

In political terms, human rights started to become a factor in foreign policy in the late 1970s. One influential factor was the decision of US President Jimmy Carter to adopt a human rights policy. In the General Assembly in 1977, he declared that ‘No member of the United Nations can claim that mistreatment of its citizens is its own business. Equally no member can avoid its responsibility to review and to speak when torture or unwarranted deprivation occurs in any part of the world’.<sup>26</sup> Many other governments had already become more actively involved in the human rights debate. Nearly ten years later, in 1986, Amnesty’s Representative at the UN, Margo Picken, wrote in an internal assessment that ‘During the last decade particularly, human rights have become a legitimate subject for discussion within the UN’. And it showed.

Massive human rights violations in Latin American countries, including political imprisonment, torture and enforced disappearances, created a strong sense that the international community needed to respond. In 1975, the Commission on Human Rights established its first mechanism to inquire into the human

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<sup>25</sup> General Assembly Resolution 62/149, 26 February 2008, was adopted by the General Assembly’s Third Committee with 99 in favour, 52 against and 33 abstentions, and in December 2007 adopted by the General Assembly sitting in plenary with an improved vote of 104 in favour, 54 against 29 abstentions.

<sup>26</sup> CARTER, J., ‘United Nations - Address Before the General Assembly’, 17 March 1977, online by PETERS, G. and WOOLLEY, J.T., ‘*The American Presidency Project*’, available at: [www.presidency.ucsb.edu/ws/?pid=7183](http://www.presidency.ucsb.edu/ws/?pid=7183).

rights situation in a specific country not related to apartheid.<sup>27</sup> It set up a five-member Working Group on the human rights situation in Chile, which, in 1979, was replaced by a Special Rapporteur. This set a precedent for the development of the crucially important body of country-specific and thematic UN human rights Rapporteurs and representatives (officially called the UN Human Rights Council's Special Procedures), which have become, in the words of former UN Secretary-General Kofi Annan, the "eyes and ears" of the UN human rights system. Indeed, he referred to them as the UN's "crown jewels".<sup>28</sup>

By 1985, the Commission on Human Rights had established two more Special Rapporteurs dealing with thematic issues. They were given key mandates addressing torture and summary or arbitrary executions, against which AI had campaigned. For example, AI Netherlands organised a timely seminar on extrajudicial executions in 1981, followed by an AI international conference on extrajudicial executions in May 1982. Its recommendations were sent directly to the Commission on Human Rights. The Commission appointed a Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions that same year, and, in 1985, a Special Rapporteur on Torture. Since then, the Commission on Human Rights has established a wide range of rapporteurs and experts with thematic mandates on economic, social and cultural rights, such as the right to water, sanitation and housing as well as on civil and political rights. These so-called "Special Procedures" have been tasked with analysing and reporting on thematic situations in addition to making specific recommendations to governments to halt and prevent specific types of human rights violations. Occasionally, they

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<sup>27</sup> The first such mechanism was established in 1967 to deal with human rights violations resulting from the "Apartheid" system in South Africa: the Commission on Human Rights in Resolution 2 (XXIII) set up and Ad Hoc Working Group of experts on South Africa to study ill-treatment of prisoners and detainees.

<sup>28</sup> Secretary-General, in message to Human Rights Council, United Nations Department of Information (SG/SM/1769. HR/49) 29 November 26.

have even been able to provide early warnings to the UN on impending, grave human rights violations, such as the Rwandan genocide and, later, the situation in Sudan.<sup>29</sup>

Since 1975, the Commission on Human Rights has also created a range of country-specific rapporteurs or representatives to publicly report to the UN on and recommend measures for better human rights protection in specific countries.<sup>30</sup> However, the most powerful countries at the UN, most notably the Permanent Five members of the Security Council, are virtually immune from such critical action, laying the system open to charges of selectivity and double standards.<sup>31</sup> AI became a crucial source of information for many of these UN country-specific and thematic rapporteurs. It also continues to promote their work at the UN in Geneva and New York, including by creating public platforms to have more in-depth public discussion of their analysis, findings and specific recommendations. AI also seeks to promote the independence of Special Rapporteurs as some have come under attack from governments disliking their independent human rights critiques. These governments generally

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<sup>29</sup> One year before the Rwanda genocide, the Commission on Human Rights ignored the pertinent recommendations of one of its Rapporteurs to prevent further massacres of civilians after he visited Rwanda in April 1993 (See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, mission to Rwanda from 8 to 17 April 1993, UN Doc.E/CN.4/1994/7/Add.1). A more recent example is the situation in Sudan (Darfur), see AMNESTY INTERNATIONAL, *Meeting the Challenge*, AI Index: IOR 40/008/2005.

<sup>30</sup> As of April 2011, the Special Procedures had 33 thematic and 8 country-specific mandates.

<sup>31</sup> The Commission on Human Rights only once passed a resolution critical of a member of the Permanent Five Security Council members – China, France, the Russian Federation, the United Kingdom and the United States of America. In 2001, it criticised the Russian Federation's use of disproportionate and indiscriminate use of force in Chechnya (E/CN.4/RES/2001/24), but subsequent attempts for renewal failed. Initiatives to raise human rights concerns in China were never formally presented to the Commission on Human Rights or its successor, for lack of votes.

prefer 'constructive international dialogue and cooperation',<sup>32</sup> over critical reporting on countries, especially those countries with gross or chronic human rights problems. Moreover, AI works hard to help ensure that the best measures are in place to appoint highly qualified, fully independent mandate holders, on which the credibility of the whole Special Procedures system of course depends.

Special Rapporteurs' reports are also key to the adoption of country-specific resolutions at the UN Human Rights Council in Geneva as well as at the General Assembly in New York. As long as the new Human Rights Council, which replaced the Commission on Human Rights in 2006 (see below), has not established a solid practice to effectively address countries with serious or persistent human rights problems, AI continues to champion the adoption of country-specific resolutions by the General Assembly. In the weeks before a vote on a country-specific resolution, AI often publishes and distributes updates about human rights violations in the countries about to be discussed at the Third Committee of the General Assembly (which deals with human rights). In addition, AI lobbyists in sections and at the UN have consistently opposed a procedural device under Rule 116 of the General Assembly's Rules of Procedure. This 'No-Action Motion' is brought by countries seeking to prevent the General Assembly from adopting country-specific resolutions. The Motion was first used in 2004 and had the disastrous consequence of removing not only Zimbabwe from the General Assembly's country specific human rights agenda, but also Sudan – then ironically named by the Security Council to be on the brink of genocide. It is, therefore, encouraging that after both Iran and Myanmar had presented a No-Action Motion in 2008, but failed to get the necessary votes, in 2009, no country brought a No-Action Motion before the General Assembly. Furthermore, during that same session, all relevant resolutions dealing with violations in the Democratic Republic of Korea, Iran, and Myanmar – which made

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<sup>32</sup> Language used in General Assembly Resolution A/RES/60/25, establishing the Human Rights Council.

specific recommendations to those governments to stop violations and improve their human rights record – were adopted by the General Assembly.<sup>33</sup>

## **5. HUMAN RIGHTS INSTITUTION BUILDING**

Three specific examples are highlighted where AI played an important role.

- **Creating a High Commissioner for Human Rights**

In 1947, when the drafting preparations of the Universal Declaration on Human Rights were in full swing, the idea to establish a top UN official for human rights protection, in the form of an “Attorney-General for Human Rights”, was proposed as well. The idea gained momentum in the run-up to the 1993 World Conference on Human Rights in Vienna. It was felt that existing human rights mechanisms, although expanded, were simply inadequate to halt and prevent massive human rights violations occurring in many regions, including, at that time, in the Balkans. A high level voice speaking up for human rights was needed. AI Netherlands hosted a large conference in September 1992 with UN and NGO human rights experts. They agreed that a high-level official to respond promptly and effectively to serious violations of human rights should be established. AI played a key role in conceptualising the idea, and vigorously promoted it at UN preparatory conferences. This included outlining the case for a High Commissioner for Human Rights in a

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<sup>33</sup> At General Assembly 65<sup>th</sup> session in 2010, Iran took a last minute decision to bring a No-Action Motion, but it was defeated by a high number of 40 votes and is not likely soon to be repeated.

detailed report, entitled 'Facing up to the Failures'.<sup>34</sup> The proposal was included in the final report of the NGO meeting to the World Conference.<sup>35</sup>

At the last moment governments agreed to include the proposal in the Conference's outcome document – the Vienna Declaration and Programme of Action, in paragraph 18 urging the General Assembly to take steps to establish a High Commissioner for Human Rights. The General Assembly created the position in Resolution 48/141 of 20 December 1993.<sup>36</sup> The High Commissioner is the UN's top human rights official, who is appointed by, and independently reports to, the UN Secretary-General for a four-year, once renewable term. The current High Commissioner, Navanethem Pillay, has an extremely broad mandate to promote and protect the effective enjoyment by all of all human rights (a mandate that might be difficult to create today). All General Assembly members have to approve the appointment. The post is located in Geneva, with a liaison office in New York<sup>37</sup>. The High Commissioner's most

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<sup>34</sup> AMNESTY INTERNATIONAL, *World Conference on Human Rights - Facing up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations*, December 1992.

<sup>35</sup> It read: "3. An office of a High Commissioner for Human Rights should be established as a new high-level independent authority within the United Nations system, with the capacity to act rapidly in emergency situations of human rights violations and to ensure the coordination of human rights activities within the United Nations system and the integration of human rights into all United Nations programmes and activities", NGO-Forum Final report to the Conference, A/CONF.157/7, at p. 4.

<sup>36</sup> For a fascinating history by AI's Representative of events leading up to the creation of the position, see CLAPHAM, A., 'Creating the High Commissioner for Human Rights, the Outside Story', *EJIL*, Vol. 5, No. 4, 1994, pp. 556-56, available at: [www.ejil.org/pdfs/5/1/1267.pdf](http://www.ejil.org/pdfs/5/1/1267.pdf).

<sup>37</sup> AI had originally conceived the post to be located in New York, which would have facilitated close interaction with the UN's most powerful body that can take binding decisions; the Security Council. However, a range of governments were far from happy with the idea of such close proximity, and, therefore, insisted that the High Commissioner was sent to Geneva, were it was to join the (already existing) Centre for Human Rights.

important function is to be a champion of human rights when and wherever they are threatened or violated. The first High Commissioner took the courageous step to visit Burundi and Rwanda, during the time of the genocide, without seeking prior instructions from governments, and it laid down a crucial marker for the independence of the office. Since then, AI has worked persistently to support the High Commissioner and her office by providing information about specific human rights violations, and by continuously pushing for adequate resources for the office at the General Assembly. Indeed, at the 2005 World Summit held in New York the most welcome step to double the resources of the High Commissioner's office was taken on specific recommendations made by the then human rights friendly UN Secretary-General.

In New York, AI also worked for the High Commissioner's timely and regular access to the Security Council. The High Commissioner is allowed to brief the Security Council in closed or open meetings. She is not, however, allowed to do this on a regular, formal basis, as ought to be standard Security Council practice.<sup>38</sup> An obvious purpose of such regular meetings would be to brief the Security Council on the status of implementation of the human rights provisions that are now often included in resolutions adopted by it.<sup>39</sup> In 2008, AI and Human Rights Watch (HRW) urged the Secretary-General to appoint an extremely capable and highly qualified new High Commissioner. After Pillay's appointment, AI and other NGOs pressed the Secretary-General to establish a more transparent and inclusive selection process for future high-level appointments. This

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<sup>38</sup> Nevertheless, in recent years, it has been observed that the High Commissioner's office in New York does in fact regularly brief to the President of the Security Council, namely, each time a new member assumes Presidency (the Presidency rotates each month among the 15 Security Council members).

<sup>39</sup> This was a recommendation made in the report, commissioned by the UN Secretary-General in 2004, by the High-Level Panel on Threats, Challenges and Change: *A more secure world: our shared responsibility* (A/159/565 at paragraph 2 89).

included publication of both qualifications for appointment to the post and a shortlist of candidates (in contrast to the selection procedure of the last UN Secretary-General, this did not happen when the last High Commissioner was selected).

In 2009, AI and HRW also campaigned for higher level representation of the High Commissioner for Human Rights at UN headquarters in New York. That was necessary to ensure that the human rights voice of the High Commissioner is effectively heard at the highest level of UN day-to-day decision making, including in the Secretary-General's office. Status matters at the UN, and one's position in the UN hierarchy dictates to which meetings one is invited or not. Moments before closing budget discussions in its Fifth Committee session on 23 December 2009, the General Assembly, assisted by some very capable, human rights friendly ambassadors, agreed to create the post of Assistant Secretary-General for Human Rights to head the High Commissioner's office in New York.

- **Creating a new Human Rights Council**

In a near throw-away line in his major 2005 report on UN reform, entitled 'In Larger Freedom, towards development, security and human rights for all', then UN Secretary-General Kofi Annan announced that what used to be the UN's prime human rights body, the Commission on Human Rights, 'suffered a credibility deficit'.<sup>40</sup> He recommended its replacement by a smaller, more authoritative body with higher status in the UN system and sitting throughout the year: a Human Rights Council. Considering that this took place in the wake of the US's invasion of Iraq, which the Security Council had refused to authorise, AI was worried that the creation of a new

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<sup>40</sup> Report of the Secretary-General. UN Doc. A/59/2005 (paragraph 182, and paragraph 183 on the creation of a Human Rights Council.) Kofi Annan said that the Commission on Human Rights suffered a 'credibility deficit [...] which casts a shadow on the reputation of the United Nations system as a whole'.

human rights body at that time, which, quite frankly, was hostile to human rights, could mean that one could end up with a weaker human rights body than the existing one.

AI drew the red lines: any new human rights body would have to be built on the strengths of the existing Commission on Human Rights. Furthermore, it must preserve, first, the system of country and thematic rapporteurs, called the Special Procedures; second, the unique rights and customary activities of NGO's under ECOSOC's consultative status system; and, third, the mandate to take political action against countries with serious human rights violations. All this was eventually achieved. In addition, AI worked hard for the UN to create a new human rights body that was stronger than the existing Commission on Human Rights. The UN Office worked closely with several NGOs, especially HRW, liaised closely with the Office of the President of the General Assembly, which oversaw the entire process, and intensively lobbied key Member States, from North and South. AI produced an evolving annotated commentary on successive draft texts for the new Human Rights Council immediately after new drafts became public. In an attempt to influence the debate right at the start, AI set out its vision of what a new Human Rights Council should look like in a key report of April 2005, entitled 'Meeting the Challenge: transforming the Commission on Human Rights into a Human Rights Council'.<sup>41</sup> The report served as the basis for subsequent extensive lobbying by AI sections.

After a tumultuous summer of negotiations, in which a newly appointed US Ambassador could have derailed the process by presenting hundreds of last-minute amendments to the President of the General Assembly's draft text, the world leaders assembled at the September 2005 World Summit in New York, and "resolved to create a Human Rights Council". The President of the General Assembly was tasked with conducting open negotiations to establish the mandate and membership of the new Council. During the World

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<sup>41</sup> AMNESTY INTERNATIONAL, Public Statement, 9 August 2005, AI Index: IOR 40/008/2005.

Summit, it was also decided to endorse the “emerging norm” of “the responsibility to protect” (as described above).<sup>42</sup>

A contentious issue was the new Council's membership. The Commission on Human Rights had 53 members. Countries like France and Germany felt that greater authority would be achieved by a new body with universal membership, in which all UN Member States participated. On the other hand, the US wanted a smaller and more effective body, with a membership more like the 15-member Security Council, consisting of countries “with a good human rights record” to do effective business. This was opposed by many countries, especially from the South, fearing they would be excluded from important decision-making. They felt this would enhance practices of “selectivity and double standards” for which the Commission on Human Rights was often criticised. Apparently, some countries, like China, did not want a Human Rights Council at all. Many other countries also opposed the proposal to elevate the status of the new Human Rights Council to that of a “principal organ” – which would have put it on par with the General Assembly and the Security Council and enhanced its ability to influence the latter.

AI and other NGOs lobbied strongly against some proposals that would have seriously weakened the new Human Rights Council and the independence of the High Commissioner. For example, China proposed that the work of the High Commissioner should be supervised by the new Human Rights Council. Cuba, Venezuela, Sudan, Pakistan, and others wanted to exclude any country examinations from the Council's mandate, except in a secret procedure. Others proposed that country-specific resolutions should only be adopted by a two-third majority vote, which would have made their adoption extremely difficult. Yet, other countries wanted to curb the independence of the special procedures. Eventually, the

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<sup>42</sup> 2005 World Summit Outcome (A/RES/60/1), paras. 157-160 on the creation of the Human Rights Council, paras. 138-139 on the “responsibility to protect”, and para. 9 on human rights as one of three pillars of the UN.

General Assembly, under the strong leadership of its President Jan Eliasson, helped by a few committed and politically astute ambassadors, and subject to persistent lobbying by NGO's like AI, created the new Human Rights Council on 15 March 2006. There were fears that the US might vote against it (which it did) or that Cuba (for a major group of developing countries) might make last minute amendments (which it did not). Thus, the resolution creating the Human Rights Council was adopted.<sup>43</sup>

The Human Rights Council is established as a subsidiary body of the General Assembly, and consists of 47 members (thus, it is slightly reduced in size compared to the 53 members of the Commission). The western group and its traditional allies lost their near majority, while the Asian and African group now has a clear majority of votes. The dominance of the most powerful countries prevailing in the Commission was broken by the requirement that any member can only serve a maximum of six years in the Council. The system of Special Procedures was maintained intact. The Human Rights Council's most innovative mechanism is the Universal Periodic Review, in which, for the first time in the UN's history, the human rights record of *all* countries is scrutinised by their peers. UN human right reviews of powerful countries, such as the US and China, had previously been thought unthinkable. Although this is not the place to review the new Council's strengths and weaknesses, a key AI critique of the new Human Rights Council is its reluctance to take critical action on serious or chronic human rights violations in specific countries. It has been observed, however, that some improvement may be on the way.<sup>44</sup>

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<sup>43</sup> General Assembly Resolution A/RES/60/251, adopted on 3 April 2006. One hundred and seventy countries voted in favour, four against (US, Israel, Palau and the Marshall Islands) and three abstained (Iran, Venezuela and Belarus). But the US made a conciliatory statement promising that it 'will work cooperatively with other Member States to make the Council as strong and effective as it can be'.

<sup>44</sup> See AMNESTY INTERNATIONAL, *'Making it Work – The reviews of the Human Rights Council 2011'* in which AI wrote: 'Ongoing failure to address

- **Creating a new UN entity for women**

Building on its longstanding campaign to stop violence against women, AI played a significant role in championing for the creation of a stronger, consolidated UN entity for women to advance the promotion and protection of women's rights. Working closely with hundreds of NGOs in the Gender Equality Architecture Reform (GEAR) campaign, AI lobbied many individual governments and initiated a global petition, which it handed to the President of the General Assembly in June 2010, urging him to prioritise the establishment of the new UN entity on women. After four years of persistent work, the UN Entity for Gender Equality and the Empowerment of Women (UN Women) was created on 2 July 2010 by the General Assembly, and became operational in January 2011. UN Women consolidates and strengthens the work of four UN entities dealing with women's issues.<sup>45</sup> It will also promote gender equality and empowerment of women across the UN system. AI continues to push hard for UN Women to have a strong in-country presence, and for mechanisms to ensure that meaningful consultations with NGOs at country, regional and international levels take place.

UN Women should help to advance gender equality and empower women by assisting those working at the grassroots level. It

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situations of violations of human rights undermines the credibility of the Council' (AI Index: IOR 41/001/2011, page 9). For indications of some recent improvements, see, for example, HUMAN RIGHTS WATCH, 'UN Rights Body acts decisively on Iran, Cote d'Ivoire, 25 March 2011, *available at*: [www.hrw.org/en/news/2011/03/25/un-rights-body-acts-decisively-iran-cote-d-ivoire](http://www.hrw.org/en/news/2011/03/25/un-rights-body-acts-decisively-iran-cote-d-ivoire), and AMNESTY INTERNATIONAL, 'Suspension of Libya from Human Rights Council welcomed', 2 March 2011, *available at*: [www.amnesty.org/en/news-and-updates/suspension-libya-hrc-welcomed-2011-03-02](http://www.amnesty.org/en/news-and-updates/suspension-libya-hrc-welcomed-2011-03-02).

<sup>45</sup> The four entities are: the UN Development Fund for Women (UNIFEM), the Division for the Advancement of Women (DAW), the International Research and Training Institute for the Advancement of Women (INSTRAW), and the Office of the Special Adviser to the UN Secretary-General on Gender Issues and Advancement of Women (OSAGI).

should play a key role in helping women claim their human rights, and should also assist governments in meeting their obligations to implement measures for the protection of women's rights. Furthermore, it should encourage people to defend women's rights, and, as Security Council Resolution 1325 requires, promote best practices in ending impunity for violence against women and in engaging women in peace talks. The new body should also facilitate effective consultation with women on implementation of the UN's Millennium Development Goals (MDGs) to ensure that development efforts advance the rights of women, including the most marginalised among them.

## **6. PEACEKEEPING AND PROTECTION OF CIVILIANS: BRINGING A HUMAN RIGHTS DIMENSION IN SECURITY COUNCIL WORK**

The UN's peacekeeping work is mandated by the Security Council, which traditionally was opposed to including human rights in its discussions and decisions. Its members argued that human rights had no place in Security Council action because they belonged solely to a sovereign State's internal affairs. They cited provisions in the UN Charter prohibiting the UN 'to intervene in matters which are essentially within the domestic jurisdiction of any State', and emphasised that the Security Council has the 'primary responsibility for the maintenance of *international* peace and security' (emphasis added).<sup>46</sup> These arguments have now long been overtaken, but were forcefully put forward during the cold war. Its end, in the late eighties, facilitated the gradual realisation by the Security Council

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<sup>46</sup> Articles 2(7) and 24 of the UN Charter respectively. Interestingly, article 24(2) of the Charter requires the Security Council to 'act in accordance with the Purposes and Principles of the United Nations', which, as pointed out above, specifically includes human rights provisions that Security Council members conveniently forgot at the time.

that human rights are an important element in achieving lasting peace and security, and should, thus, be incorporated into the Council's work, including UN peace operations.<sup>47</sup>

In the 1990s, AI's representative at the UN played a key role in pushing for strong human rights components in a range of UN missions. AI's UN Office lobbied members of the Security Council and UN officials, analysed the strengths and weaknesses of specific UN missions, and made specific recommendations to the UN and governments for improvement.<sup>48</sup> Particularly influential was AI's path-breaking 1994 report written by Andrew Clapham, AI's Representative at the UN at that time. It was AI's first public critique of the UN. Although there has been considerable improvement since then, its analysis is still relevant today and reads in part:

Amnesty International believes that the UN has so far failed to build essential measures for human rights promotion and protection consistently into its peace-keeping activities. It is time for the UN to develop a more coherent and comprehensive approach. It must ensure that human rights concerns are addressed in the planning and implementation of any peace-keeping operation and that mechanisms are established within the operation to secure the full protection of human rights both during the transitional settlement period and in the longer-term, when the main UN operation comes to an end.<sup>49</sup>

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<sup>47</sup> For a review of the first steps taken by the Security Council, see WESCHLER, J., [Chapter 4:] 'Human Rights', in: MALONE, D.M. (ed.), *The U.N. Security Council: From the Cold War to the 21st Century*, pp. 55-68 (Project of the International Peace Academy).

<sup>48</sup> See for example CLAPHAM, A. and MARTIN, F., 'Smaller Missions Bigger Problems', in: HENKIN, A.H. (ed.), *Honoring Human Rights from Peace to Justice; Recommendations to the International Community*, the Aspen Institute, Washington, 1998, pp. 131-161.

<sup>49</sup> AMNESTY INTERNATIONAL, *Peacekeeping and Human Rights*, January 1994, AI Index: IOR 40/01/94, Introduction, available at: [www.amnesty.org/en/library/asset/IOR40/001/1994/en/dba0cc2f-ec2b-11dd-8d9d-a7825928c0bf/ior400011994en.pdf](http://www.amnesty.org/en/library/asset/IOR40/001/1994/en/dba0cc2f-ec2b-11dd-8d9d-a7825928c0bf/ior400011994en.pdf).

The report includes, in Part III, AI's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations. Many of these points are still valid today. AI called for a policy of "No international silent witnesses", highlighted the need for substantive human rights chapters in peace agreements, and also addressed the gender dimension of UN operations. Apart from underlining the need for consistent, on-site monitoring, investigating and frequent and public reporting on human rights violations by the UN (issues the AI Office in New York continues to pursue in a range of UN peace missions especially in Africa), the report highlighted that 'the UN itself and all its personnel must set an example and demonstrate their own adherence to international humanitarian and human rights standards at all times'.<sup>50</sup> Action was taken a few years later.<sup>51</sup>

Another moment marking an advance for human rights in Security Council practice was the adoption of landmark Resolution 688 on Iraq in April 1991, after Saddam Hussein's forces invaded Kuwait and committed widespread violations of human rights and international humanitarian law. This was the first resolution in which the Security Council linked widespread human rights violations directly to peace and security.<sup>52</sup> Interestingly, two years earlier, AI

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<sup>50</sup> *Idem*, p. 2.

<sup>51</sup> AI wrote in point 13: 'In the short term, an unambiguous statement should be issued by the UN Secretary-General, as well as a declaration adopted by the General Assembly and the Security Council, affirming that forces acting under UN authority are bound by international human rights standards and international humanitarian law'. On 6 August 1999, the UN Secretary-General issued a bulletin 'Observance by United Nations Forces of International Humanitarian Law' (ST/SGB/1999/13). It addressed the need for UN forces to comply with the rules of international humanitarian law, although it did not include human rights law.

<sup>52</sup> In Resolution 688 of 5 April 1991, the Security Council condemned 'the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region [...] [and] Demands that Iraq, as a contribution to remove the threat to international peace and security in the

had issued its first ever appeal to the Security Council, calling for action on human rights violations committed by the Iraq regime and taking the UN Charter as the basis for its appeal. On 8 September 1988, AI publicly urged the Council to act to stop the massacre of Kurdish civilians in northern Iraq by Saddam Hussein's military forces. AI said that 'these killings represent a most serious violation of the purposes of the United Nations Charter' and that the systematic human rights violations taking place in Iraq 'call for immediate action by the Security Council'.<sup>53</sup>

The grave human rights violations in Iraq prompted another first for the Security Council. Notwithstanding strong reservations expressed by some of its members at that time, most notably India, the Security Council heard its first briefing by the Special Rapporteur on Iraq in August 1992 – the Rapporteur's recommendation to place human rights monitors in Iraq, however, failed to get the Council's support. Max van der Stoep's appearance before the Security Council was all the more remarkable since the then UN Secretary-General, Boutros-Boutros Ghali, apparently believed that human rights were not a security issue and did not belong in the Security Council. No UN Special Rapporteur with a country-specific human rights mandate has since briefed the Security Council, although the High Commissioner for Human Rights has occasionally been able to brief its members on human rights in specific countries.<sup>54</sup>

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region, immediately end this repression'. Cuba, Yemen and Zimbabwe voted against, China and India abstained.

<sup>53</sup> AMNESTY INTERNATIONAL, 'Amnesty International calls on UN Security Council to halt Massacre of Kurds by Iraqi Forces' (AI Index MDE 14/08/88).

<sup>54</sup> Until this day, the Security Council has remained most reluctant to hear directly from the UN's human rights experts. The AI UN Office has persistently campaigned for country or thematic human rights rapporteurs to brief the Security Council in situations where this is appropriate, but with little success. In March 2002, Radhika Coomaraswamy, then Special Rapporteur on Violence against Women, was the first UN Special Rapporteur with a thematic mandate to brief the Security Council in a closed session. The only other exception is the Special Rapporteur on the promotion of human rights while

The Security Council should be more open to the information these UN human rights experts provide, not only for countries already on their agenda, but also because UN Special Rapporteurs can perform an important early warning function. As noted, the Commission on Human Rights, unfortunately, ignored the warnings by its UN Special Rapporteur on extrajudicial, summary or arbitrary judicial executions of an impending genocide in Rwanda. The Rapporteur expressed his concerns after his visit to the country in April 1993, a year before an estimated 800,000 innocent civilians were massacred. This failure to act on Rwanda is still a huge blot on the Security Council's record. Had it taken note of the UN human rights system's early warning signals of impending genocide in Rwanda, the Security Council might have been prompted to act to prevent the killings by, for example, extending its UN peacekeeping force in Rwanda, rather than reducing its strength from 2,000 to 260 personnel at a time when it was most needed.<sup>55</sup>

Meanwhile, the Security Council has established two *ad hoc* tribunals to try the perpetrators of serious violations of international humanitarian law in Rwanda and the former Yugoslavia.<sup>56</sup> Moreover, in the last decade and a half, the Security Council has increasingly demanded in numerous thematic and country-specific resolutions that 'parties to armed conflict comply strictly with the obligations applicable to them under international humanitarian, human rights and refugee law', that they end violations of human rights and international humanitarian law, and underlined that there will be no

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countering terrorism, who briefs the Security Council's Counter Terrorism Committee each year.

<sup>55</sup> See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, mission to Rwanda from 8 to 17 April 1993, UN Doc.E/CN.4/1994/7/Add.1.

<sup>56</sup> Established by UN Security Council Resolution 827, S/RES/827, 25 May 1993; and UN Security Council Resolution 955, S/RES/955, 8 November 1994 respectively.

impunity for violators.<sup>57</sup> Furthermore, the Security Council has urged political parties to take into account human rights records when selecting people in elections for a new government and allow immediate access for human rights monitors.<sup>58</sup> Exceptionally, the Security Council has even requested the UN Secretary-General to establish an international commission of inquiry into alleged violations of international human rights and humanitarian law, including possible acts of genocide – as it did, for example, in Darfur (Sudan).<sup>59</sup>

Nearly all UN peacekeeping operations now include a human rights monitoring component, child protection officers and gender advisers, even though the Security Council does not always give their reports the attention they deserve. AI continues to lobby persistently for strong human rights mandates to be included in UN peace operations, and to brief members of the Security Council on specific human rights concerns in countries on its agenda, especially before Security Council members go on field visits. AI criticises the

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<sup>57</sup> See, for example, the Security Council's latest resolutions on protection of civilians: Resolution 1894, S/RES/1894, 11 November 2009, Operative Paragraph 1), Resolution 1973, S/RES/1973, 19 March 2011 on Libya, and Resolution 1556, S/RES/1556, 30 July 2004 on Sudan, in which the Security Council condemns 'all acts of violence and violations of human rights and international humanitarian law by all parties to the crisis [...] including indiscriminate attacks on civilians, rapes, forced displacements and acts of violence especially with an ethnic dimension [...] [and urges] all the parties to take the necessary steps to prevent and put an end to violations of human rights and international humanitarian law and underlining there will be no impunity for violators'.

<sup>58</sup> UN Security Council Resolution 1468, S/RES/1468, 20 March 2003; and UN Security Council Resolution 1970, S/RES/1970, 26 February 2011.

<sup>59</sup> UN Security Council Resolution 1564, S/RES/1564, 18 September 2004 requests, in paragraph 12, 'that the Secretary-General rapidly establish an international commission of inquiry in order to immediately investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable [...]'.  
*SIM Special 36*

Security Council when it fails to include adequate human rights provisions in its resolutions, as it did for example in Afghanistan. It also works to strengthen the monitoring of arms embargoes imposed by the Security Council. For example, AI sent a detailed report to the Security Council in an informal meeting on arms transfers to and human rights violations in the DRC, where a mandatory arms embargo was imposed with specific recommendations to strengthen the embargo.<sup>60</sup> Despite the lack of Security Council determination to consistently follow through on the human rights provisions in its own resolutions, or its failure to act on the recommendations of its own expert panels, which monitor implementation of sanctions or arms embargoes imposed on countries, the inclusion of sometimes far-reaching human rights provisions in numerous Security Council resolutions is a major step forward, especially considering that this was simply unimaginable even two decades ago.

- **Protection of civilians**

Protection of civilians during armed conflict, including women from sexual violence, is now a routine part of mandates of UN peace operations. The Security Council gave a particularly strong mandate to the UN operation in the DRC in Resolution 1925 (2010), requiring that it makes the protection of civilians a priority.<sup>61</sup> Thematic

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<sup>60</sup> AMNESTY INTERNATIONAL, Democratic Republic of Congo: Arming the east, AI index: AFR 62/006/2005, July 2005.

<sup>61</sup> UN Security Council Resolution 1925, S/RES/1925, 28 May 2010 on the DRC emphasises in paragraph 11 ‘that the protection of civilians must be given priority in decisions about the use of available capacity and resources and authorises MONUSCO to use all necessary means, within the limits of its capacity and in the areas where its units are deployed, to carry out its protection mandate’. The latter is specified in paragraph 12 to include ‘human rights defenders, under imminent threat of physical violence, in particular violence emanating from any of the parties engaged in the conflict’ and the need to protect civilians from ‘violations of international humanitarian law and human rights abuses, including all forms of sexual and gender-based violence, to promote and protect human rights and to fight impunity [...]’.

resolutions on protection of civilians and on children and armed conflict, adopted by the Security Council, often act as trailblazers for concrete action for human rights protection elsewhere. NGOs, including AI, have worked to strengthen human rights components, first, in the reports of the UN Secretary-General that form the basis for Security Council action, and, second, in the resolutions that the Security Council adopts as a result.

Since 1999, for example, the UN Secretary-General wrote a range of strong reports on the protection of civilians. His fourth report on that issue, published in May 2004, addressed human rights, accountability, gender issues, and sexual violence. Furthermore, it drew attention to the potential contributions of the High Commissioner for Human Rights, while carrying out visits to monitor crisis situations on the Security Council's agenda, as well as to the Security Council's powers to refer specific situations to the International Criminal Court.<sup>62</sup> His fifth report<sup>63</sup> laid the groundwork for a particularly strong Security Council resolution, which was adopted the following year. In resolution 1674 (2006) the Security Council not only reaffirms the concept of a State's "responsibility to protect" its populations from genocide, war crimes, and crimes against humanity, but also warns "that the deliberate targeting of civilians and other protected persons, and the commission of widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security and reaffirms in this regard its readiness to consider such situations and, where necessary, to adopt appropriate steps".<sup>64</sup> In fact, as pointed out at the beginning of this article, the Security Council did affirm its readiness to protect civilians when it recently authorised "all necessary means" to protect

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<sup>62</sup> Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, S/2004/431, paragraphs 39, 52 and 55.

<sup>63</sup> Report of the Secretary-General on the protection of civilians in armed conflict, S/2005/740.

<sup>64</sup> Security Council Resolution 1674, S/RES/1674 (2006) paragraphs 4 and 26.

civilians in Libya and Cote d'Ivoire. It is not surprising, therefore, that some permanent Security Council members, such as China and the Russian Federation, are not keen on such thematic debates and resolutions, as they seem to pave the way for robust action by the Security Council to protect civilians in specific countries in the future. AI and other NGOs have also pushed some diplomats to address human rights concerns in the Security Council – for instance, during public debates on protection of civilians – in particular with regard to specific countries that the Security Council does not want to put on its agenda, such as Myanmar, Sri Lanka and Zimbabwe (probably due to the fact that they have powerful friends among some permanent Security Council members).

- **Women, peace and security**

AI has worked successfully with other NGO's and key governments for stronger provisions on women's human rights in resolutions renewing UN peace mandates, including mandates to protect women from gender-based violence in peace-keeping operations. At the UN, AI based this work on landmark Resolution 1325, which the Security Council adopted in 2000. That Resolution seeks to promote women's human rights in situations affected by conflict, advocates effective participation of women in peace negotiations, and measures to end impunity for sexual violence. Many governments paid lip service to the resolution's provisions but have not been willing to pursue effective implementation in UN operations or in training of UN personnel.

A trigger for stronger Security Council action came when appalling accounts of sexual violence and abuse emerged in the Democratic Republic of the Congo (DRC), documented by the UN and NGOs, including AI. AI played a substantive role in the run-up to the unanimous adoption of Resolution 1820 (2008), the first follow-up to Resolution 1325. Resolution 1820 established a clear

link between sexual violence and sustainable peace and security.<sup>65</sup> One year later, Resolution 1888 (2009) was unanimously adopted. It strengthens the UN's political commitment to halt conflict-related sexual violence. The Resolution calls for the high-level appointment of a Special Representative of the Secretary-General to coordinate the fight against sexual violence. It also establishes a novel mechanism: the rapid deployment of a team of experts by the UN Secretary-General where there is a particular need to strengthen justice systems to end impunity for sexual violence in armed conflict (provided there is consent from the host government). A month later, the Security Council adopted Resolution 1889 (2009), which sets global indicators to monitor the implementation of Resolution 1325. Finally, Resolution 1960, adopted in 2010, seeks to improve the UN's monitoring, analysis and reporting procedures on sexual violence, including countries which are not on the Security Council's agenda. The AI UN office worked with diplomats on the strongest human rights text in these resolutions, and is currently advising on how Resolution 1960 should be implemented, taking human rights standards into account.

## **7. ACCOUNTABILITY, IMPUNITY AND THE ICC**

AI has persistently campaigned for accountability for grave human rights violations in a range of countries. Early on, it realised that an international judicial mechanism was necessary to help ensure that those responsible for grave violations of international human rights and humanitarian law are brought to justice. Already in 1971, Sean Mac Bride, then chair of AI's International Executive Committee, wrote in a foreword to AI's annual report:

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<sup>65</sup> In paragraph 1, the Security Council 'affirms [...] that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security'.

‘Obviously, those who massacre civilians, or ill-treat prisoners should be tried publicly by an International Tribunal and punished under international law. Until such an International Tribunal is established, let us at least have a permanent UN Commission of Inquiry that will investigate and publicly place responsibility’.<sup>66</sup> It took years to create the former (the ICC), and the latter still remains a dream.<sup>67</sup>

One of the most positive changes in the Security Council’s human rights record is, as noted, its readiness to repeatedly declare that there can be no impunity for war crimes, crimes against humanity and genocide. The triggers for change were the genocide in Rwanda as well as the war crimes committed in the former Yugoslavia in the 1990s. Having found a new freedom to act following the end of the cold-war, the Security Council decided that these widespread violations of international humanitarian law constituted a threat to international peace and security, and created two *ad hoc* judicial bodies; the International Criminal Tribunal for the former Yugoslavia (in 1993) and the International Criminal Tribunal for Rwanda (in 1994). These tribunals would help end impunity and contribute to the restoration and maintenance of peace. Although the Security Council never established a permanent international criminal tribunal, 120 individual States came to together in Rome, Italy, and agreed to adopt the Rome Statute of the ICC in 1996.<sup>68</sup> Two years before the adoption, AI had launched its campaign

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<sup>66</sup> AMNESTY INTERNATIONAL, *Annual Report 1970-1971*, AI Index POL 10/001/1971, p. 5.

<sup>67</sup> The UN has not created a permanent commission of inquiry but an International Fact-Finding Commission was established under Article 90 of Additional Protocol One to the Geneva Conventions, which has limitations. The Commission has not yet been able to carry out any investigations; parties to the Protocol must first specifically accept the competence of the commission to carry out inquiries into serious violations of the Geneva Conventions and its Protocol.

<sup>68</sup> The Security Council would have found it hard to create a tribunal with worldwide jurisdiction that would have covered its permanent members, such as China, the Russian Federation and the US, which are, to date, not State

for a permanent International Criminal Court, and made a major, substantive contribution, which involved detailed legal analyses and extensive lobbying for the creation of a strong ICC – including as a member of the Coalition for an International Criminal Court.<sup>69</sup> Because of strong US opposition to the ICC, the Security Council has been extremely reluctant – until very recently – even to mention its existence. However, an early Security Council resolution, Resolution 1265 (adopted during the Clinton administration in 1999), ‘acknowledges the historic significance of the adoption of the Rome Statute of the ICC’.<sup>70</sup>

With the necessary ratifications of the Rome Statute obtained, the ICC became a reality on 1 July 2002. By writing many letters to the Security Council and making public statements, AI lobbied hard at the UN to defeat attacks by the US to limit the scope of the ICC’s jurisdiction. The US tried to exempt UN peacekeepers (and, thus, the US’s own troops participating in such UN missions) from the court’s jurisdiction. On the same day that the Rome Statute came into force, AI made a public appeal in which it warned that there should be no double standards in international justice, and that the US’s attempts to limit the ICC’s jurisdiction threatened the international justice system as a whole. An initial attempt by the US to make UN peacekeepers immune from prosecution failed (in the resolution establishing the new UN mission in East Timor (UNMISET)). When the US threatened to keep the extension for all future UN

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Parties to the Rome Statute of the ICC. As of 11 July 2011, 116 States had ratified the Rome Statute, thus, accepting the ICC’s jurisdiction.

<sup>69</sup> See: AMNESTY INTERNATIONAL, *International Criminal Court: Making the right choices*, Part I (AI Index: IOR 40/001/1997), Part II (AI Index: IOR 4/011/1997), Part III (AI Index: IOR 40/013/1997), Part IV (AI Index: IOR 40/004/1998), and Part V (AI Index: IOR 40/10/98), in which AI set out 16 Fundamental Principles for a just, fair and effective International Criminal Court. For more recent work, see AMNESTY INTERNATIONAL, *International Criminal Court: Making the right choices at the Review Conference* (AI Index: IOR/40/008/2010).

<sup>70</sup> UN Security Council Resolution 1265, S/RES/1265, 17 September 1999, operative paragraph 6.

peacekeeping missions hostage to the inclusion of the exemption clause, and proceeded to use its veto to prevent the extension of the UN's Bosnia mission for that purpose, it became clear that it meant business. With regrettable little opposition from the EU, the Security Council passed Resolution 1422 (2002), granting the exemption from ICC jurisdiction to peacekeepers for a period of one year. AI criticised the Security Council for taking a political decision to exempt one category of people from international justice, thus, bypassing the ICC and the integrity of the Rome Statute of the ICC, the States that created it, and the UN Charter itself. For the first time, AI declared a Security Council resolution to be "unlawful".<sup>71</sup> Although the objectionable provision was renewed the following year (in Resolution 1487), it was defeated the year afterwards.

Key to that defeat was not only the combined opposition from a growing number of governments and NGOs (AI, for instance, worked very close with hundreds of sister NGOs in the Coalition for the International Criminal Court), but also the strong opposition articulated by UN Secretary-General Kofi Annan. On 17 June 2004, he said, referring to recently revealed evidence of torture by US personnel of Iraqi prisoners in Abu Ghraib:

[The] blanket exemption is wrong. It is of dubious judicial value [...] For the past two years, I have spoken quite strongly against the exemption, and I think it would be unfortunate for one to press for such an exemption, given the prisoner abuse in Iraq [...].<sup>72</sup>

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<sup>71</sup> AMNESTY INTERNATIONAL, *International Criminal Court: The unlawful attempt by the Security Council to give US citizens permanent impunity from international justice* (AI Index: IOR 40/006/2003).

<sup>72</sup> Secretary-General's press encounter upon arrival at UNHQ, unofficial transcript Secretary-General, New York, 17 June 24, Secretary-General, Office of the Spokesperson. The Secretary-General was referring to the torture and other human rights violations, amounting to war crimes, revealed in the spring of 2004, committed by US personnel on Iraqi prisoners held in Baghdad's Abu Ghraib prison. See, for example: AMNESTY INTERNATIONAL,

The US Administration did not forgive Annan for this statement, and other strong statements showing independence of judgement, and had to pay the consequences when he became target of a campaign to undermine his position. This episode underlines the need for the strongest measures to be in place to allow any UN Secretary-General to operate with the maximum degree of independence.

When grave violations of international humanitarian and human rights law are reportedly committed, the Security Council has a number of powerful tools to respond: it can request investigations, mandate a commission of inquiry, impose targeted measures such as sanctions, or most seriously, refer a situation to the ICC. As described before, the Security Council has in fact referred two country situations to the Prosecutor of the ICC. Furthermore, Costa Rica, a strong proponent of the court, has persuaded the Security Council to make its first statement criticising a UN Member State – Sudan – for non-cooperation with the ICC, a concern often raised by AI as well.<sup>73</sup> However, as recent events in the Middle East demonstrate, the Security Council's record on pursuing accountability for war crimes and crimes against humanity across the board is patchy at best. The inconsistency in its approach is perhaps most starkly demonstrated by the Security Council's dismal failure in recent years to apply the high accountability standards it has set to prosecute people who have committed international crimes. Examples include the failure to act on the situations in Gaza and southern Israel, as well as in Sri Lanka.

AI found that serious and extensive violations of international human rights and humanitarian law, including war crimes, had been carried out by Israeli forces in Gaza, and by Hamas and other armed

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An open letter to President George W. Bush on the question of torture and cruel, inhuman or degrading treatment (AI Index: AMR 51/075/2004).

<sup>73</sup> UN SECURITY COUNCIL, Statement by the President of the Security Council, S/PRST/2008/21, in which '[...] the Council urges the Government of Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court, consistent with resolution 1593 (2005), in order to put an end to impunity for the crimes committed in Darfur'.

Palestinian groups in southern Israel during operation “Cast Lead” in December 2008/January 2009. These violations caused the deaths of some 1,400 Palestinians by Israeli forces, including 300 children, and of three civilians in southern Israel by Hamas. AI also found that similar grave international crimes were committed by the Sri Lankan government and the Liberation Tigers of Tamil Eelam, the armed Tamil group which fought for an independent Tamil State, during the military offensive operation between late 2008 and mid-May 2009, in which thousands of civilians were killed. However, the Security Council refused to take any action in both cases. The reason is not far to seek: the US protects Israel from any critical action in the Security Council, and has no problem threatening or using its veto power. Sri Lanka too feels free from any demands for accountability in the Security Council as its friends include China and the Russian Federation, and several key members of the G77 group of developing countries.

AI concluded that the seriousness of the extensive violations of international humanitarian and human rights law by parties to both conflicts required full, independent and impartial investigations, and effective measures to bring the perpetrators to justice and provide reparation to the victims. AI lobbied the Security Council and the General Assembly intensively to make that happen, with very limited success. However, the actions taken by the Human Rights Council and the General Assembly to pursue accountability for acts committed during the conflict in Gaza and southern Israel – and the remote threat of a referral to the ICC Prosecutor by the Security Council – have at least triggered dozens of investigations into war crimes by Israel.<sup>74</sup> Although failing to meet international standards, these investigations are a first step towards establishing accountability, which otherwise would not have happened. Moreover, the UN system has also produced two major analytical

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<sup>74</sup> See AMNESTY INTERNATIONAL, *Amnesty International's updated assessment of Israeli and Palestinian investigations into the Gaza conflict* (AI Index: MDE 15/018/2011), 18 March 2011.

reports on violations of international humanitarian law in both conflicts – to which NGOs, including AI, contributed.<sup>75</sup> These reports provide a solid basis for any future prosecutions of the perpetrators. The quest for justice and redress for the victims of both conflicts must be pursued.

## **8. PROTECTING HUMAN RIGHTS IN TACKLING TERRORISM**

States are obliged to protect their citizens from terrorist acts, but measures taken to combat them should not be used as a convenient cover to suppress peaceful political dissent, nor should it be a reason to resort to torture, enforced disappearances or violate other alleged terrorists' or their (presumed) associates' rights. When human rights safeguards are abandoned, innocent people become victims of

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<sup>75</sup> The first report, a landmark report of 574 pages, was mandated by the Human Rights Council and concluded that both Israeli forces and armed Palestinian groups had committed serious violations of international humanitarian law, amounting to war crimes and possibly crimes against humanity. It includes a recommendation for a Security Council referral to the ICC Prosecutor should the parties to the conflict fail to conduct good faith investigations that meet international standards: *Report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48)*, 25 September 2009. Its members are: Justice Richard Goldstone (Head of Mission), Professor Christine Chinkin, Ms. Hina Jilani, and Colonel Desmond Travers ([www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm](http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm)). The second report, consisting of 122 pages, was requested by the UN Secretary-General: *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, United Nations, 31 March 2011. Its members are: Marzuki Darusman, Steven Ratner and Yasmin Sooka ([www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf)). The panel concluded that 'Indeed the conduct of the war represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace', and that 'missing from the Government's [...] conception is any notion of accountability for its own conduct in the prosecution of the war'.

violations too easily. AI, therefore, has consistently campaigned for governments to uphold human rights when dealing with terrorism. AI's work in New York for instance, particularly focused on the Security Council, which took swift action following the attacks on the World Trade Centre in New York on 11 September 2001.

In a far-reaching Resolution (1373 of 28 September 2001), the Security Council imposed a legal framework of binding measures on all States, including a prohibition on the financing of terrorism, imposition of an assets freeze, and, furthermore, required that the perpetrators of terrorist acts be brought to justice in a manner that reflects 'the seriousness of such terrorist acts'.<sup>76</sup> The Security Council did not define "terrorist acts", which led to a broad interpretation and abuse of the term. In addition, the Security Council created a Counter Terrorism Committee (CTC), consisting of all Security Council members, to supervise implementation of these measures. In the days that followed, AI warned the Security Council that such measures had to be carried out within the framework of the UN Charter, which requires full respect for human rights. This has been AI's constant message ever since. Normally, far-reaching measures, as those imposed on States by Resolution 1373, would have been carefully negotiated in a treaty-process involving all other UN Member States. Human rights provisions would probably have been included. However, as a consequence of not following this process, the Security Council's approach to countering terrorism suffered a major human rights deficit for many years: initial resolutions either failed to include the need to uphold human rights, or did so in weak terms, relegating them to obscure paragraphs.<sup>77</sup>

AI at the UN in New York has been one of the most persistent NGOs campaigning to give human rights its proper place

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<sup>76</sup> UN Security Council Resolution 1371, SC/RES/1373, 28 September 2001, Operative Paragraph 2 (e).

<sup>77</sup> For example, human rights are only mentioned in paragraph 3(g) of Resolution 1373 (2001), which deals with refugee claims.

in the UN's counter-terrorism strategy.<sup>78</sup> It appears that AI's efforts over the last ten years are now starting to pay off. Particularly helpful in New York was the consistently high level of critical work by AI's International Secretariat in London against US abuses in Guantanamo Bay and in secret detention centres of terrorist suspects around the world. Important support came from some diplomats as well as the highest UN quarter: Secretary-General Kofi Annan repeatedly spoke out firmly for upholding human rights in dealing with terrorism. Already in March 2003, he warned: 'Human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism – not privileges to be sacrificed at a time of tension'.<sup>79</sup>

As a result, newly adopted resolutions started to include provisions which emphasised the need to observe human rights while countering terrorism.<sup>80</sup> Mexico, a non-permanent member of the

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<sup>78</sup> Apart from sending frequent letters and communications to Security Council members for ten years, AI urged the Council in public Statements to revise its draft resolutions (for example: AMNESTY INTERNATIONAL, *Proposed Anti-Terrorism resolution undermines human rights*, 8 October 2004 (AI Index: IOR 40/000/2004)) and published a region-wide survey of the impact of counter-terrorism on human rights with detailed recommendations to the General Assembly and the Security Council to address human rights: AMNESTY INTERNATIONAL, *Security and Human Rights – Counter-terrorism and the United Nations*, September 2008 (AI Index: IOR/40/019/2008).

<sup>79</sup> Kofi Annan's statement at the special meeting of the Security Council's Counter-Terrorism Committee, 6 March 2003.

<sup>80</sup> For example, UN Security Council Resolution 1456, S/RES/1456, 20 January 2003; Resolution 1624, S/RES/1624, 14 September 2005; Resolution 1787, S/RES/1787, 10 December 2007; and Resolution 1805, S/RES/1805, 20 March 2008. Of these, only Resolution 1624 uses unambiguous language that certain new requirements identified – such as prohibiting incitement to terrorists acts – *must* comply with States' obligations under human rights law (emphasis added). The clear language in this Resolution effectively provides a human rights mandate to the CTC, as the Special Rapporteur on human rights and counter-terrorism has pointed out (ECONOMIC AND SOCIAL COUNCIL, Report of the Special Rapporteur on the promotion and protection of human

Security Council, wanted a human rights clause included in the CTC's follow-up communications with States. Mexico's efforts were rewarded with the adoption of Resolution 1456, which requires that 'States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and *should* adopt such measures in accordance with international law, in particular human rights, refugee and humanitarian law' (emphasis added).<sup>81</sup> The word "should" (instead of the obligatory "shall") was included in this and several subsequent resolutions at the insistence of the US (possibly with an eye on its own conduct in handling terrorist suspects in secret detention, making this provision less powerful). Other permanent Security Council members, notably China and Russia, have been at least equally keen to keep any references to human rights as weak as possible.

In the early years of its work, the then UK Ambassador chairing the CTC saw no need to include human rights expertise in the UN body supporting the CTC, the Counter-Terrorism Executive Directorate (CTED) established under Security Council Resolution 1535. However, after pressure by NGOs and a few governments, a human rights expert is now included in the CTED's staff, and a human rights policy guidance document, although weak, has been agreed upon.<sup>82</sup> The CTED also supports the CTC in carrying out an increasing number of visits to countries to ensure that effective measures to counter terrorism are taken in conformity with Resolution 1373. AI urged that relevant UN Special Rapporteurs and Working Groups – for example, those dealing with torture, extrajudicial executions and enforced disappearances – should be able to brief the CTC. As yet, only the High Commissioner for Human Rights and the Special Rapporteur on human rights and

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rights and fundamental freedoms while countering terrorism, Martin Scheinin, E/CN.4/2006/98, paragraph 54).

<sup>81</sup> UN Security Council Resolution 1456, S/RES/1456, 20 January 2003, Annex, Operative paragraph 6.

<sup>82</sup> UN SECURITY COUNCIL, Conclusions for policy guidance regarding human rights and the CTC (S/AC.40/2006/PG.2), 25 May 2006.

counter-terrorism had meetings with the CTC. The latter meets with the CTC on an annual basis, to help ensure that its advice is in line with, and does not hinder the observance of human rights, as happened in the early stages of the CTC's work.

AI has also pushed the Security Council for many years to include basic standards of due process in the "listing" and "delisting" process of suspected terrorists under the Security Council's sanctions regime. The listing process, which involves the compilation of names of individuals suspected of being involved in terrorist activities, was established as a counterterrorism tool for members of Al Qaida and the Taliban in Resolution 1267 (1999). The process was strengthened in subsequent resolutions, but nearly all failed to mention human rights.<sup>83</sup> It is relatively easy for a country to put an individual or group on the list, which triggers an assets freeze and a travel ban. These persons may remain on this list indefinitely. Getting oneself removed from the list, however, proved to be very difficult, if not impossible. It requires consensus from all members of the Security Council in a process that is one of the least transparent in the UN. Not surprisingly, innocent people were reported to be on the list, including dead people, but there was no avenue to complain. The lack of due process guarantees led to a range of legal challenges against the Al Qaida and Taliban sanctions regime, brought both before courts in Europe (including the European Court of Justice and the European Court of Human Rights), and elsewhere (including the Human Rights Committee and the Supreme Court in Pakistan). Some complaints were successful, which worried some Security Council members.

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<sup>83</sup> UN Security Council Resolution 1390, S/RES/1390, 28 January 2002; Resolution 1526 (2204); Resolution 1617, S/RES/1617, 29 July 2005; Resolution 1730, S/RES/1730, 19 December 2006; and Resolution 1735, S/RES/1735, 22 December 2006, strengthened the 1267-regime, but only UN Security Council Resolution 1822, S/RES/1822, 30 June 2008, and Resolution 1904, S/RES/1904, 17 December 2009, include brief references to human rights.

In 2005, world leaders at the World Summit in New York had urged the Security Council to include ‘fair and clear procedures [...] for placing individuals and entities on the sanctions list and for removing them’.<sup>84</sup> The following year, Kofi Annan presented the Security Council with a detailed list of minimum standards required to achieve that aim. Crucial was the requirement that people listed needed access to a review by an “independent mechanism”.<sup>85</sup> A small number of countries, deeply committed to improving the sanctions regime, and eager to include basic safeguards, took the next step and developed further proposals. In July and August 2008, AI sections campaigned on the basis of detailed letters to the Security Council and the General Assembly, translated into nearly all of the UN’s official languages (which elicited positive responses), in order to establish an independent review mechanism to examine “de-listing” requests. In response to these various pressures, the Security Council first took some small steps, and eventually – with the new US Administration taking the lead – established an Ombudsperson in 2009.<sup>86</sup> The creation of the Office of the Ombudsperson is a major step in the right direction, but her work is hampered by the severe limitations on her mandate, as is it advisory in nature. The Ombudsperson can hear people on the list, analyse the information available, and ‘lay out for the (Sanctions) Committee the principal arguments concerning the delisting request’.<sup>87</sup> She cannot, however, make any specific recommendations, let alone decisions, on the case to the Sanctions Committee overseeing implementation of the AI

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<sup>84</sup> 2005 World Summit Outcome (A/RES/60/1), paragraph 109.

<sup>85</sup> Letter from UN Secretary-General Kofi Annan to the President of the Security Council, 15 June 2006, UN Doc. S/PV.5474.

<sup>86</sup> Security Council Resolution 1730, S/RES/1730, 19 December 2006 created a “focal Point”; Resolution 1735, S/RES/1735, 22 December 2006 required more details for a “listing”; Resolution 1822, S/RES/1822, 30 June 2008 required an annual review of those listed; and, finally, Resolution 1904, S/RES/1904, 17 December 2009, was adopted creating the Ombudsperson. Judge Kimberley Prost was appointed as the first Ombudsperson.

<sup>87</sup> Resolution 1904, S/RES/1904, 17 December 2009, Annex II, paragraph 7 (c).

Qaida and Taliban sanctions regime. At present, the challenge is to turn the Ombudsperson's advisory powers into a fully effective mandate with powers to remove people or entities from the sanctions list, as international human rights law so requires.

## **9. THE FUTURE**

This review shows that where AI has been successful in its work on intergovernmental organisations, it was primarily because of the following factors: the high quality of AI's research, the strength of its analysis and expertise, the timeliness of its interventions as well as the lobbying capacity of its world-wide membership. Especially important has been AI's willingness to adopt long-term strategies to help build and strengthen the human rights architecture, and to make a long-term investment to achieving its goals, however remote the prospect of success. This must be maintained.

At the UN, AI's work is subjected to the closest scrutiny. AI is only as good as the quality of its research and the reliability of its information and actions; its reputation and effectiveness entirely depend on it. AI should, therefore, reinvest resources into high quality research and ensure that consistency and high standards of research and reporting are guaranteed when redesigning research work away from the International Secretariat, and towards regional structures in the South, East and elsewhere.

The UN is unique as an intergovernmental organisation, as it has human rights promotion written in its Charter. The UN has also created the world's foremost human rights standards: the Universal Declaration of Human Rights as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The potential of its most powerful body, the Security Council, to meaningfully address violations of international human rights and humanitarian law and protect civilians, is most recently demonstrated by its robust reaction to events in Libya. Other intergovernmental organisations with

the potential to address human rights questions on a regional level such as the Association of South East Asian Nations (ASEAN), will assume increasing importance with global shifts in the balance of power.

AI's lobbying capacity in the South and East is currently limited. AI's determination to bring its work closer to the ground provides a good opportunity to strengthen cooperation with NGOs at both national and regional levels, and to enhance lobbying work for human rights at the UN and other International Governmental Organisation (IGOs). Sharing its experience and knowledge of how IGO's work, and building lobbying partnerships with appropriate NGOs at the national level, especially in the South and East, should be an important part of its new approach. It will also be an opportunity for AI to promote the universal validity of all human rights, as exemplified in the Universal Declaration of Human Rights, and to help break through the artificial distinction between civil and political rights on the one hand, and economic, social and cultural rights on the other, by helping build unified structures amongst others.

Absolute human rights standards, like the prohibition of torture, are now being challenged. Moreover, the strength and independence of long-established UN mechanisms to protect human rights, which AI worked hard to create or support, are increasingly under threat. For example, the integrity and independence of the High Commissioner for Human Rights, the Special Procedures of the Human Rights Council, some of the human rights treaty supervisory bodies as well as that of the ICC have been attacked. This demonstrates the need for AI to continue to invest in protecting the UN's human rights architecture. Work to protect the independence of these bodies, to select office-holders with the strongest human rights credentials, and to provide them with adequate resources, should remain a priority.

AI, as a respected worldwide organisation with a solid track record and members everywhere, has the capacity, by cooperating with other NGOs, to take a lead role in setting the human rights

agenda. Where opportunities arise, AI should push to strengthen the human rights architecture, and AI's national sections could help provide a forum for expert discussion. Human rights violations require effective remedies. Proposals to bridge the gap between the letter of human rights treaty laws and the reality of their daily violation and lack of enforcement, by, for example, creating a World Court of Human Rights<sup>88</sup>, provide one such opportunity.

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<sup>88</sup> See, for example: Swiss Initiative to commemorate the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights, An Agenda for Human Rights, 5 December 2008, Research Project 8, A World Human Rights Court, *available at*: [www.udhr60.ch/research.html](http://www.udhr60.ch/research.html).



# MANAGING CHANGE: AMNESTY INTERNATIONAL AND HUMAN RIGHTS NGOS

ELLEN DORSEY

## 1. INTRODUCTION

Amnesty International (AI or Amnesty) has the remarkable history, and challenge, of being one of the world's most recognised and preeminent non-governmental organisations (NGOs).<sup>1</sup> Today, when the world has more than tens of thousands of NGOs, officially recognised and unofficially operating,<sup>2</sup> AI has the unique record of building the global human rights movement over the past five decades, by directly challenging and changing the policies and practices of governments and non-State actors, defining and popularising the very notion of human rights, and defending the rights and lives of countless individuals.

Arguably, AI is the standard-setting organisation for NGO operations in the human rights field and beyond. As an "icon" of the field of human rights NGOs, AI defined what is recognised as the core human rights methodology. "Mobilising shame" has come to describe what the founders of AI innovated to pressure governments to respect the civil and political rights of its own populations. The violating State is targeted directly by global citizen activism, and

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<sup>1</sup> This chapter draws liberally and extensively from the work this author has done with Paul Nelson. While together we have published several articles, our book explored many of the themes in this chapter (DORSEY, E. and NELSON, E., *The New Rights Advocacy*, Georgetown University Press, Washington DC, 2008). Some of the specific passages written about AI and HR NGOs draw directly from its text and the extensive experience this author has with AI, drawing upon her years of work and voluntarism with the organisation.

<sup>2</sup> SMITH, J.S. and PAGNUCCO, R., with LOPEZ, G.A., 'Globalizing Human Rights: The work of Transnational Human Rights NGOs in the 1990s', *Human Rights Quarterly*, Vol. 20, No. 2, 1998, pp. 379-412.

additional pressure is brought to bear by governments and agencies with influence over the perpetrating government. Shining the spotlight on abuses, largely told through the specific cases of individual victims, would pressure governments into reforming their practices and respecting newly enshrined international human rights standards.

To be credible, it was quickly recognised that this approach had to be based on clear and defensible evidence of abuses, be devoid of partisan bias, and be derived from definitions of rights legitimated by internationally agreed upon norms and codifications. In essence, what came to be known as “the human rights methodology” evolved out of Amnesty’s initial experiences. AI’s early advocacy built a foundation upon which other human rights NGOs would develop their work either in a parallel fashion or in complimentary distinction to Amnesty’s work by method, issue focus, or constituency base.

Through its advocacy, Amnesty began to popularise the very notion of human rights for governments and citizens, breathing life into international standards already codified but largely ignored. As it brought citizen pressure, international attention, and media coverage of human rights abuses around the world, AI defined the early global consciousness of what “human rights” represented. While the Universal Declaration of Human Rights (UDHR) is the revolutionary text laying out the interconnected set of rights that must be met for all individuals to live a life of dignity, AI’s early activism began to define a concept of human rights that was narrower and singularly focused on civil and political rights. This emphasis on a subset of human rights denied the basic notion of the interdependence of all rights enshrined in the UDHR and relegated economic, social and cultural rights into a secondary status. Although the consequence was largely unintentional, it had significant implications for the legitimacy of other rights for decades to come. But popularise human rights, AI did. It developed an impressive constituency – building out from Western countries into other regions of the world, still evolving today.

Perhaps most significant, from its inception, AI delivered efficacy; an opportunity for concerned individuals to take *effective* action in opposition to cruel and offensive practices by governments and, later, non-State actors. Building mechanisms to mobilise solidarity across borders and effectively target seemingly intractable governments is the incredible success story of Amnesty International, for both human rights advocacy and other NGO sectors. AI provides a vehicle for its members of social justice solidarity that is personally meaningful, enriching, and satisfying in its effectiveness.

The practice of giving a personal face to human rights abuses was not simply a tactic for AI; it was built into the very foundation of its advocacy. It also bound supporters to Amnesty; building a personal tie between the activists and the individuals whose rights have been violated and a deep and abiding sense of responsibility to continue activism on their behalf. This sense of on-going responsibility also fostered a deeper loyalty to the organisation. Students of NGO practice look to this focus on individuals as a pivotal tool for organisational development and practical success.

Amnesty is not the only vehicle for social change work, nor is it the first. Other NGOs preceded it, and many successful social movements worked globally to resist the practices of slavery, genocide, and rights violations prior to Amnesty's launch. Yet, if one looks at other international NGOs, working across different issue areas and with different approaches, it is difficult to find an organisation that has come to symbolise the issue domain it advances, as has AI. It is challenging to empirically demonstrate why this is the case, but clearly AI's legitimacy derives from international human rights principles. Its unique methodology executed at high professional levels, its effective public education and engagement, and the sense of efficacy it delivers to its constituency, have all contributed to AI's dominant role within the larger system of human rights advocacy.

AI's record of impact should not be trivialised nor should it be glamorised in ways that inhibit organisational development. To continue to be effective, AI must evolve in response to changing

international conditions, a changing world demographic, the shifting power of international actors, the emergence of new human rights issues and crises, changing methods of communications and delivery of information, and the shifting eco system of NGOs and social movements across the globe. As AI celebrates its 50<sup>th</sup> anniversary, it is the question of change – how it has changed and how it will adapt to changing conditions – that is perhaps most important for the study of NGOs.

Can a large, complex and successful organisation change? Can it adapt and perpetuate itself and replicate its successes through dramatically shifting operating environments? The remarkable history is that Amnesty *has* evolved over the past 50 years, through tremendous international change. It has done so often slowly – even frustratingly so in the eyes of its supporters and detractors, given the urgency of human rights crises the world over – yet, nonetheless dramatically. And it will continue to change over the course of its next 50 years.

This essay will pose and attempt to address some of the basic questions facing AI, as a leading international NGO and the grandmother of other human rights NGOs. How will AI consciously address a myriad of challenges that range from its own organisational success and bureaucratic complexity to operating within a fundamentally different global system from the one wherein it was born? And how will AI respond to demands for change and position itself to continue to be a leading and effective voice for human rights in the world? Will it continue to change its mission, its scale of operations, and its relationship with other NGO sectors, social movements, and historical constituency? Will it change its methodology and its very relationship to the ‘rights holders’ with whom AI has ostensibly worked since its inception?

While many of these questions cannot be answered in the abstract and without the benefit of knowing how its membership base will guide the organisation’s decision-making in years to come, the following will offer three lines of inquiry, reflection, and analysis. After beginning with a short overview of the field of human rights

and the role of NGOs, it will first examine what influences the direction of NGO activity, particularly that of AI. Second, it will explore Amnesty's history of change over its five decades of activism. Finally, it will sketch out some critical areas that AI will be compelled to respond to in the future, to shape its priorities, potential methodologies, and constituency base.

## **2. NGOS AND THE ADVANCEMENT OF HUMAN RIGHTS**

We think of NGOs as part of a larger organisational field – 'human rights', 'environment', 'development', and so forth. An organisational field is defined by recognition of a common identity, a sense of common purpose, a shared definition of meaning and legitimacy, and intensive interaction of groups with a practice of cooperation as well as competition.<sup>3</sup> Each organisational field has specific allegiances, standards, and modal methodologies, and draws from particular professional fields of expertise.

Human Rights NGOs articulate their agendas and missions in terms of strengthening international human rights norms and protecting and implementing recognised human rights, by holding governments and non-State actors accountable to those standards. They draw their legitimacy from the international human rights standards and principles, largely codified through the United Nations and other regional inter-governmental bodies, and anchored in respect for human dignity. Human rights NGOs associate with the United Nations, regional bodies, governmental human rights agencies and other human rights NGOs. And, while the method they deploy to achieve their goals varies by individual organisation, the core activities are the promotion of standards, investigation and documentation of violations, advocacy and campaigning, and

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<sup>3</sup> DIMAGGIO, P.J., and POWELL, W.W., 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields', *American Sociological Review*, Vol. 48, No. 2, 1983, pp. 147-160.

litigation.<sup>4</sup> Over time, and in response to the growth of the human rights movement worldwide, international NGOs began to also focus on the training and skill building for other NGOs, human rights defenders, and community-based leadership at risk for violations. Technical expertise in interpreting standards and investigating governmental performance in achieving those standards, along with rigorous impartiality, are critical to the legitimacy of the human rights organisations' claims and advocacy.

The idea that human rights NGOs mobilise global citizen outrage to pressure governments (and increasingly non-State actors) to change their behaviour, policies and laws implies the kind of advocacy that was developed by AI and evolved into a commonly adopted methodology. This methodology has been labeled “naming and shaming” or “mobilising shame”.<sup>5</sup> Not all human rights NGOs engage in building citizen advocacy. Today in the rich eco-system of groups engaged in human rights work, either as their primary mission or tied to a wider set of advocacy agendas, NGOs can *perform specific functions* (research, litigation, standard setting, community education, and organising), *work on specific sets of rights* (such as the right to water, health, and physical integrity), represent *all human rights within specific constituencies* (such as minority groups, disabled, and LGBTQIA<sup>6</sup>) or *work at the nexus of human rights and other organisational fields* (like environment or development).

There are few NGOs with the scope of mission and range of methodologies deployed, in aspiration or in practice, as that of AI today. AI began with a narrower mission, founded to advance specific civil and political rights. But at present it embraces advocacy on all human rights and deploys a wide range of methodologies to advance this mission. This scope reflects the organisation's natural

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<sup>4</sup> WELCH, C.E. (ed.), *NGOs and Human Rights*, University of Pennsylvania Press, Philadelphia, 2001.

<sup>5</sup> DRINAN, R.F., *The Mobilization of Shame*, Yale University Press, New Haven, 2001.

<sup>6</sup> Abbreviation of: Lesbian women, Gay men, Bisexual people of both genders, Transgender people, Questioning people, Intersexual people, and Allies.

evolution over time, in response to changes in the work environment in which it operates, challenges from other NGOs and social movements, and internal organisational imperatives to manage and leverage resources.

Scholarship on NGOs has tended to treat them in two ways: either as principled independent political actors advancing values based agendas or as organisations acting rationally to protect and perpetuate their own organisational life. They are, of course, both. NGOs can be value driven political actors that seek to achieve social change, while operating as rational organisations deploying and growing resources and jockeying for strategic advantage in a competitive environment. AI's own history embodies that complexity. Clearly a value-driven organisation, AI has worked to advance human rights through specific and success driven methods and campaigns. AI also seeks to build and grow its constituency, strengthen its internal operations and expertise, and generate sufficient resources to accomplish all of its mission and operational goals.

Ultimately, what is critical to the success of any NGO is the capacity to generate *power* in a targeted way to achieve specific goals. However, there is very little attention to the question of the “power” of human rights NGOs, within the practice of the organisations themselves or the literature that analyses and tracks NGOs. Human rights activists rarely talk about power when they talk about what they do to advance their work. Yet, limiting the power of rights-violating actors, leveraging other institution's power, demanding power, and empowering demands are all integral to the work of AI and other human rights organisations.

Fundamentally, human rights observance is a struggle over power, whether power is deployed to advance human dignity or to violate basic standards of human rights. Human rights advocacy is the profound and courageous act of attempting to rectify the imbalance and abuse of power as measured by universally accepted standards of basic human dignity. Human rights NGOs attempt to limit the power of governments and non-State actors who violate

human rights, and seek to target the power of governments that must also protect and fulfil rights. To strengthen their pressure on governments and non-State actors who influence human rights conditions, NGOs often use third party targets to achieve their goals. If direct citizen pressure cannot succeed in getting the violating State or company to cease their activities, a government with influence over that actor might. Most of the literature on human rights NGOs focuses on these two aspects of power, influence over international organisations, national and local governments, and global economic actors, although it rarely explicitly analyses these activities in terms of increasing the power of the NGO itself.<sup>7</sup>

There are several other critical dimensions of power that must be discussed when analysing NGOs influence and evolution. How do human rights NGOs empower new rights claims that emerge from struggles in communities and against specific actors? There is a wealth of studies of NGOs and their norm setting activities at the United Nations,<sup>8</sup> but there is comparatively little analysis of where human rights claims arise and how they grow to normative status.<sup>9</sup> As new human rights claims emerge out of often popular struggles

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<sup>7</sup> KECK, M.E., and SIKKINK, K., *Activists Beyond Borders: Advocacy Networks in International Politics*, Cornell University Press, Ithaca, NJ, 1998; FLORINI, A.M. (ed.), *The Third Force: The Rise of Transnational Civil Society*, Japan Center for International Exchange, Tokyo, and the Carnegie Endowment for International Peace, Washington DC, 2000; EDWARDS, M., and GAVENTA, J., *Global Citizen Action*, Lynne Rienner Publishers, Boulder, 2001; FOX, J.A., and BROWN, L.D., *The Struggle for Accountability*, MIT Press, Cambridge MA, 1998; WAPNER, P., *Environmental Activism and World civic Politics*, State University of New York Press, New York, 1996, to cite only a few.

<sup>8</sup> KOREY, W., *NGOs and the Universal Declaration of Human Rights*, St. Martin's Press, New York, 1998; GORDENKER, L. and WEISS, T.G., (eds.) *NGOs, the UN, and Global Governance*, Lynne Rienner Publishers, Boulder, 1996.

<sup>9</sup> Two exceptions to that gap in literature are STAMMERS, N., 'Social Movements and the Social Construction of Human Rights', *Human Rights Quarterly*, Vol. 21, No. 4, 1999, pp. 980-1008; and NELSON and DORSEY, *op.cit.*

around the world (the right to essential medicines or the right to water, for instance), human rights NGOs can *empower* these struggles, and the new claims associated with them, by conferring legitimacy to the “new rights” and contributing skills or pressure in advocacy campaigns, or they can serve to limit their advance.<sup>10</sup>

An explicit focus on power is crucial to build effective strategies for social change; one should consider who has power, who can exert power over other actors, what weakens the authority and power of States and economic actors, who has authority to represent human rights claims, and who can be empowered by different types of actions, as these are all factors that should be taken into account to effectively campaign for human rights.

### **3. HUMAN RIGHTS NGOS: MANAGING CHANGE**

When the experiment of AI began 50 years ago, human rights norms and standards were nascent, given little attention by governments the world over. And while social movements had fought successful struggles for human rights for many thousands of years preceding the official codification of human rights in this last century, the particular experiment of the “NGO” as an international actor was also in its early stages. Since the launch of the 1961 “forgotten prisoners” campaign, urging the release of those imprisoned for expressing their beliefs,<sup>11</sup> Amnesty has evolved into being the world’s largest, most notable and complex human rights NGO amongst NGOs campaigning on a range of human rights issues with a significant depth of global coverage.

Over the last five decades there have been six critical forces of change that have influenced the policies and practices of human rights NGOs, and, with it, AI. First, there have been obvious and momentously significant changes in the international system that

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<sup>10</sup> NELSON and DORSEY, *op cit.*

<sup>11</sup> For a compelling history of AI, see KOREY, *op cit.*

directly shape human rights advocacy; those in power, ways in which leverage is exerted to influence violating States and non-State actors, as well as questions as which human rights issues are most critical, egregious, and impacting the largest populations.

Second, there have been notable changes in the methods deployed by human rights NGOs. As governments grew to anticipate the reactions of human rights groups to their repressive tactics, they began to shift to new methods of discrimination and repression. One example is the shift from long-term imprisonments to extrajudicial executions and disappearances, often attributed to the effectiveness of campaigning on the “forgotten prisoner”. Another example is the control of communications technologies by governments facing advocacy buoyed by social networks. Human rights organisations, partly due to their own success, have had to consistently adjust and adapt to the changing patterns and tools of human rights abuse.

Third, non-governmental actors have become increasingly more important to human rights conditions than at the outset of the Cold War. From the explosion of ethnic, religious, and political groups deploying violent and militant practices, to the ascendance of economic actors as dominant in the international community today, NGOs have had to go beyond the violating State to tackle new forms and perpetrators of human rights abuse.<sup>12</sup>

Fourth, the eco-system of advocacy has shifted dramatically. NGOs are a uniquely modern phenomenon, preceded by social movement advocacy channelled into or in opposition to formal institutions of power. Today, civil society is comprised of interwoven and crosscutting international, national and sub-national NGOs, community based organisations, social movements operating at all levels, and independent advocates. Greater specialisation in methods and skills, issue focus, and constituency base have shifted the way NGOs operate with each other, the communities and individuals they seek to represent, and the broader public they seek to engage. These

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<sup>12</sup> NELSON, E. and DORSEY, E., ‘New Rights Advocacy in a Global Public Domain’, *European Journal of International Relations*, 2007.

changes have also produced complex and often contentious relationships among the various actors.

There has been a wealth of literature examining how social movement campaigns have proliferated and worked with or without NGO partners, including studies of the anti-apartheid movement, the global women's movement, the international campaign to ban landmines, to end sweatshops, and to end the privatisation of water. These studies document the role of specific human rights NGOs operating in a web of activism, sometimes coordinated effectively and sometimes not.<sup>13</sup> Several recent studies have focused on North-South relationships among NGOs in advocacy campaigns. Although weaknesses in accountability of international NGOs to national and community organisations in poor countries are better documented in the development sector,<sup>14</sup> they are assessed in the global environmental, human rights and women's movements as well.<sup>15</sup>

Similarly, the fifth critical force of change is the profound convergence and cross-fertilisation of organisational sectors, previously defined as uniquely committed to "development", "environment", "women", "indigenous rights", and so on. While it is

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<sup>13</sup> DORSEY, E., 'Expanding the Foreign Policy Discourse: Transnational Social Movements and the Globalization of Citizenship' in SKIDMORE, D., and HUDSON, V. (eds.), *The Limits of State Autonomy*, 1992, Westview Press Inc., Boulder, pp. 237-266; DORSEY, E 'Root Causes to Full Spectrum: Human Rights and Development Organizations Confront Economic Globalization', paper presented at the International Studies Association, New Orleans, 2002; MEKATA, M., 'Building Partnerships toward a Common Goal: Experiences of the International Campaign to Ban Landmines' in FLORINI, *op.cit.*; TARROW, S., *The New Transitional Activism*, Cambridge University Press, Cambridge, 2005; DELLA PORTA, D. and TARROW, S., *Transnational Protest and Global Activism*, Rowman & Littlefield Publishers, Lanham MD, 2005.

<sup>14</sup> NELSON, E., 'Internationalizing Economic and Environmental Policy: Transnational NGO Networks and The World Bank's Expanding Influence', *Millennium Journal of International Studies*, Vol. 25, No. 3. 1996, FOX and BROWN, 1998, *op.cit.*

<sup>15</sup> ROE, E., 'Critical Theory, Sustainable Development and Populism', *Telos*, No. 103, 1995, GUILLOT, N., *The Democracy Makers, Human Rights, and the Politics of the Global Order*, Columbia University Press, New York, 2005.

obvious that human rights are interconnected and central to each of these different organisational structures, for the past 60 or more years, these sectors have each developed their own unique and distinct methods of operating with NGO affiliates, and independent sets of experts, funders, and supporters. Now, over the last 15 years, the walls between the organisational fields have broken down, perhaps more accurately representing the complexity and interdependence of struggles for justice the world over.<sup>16</sup>

Sixth, it is hardly profound to note that there have been revolutionary changes in how people seek, share and retrieve information, and in doing so change the way the world learns about human rights crises. At the same time, decentralised communications technologies are creating new opportunities to mobilise solidarity within and across societies. The “Facebook” revolutions of today are completely altering the way human rights struggles unfold and the world’s public responds to them. Furthermore, the amount of different communication technologies also influences the way in which AI and other NGOs receive information, mobilise to protect activists, and communicate demands upon governments. Their approaches are increasingly different.<sup>17</sup>

Clearly, the world in which Amnesty operates today is far different from the one which it was born into in 1961. The following will examine specifically how these factors enumerated above influenced AI practices over the last few decades, and how they will contribute to AI’s evolution in the coming decades.

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<sup>16</sup> This author, with FOX and NELSON, has written extensively about the convergence of the human rights and development sectors to advance economic and social rights, describing the sources and patterns of convergence.

<sup>17</sup> MUNOZ, L.L., and DE SOYSA, I., ‘The Blog Versus Big Brother: New and Old Information Technology and Political Repression’, 1980–2006, *The International Journal of Human Rights*, 2010.

#### **4. AMNESTY – THE CHANGING NGO**

Before one can look at what AI and other human rights groups will confront in the coming 50 years, one needs to understand how and why Amnesty has changed over the last decades to respond to its external and internal environments. The following brief history attempts to track how changes in the international system and in the fields of human rights advocacy have shaped where AI is today.

Most of the early human rights NGOs emerged in the West and reflected a bias toward civil and political rights, reinforcing the cold war dichotomy. The early human rights NGOs took on the most egregious forms of human rights violations recognised by Western governments. This included torture, mistreatment, execution, and denial of due process for political beliefs. These violations became the central organising principle and mission of the newly emergent human rights groups. Human rights NGOs also understood that they would be most influential if they focused on issues potentially recognised as legitimate by Western constituencies, as this would allow activists to build a power base for their international advocacy. With the expansion of repressive regimes associated with the Eastern bloc, and the tendency of the United States and other Western countries to treat human rights abuses by allied regimes as tolerable trade-offs to achieve short term political stability, the Western constituency for civil and political rights protection began to grow.

AI evolved its methodology for protecting civil and political human rights in this cold war context. Addressing individual's rights to freedom and bodily integrity, AI garnered international support that transcended partisan difference by targeting those abuses in the Soviet bloc countries, the southern hemisphere, while, at the same time, challenging the Western rationale for tacitly or directly supporting repression by anti-communist regimes. Coupling solid research and letter writing tactics, AI was quickly recognised for its successes in securing human rights protections and for building an

international grass roots constituency.<sup>18</sup> Although its mandate evolved over time, AI's focus remained relatively circumscribed within the larger system of human rights, and civil and political rights in particular.

Other international organisations replicated AI's focus on this subset of human rights, through monitoring and advocacy. While each had a different methodology or constituency, the growth of international human rights NGOs in the United States alone (for example, Human Rights Watch, Lawyers Committee for Human Rights, and the International Human Rights Law Group) effectively reinforced and popularised the idea that human rights were civil and political.

Dramatic international system changes compelled human rights groups to alter strategies. As the cold war system began to unravel, and new regimes led by human rights activists or shaped by human rights principles came to power, the optimistic view flourished that a new era for global human rights advocacy had opened. As the world witnessed a decade of democratisation in the 1990s, and the Cold War rationale that had legitimated international support for undemocratic and repressive government was weakened, international human rights NGOs debated about issues such as how to ensure that newly independent and democratic regimes comply with international human rights standards, and how to address past rights violations.

The optimism of human rights advocates was quickly eclipsed by a spate of communal conflicts around the world, ranging from the former Yugoslavia to Rwanda. As human rights groups struggled to determine their positions on intervention in genocidal situations and as the international community failed to respond to the carnage, given little political or economic interests in those geographic areas, the new challenges for human rights were brought into stark vision.

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<sup>18</sup> KOREY, *op cit.*

By the mid-1990s, AI and other human rights NGOs faced four critical factors that challenged their traditional approaches to work in civil and political human rights: the proliferation of communal conflicts and genocidal conditions, the global expansion of civil society, the affront to universality of human rights under a weakening United Nations, and the rapid expansion of a global economy based on neo-liberal principles. The changes compelled a rethinking of strategies and led Amnesty into greater collaboration across the north-south divide and with other traditional advocacy sectors, most notably, the development and women's rights sectors detailed below.

*Communal Conflict and Accountability.* The growing number of communal or ethnic conflicts appeared to accelerate with the dismantling of cold war alliance systems. Human rights groups faced with the carnage of Rwanda and the former Yugoslavia, grappled with how to respond to such crises before they reached genocidal proportions and how to ensure that post-conflict situations would not spiral back into violence. AI responded to these challenges in three ways: (1) by pushing for mechanisms of accountability for mass violations of human rights and genocide, specifically for a permanent International Criminal Court; (2) holding insurgent groups in civil conflicts (non-State actors) accountable to international human rights standards and documenting the abuses they committed; and (3) focusing on developing early warning and crises response systems to enable rapid, effective action before genocide unfolds. Additionally, human rights advocates within and outside of AI, called for greater attention to the 'root causes' of communal conflict. They began to examine ways to track patterns of identity-based conflicts that could lead to wider violence and to control the tools of these conflicts, small arms and child soldiers. AI pushed for stronger international standards, and increased its monitoring of human rights and non-State actors. Furthermore, it assumed a leadership position in global campaigns on the arms trade and child soldiers.

*Global Civil Society.* By the early 1990s, the growth of local, national and regional NGOs throughout the world meant that the

international human rights NGOs now had new partners to document human rights abuses. These partners, however, also challenged the forty year-old methods, operating procedures, and priorities of the international groups. Globalisation of communications systems led to sharing of information and strategies across geographically dispersed social movements and NGOs, resulting in shifting relations between and across international NGOs and smaller, more geographically specific organisations. While AI and other organisations had already begun to devote resources to training and capacity building on human rights standards and methods for newly emergent human rights leadership in the 1980s, this work increased significantly in scale in the 1990s. International human rights NGOs assisted organisations in the East and South to conduct investigations, litigate cases, and develop campaigning tools. For AI, this meant both playing a role in expanding the capacity of new NGOs and building up nascent AI sections in key countries around the world. AI also campaigned on the rights of human rights defenders, described in more detail below, a strategy that became more significant as economic globalisation escalated.

*Universality and the Erosion of the UN Human Rights Machinery.* The 1993 World Conference on Human Rights, held in Vienna, was expected to be a celebration of the post-Cold War era, the opportunity for the United Nations and NGOs alike to operate in a less politicised international environment. Instead, it was a watershed moment for the integrity of the human rights normative framework and operating systems, as NGOs battled a coalition of governments determined to undermine the principle of universality and to weaken the United Nations system. Due largely to the smart lobbying and powerful mobilisation of women's human rights groups, the conference ended with a weak, but successful, renewal of support for the core concepts of universality, indivisibility, and interdependence of rights and some key, specific commitments to strengthening the UN machinery. NGOs, however, lamented the failure to use the conference to advance international standards and

build more rigorous and enforceable systems of accountability at the international, regional, and national levels.

The challenge to reinforce the core principles of human rights was made more difficult by shifting foreign policy priorities of key Western governments. Free of the Cold War imperative, the new push was for the expansion of so-called “free market democracies”, rather than human rights, resulting in the reversal of previously established guarantees for human rights in those foreign policies. One notable example was the de-linking of human rights from aid and trade by a democratic administration in the United States.<sup>19</sup> Human rights advocates battled throughout the early to mid-1990s for continued attention to human rights in the post-cold war foreign – and largely economic – policies of the most powerful governments on the international stage.

*Economic Globalisation.* As human rights groups focused their attention on mass atrocities and defending the underlying principles to the human rights system, economic globalisation accelerated rapidly. The rapid economic changes and their impact on conditions of poverty across the globe demanded continued strategic adaptation of AI and other traditional human rights groups. There were three major challenges posed by economic globalisation for AI: how to measure the impact of economic globalisation through human rights standards, how to apply international human rights standards to the most important economic actors, and how to remain relevant in the eyes of the emerging NGO and social movement mobilisations opposing economic globalisation and calling for a human rights approach to development.

AI, which was historically State-focused, had limited experience in monitoring corporations and international financial institutions or targeting them for grassroots campaigns. While there had been targeted actions for aid conditionality and human rights assessments of loans, they were very much relegated to specialised

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<sup>19</sup> MANN, J., *About Face: A History of America's Curious Relationship with China, from Nixon to Clinton*, Vintage Publishing, London, 2000.

asks of donor countries. Developing a methodology for campaigning on companies, with weak international standards for corporate accountability, was a new challenge. AI would need to both advance those standards, while pressuring governments to hold corporations accountable for their human rights impacts.

Additionally, as a result of the economic policies of the 1990s, AI and other human rights NGOs were increasingly vulnerable to the challenge that their work was not relevant to the conditions and policies that left 1.2 billion people in abject poverty, heightened inequality, and social marginalisation. Voices demanding that economic and social rights were advanced and protected grew louder, pressuring for the first full embrace of the core concept of indivisibility of rights. With the explosion of civil society organisations in the South, and with the appearance of new NGOs devoted specifically to the advance of economic, social and cultural rights (ESC rights), traditional human rights groups came under fire for adopting an inadequate approach to human rights advocacy. In some cases, they were even accused of blocking the full potential of the human rights framework to protect and advance the rights of people hardest hit by economic globalisation. As international exchanges of perspectives intensified and began to change the power dynamics among NGOs and within AI itself, recognition of the need to address ESC rights was finally occurring. Criticisms from other NGOs and movements were not new, but AI began to design a human rights approach to social and economic conditions, both reactively and intentionally.

This new approach had two dimensions, evolving rapidly from each other and to a new mission. First, AI, along with the larger human rights movement, began to examine how it could create a space for advocacy across all human rights and economic impacts while retaining its traditional focus on civil and political rights. AI began working to “defend the defenders” of human rights. AI could draw international attention to the issues and help create a safe political space for the increasing advocacy of social movements against economic globalisation. Focusing on the civil and political

rights, violations committed against development, labour, environmental and women's rights activists gave a human face to the impact of economic globalisation and retained the traditional casework tactics of AI.

Second, AI stepped up its focus on ESC rights in educational activities on human rights, while, at the same time, expanding its analysis of the economic conditions leading to more traditional civil and political rights. AI began to incorporate analysis of the relationship between civil and political rights and economic and social rights in education and advocacy materials and campaigns. It educated its own supporters and slowly began to lend credibility to these rights in the public consciousness as well.

These two approaches created momentum towards a new mission. As is now well-known, in 2001, the international decision making body of AI adopted a new mission that called for a limited move into the ESC rights.<sup>20</sup> As a result of intensified interaction with other advocacy sectors, growing capacity of researchers and advocates, AI was ripe for change. It felt compelled to link economic and social rights with civil and political, as that would lead to greater attention to both economic actors and the economic impacts of government policies, as well as a slow popularisation of the economic rights and the concept of interdependence of all rights. Doing less meant questioning its very legitimacy as a leader in human rights; its capacity to work effectively on the conditions that led to civil and political rights would be weakened, and its credibility among its partners in the NGOs community and the rights holders themselves was at stake. Increasingly, AI's supporters were primed and resistance softened.

Changes in the organisation were immediately visible and the hotly debated limited approach was quickly eclipsed by a commitment to infuse research and advocacy on ESC rights into Amnesty's campaigning. Within only a few short years, this commitment was clearly visible to the world, as seen in the

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<sup>20</sup> MATAS, D., *The Amnesty Mandate History*, unpublished manuscript.  
*SIM Special 36*

introduction of the AI 2005 Annual Report that cites the persistence of poverty as the ‘gravest threat to human rights and collective security’. Additionally, the organisation was already beginning to conceptualise a high priority, large-scale campaign on the links between human rights and poverty, later known as “Demand Dignity”; a ten year campaign set as one of the highest priorities for all sections of the international organization.

In the period of one decade, conditions, assumptions, and practices on which the previous thirty to forty years of advocacy were built had undergone radical change. The Cold War was over, economic actors were in the ascendancy, and the fabric of the human rights movement was more textured through the proliferation of civil society. The rapid development of new organisations working on human rights, the intensified interaction with the development and human rights fields, and the growing call by social movements and specialised NGOs for human rights groups to address economic actors and economic and social policies, set in motion a process of setting new strategic priorities for AI, and, increasingly, changes in mission and methodology.

## **5. NEW MISSION, NEW METHODS?**

In a short period of time, campaigns on economic and social policy from a human rights framework proliferated around the world by international human rights NGOs, domestic organisations, and social movements. AI moved immediately to infuse ESC rights into the range of its issue-based and geographic work, deepening its own experience in investigating, advocacy, and campaigning in the process. A global campaign on poverty was launched. Yet, the debate on how to implement ESC rights and what it means for the

organisation's effectiveness – and the human rights movement – is not over.<sup>21</sup>

The debate about how adoption of work on ESC rights will impact the methods and effectiveness of traditional human rights NGOs revolves around three central questions. First, can the historic methods of human rights advocacy, developed to advance civil and political rights, be effective in economic and social rights? Second, can effective standards be established for measuring government attainment of ESC rights? Third, can international human rights organisations effectively expand their activities to include a wider range of issues, or will they dilute their effectiveness, confuse their constituencies, or render themselves indistinguishable from other sectors?

*Do traditional methods apply?* A widely read and cited article by the head of Human Rights Watch, Ken Roth, argued that the traditional approach of “naming and shaming” human rights violators, by documenting human rights abuses and mobilising international pressure to enforce international human rights standards, could not as readily be applied to ESC rights advocacy. Arguing that it would be difficult to establish who are the duty holders for these rights, to identify the specific acts or policies that constitute violations, and to track the progressive realisation demanded by all governments for attainment of economic and social rights, Roth represented the voices of those in the traditional human rights community that were sceptical about moving forward methodologically.<sup>22</sup>

This critique was denounced as both simplistic and regressive. The main response to this argument has been that

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<sup>21</sup> YAMIN, A.E., ‘The Future in the Mirror: Incorporating Strategies for the Defense and Promotion of Economic, Social and Cultural Rights into the Mainstream Human Rights Agenda’, *Human Rights Quarterly*, Vol. 27, No. 4, 2005, pp. 1200-1244.

<sup>22</sup> ROTH, K., ‘Defending Economic, Social, and Cultural Rights: Practical Issues Faced by an International Human Rights Organizations’, *Human Rights Quarterly*, Vol. 26, No. 4, 2004, pp. 63-73.

traditional human rights methods could still be applied, although some new skills and experiences in doing so would be required. Additionally, where new methods need to be developed to respond to specific issues, adaptation is consistent with NGOs work on civil and political rights in the past and will continue to be in the future. NGOs have already moved beyond traditional naming and shaming to lobby for policies, systems and services that can fulfil ESC rights, similar to historical experiences in work on civil and political rights.<sup>23</sup>

Mary Robinson, former UN High Commissioner for Human Rights, argued that human rights groups can lobby for greater allocation of government resources when they exist or have been siphoned away for unnecessary military expenditures, corruption, or misspending.<sup>24</sup> This is not fundamentally different than the remedies for civil and political rights violations that called for expanded government investment in judicial capacity, training for police, more prisons, and so on. In fact, previously, recommendations for redress of civil and political violations that involved government expenditures were often made with no attention to budgetary considerations, rendering them aspirational. NGOs can support governments and international donors to design programs with an understanding of their human rights implications. Naming and shaming techniques will be employed in some cases, institution and capacity building in others, and often both will occur simultaneously. This is not markedly different than the traditional civil and political rights advocacy. Yet, it is clear that looking at the affirmative obligations of States to meet basic needs will require new strategies to pressure governments and more sophisticated capacities of NGOs for understanding the design and impact of social programs, budgets

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<sup>23</sup> RUBENSTEIN, L.S., 'How International Human Rights Organizations Can Advance Economic, Social and Cultural Rights, A Response to Kenneth Roth', *Human Rights Quarterly*, Vol. 26, No. 4, 2004, pp. 845-865, at p. 851.

<sup>24</sup> ROBINSON, M., 'Advancing Economic, Social and Cultural Rights: The Way Forward', *Human Rights Quarterly*, Vol. 26, No. 4, 2004, pp. 866-872, at p. 870.

and service programs.<sup>25</sup> Should, however, the scope of human rights groups work be limited by their current tools and historic traditions?

The question of assigning duty to ESC rights violations is perhaps the most challenging one. Changed international conditions and changed power relations between the State and economic actors create a more complex set of actors to sort out in the assignment of accountability for ESC right violations. It is possible to identify multiple violators while determining both accountability and remedy for abuses. Yamin cites a case of water privatisation in Ghana that examines the shared responsibility of the international financial institutions, the Ghanaian government, and the British Department for International Development for violations of right to health, life, and water.<sup>26</sup> NGOs, largely based in the global South, have subjected international institutions and trade and commercial regimes to human rights assessments, requiring a blending of traditional civil and political method with development tools. In the case of campaigning for the “new right” to essential medicines, naming and shaming pressured pharmaceutical companies and governments to remove barriers to the greater availability of generic HIV/AIDS medications.<sup>27</sup>

Many NGOs, including AI, are already working in partnership with other NGOs and development agencies, and, although complex, with governments, sometimes adversarial and sometimes supportive. Therefore, the NGOs assign responsibility for the failure to meet rights standards to multiple actors. In a sense, they are and have been moving “beyond the violating State” and assign responsibility to actors that may create obstacles to the fulfilment of rights in a global economy. Poor domestic governments, of course, remain obligated to respect, protect, and fulfil economic and social

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<sup>25</sup> RUBENSTEIN, *loc.cit.*

<sup>26</sup> YAMIN, *loc.cit.*, p. 1231.

<sup>27</sup> RUBENSTEIN, *loc.cit.*; NELSON and DORSEY, ‘At the Nexus of Human Rights and Development: New Methods and Strategies of Global NGOs’, *World Development*, Vol. 31, No. 12, 2003, pp. 2013-2026.

rights. International standards emphasise States' duties to realise those rights and ensure that they are delivered without discrimination. Advocacy goes beyond the State, not because States are no longer accountable, but because in a global economy accountability is increasingly shared by corporations, international economic institutions and regimes, and often by rich-donor governments. To achieve adequate remedy, NGOs may need to partner with a government to pressure international actors.

The political environment in which ESC rights advocacy takes place puts advocates in a different relation to poor-country governments and to sources of political leverage in the international political agenda. At times, NGOs will oppose and condemn the violating State, at other times they will attempt to shift responsibility for violations to the international level and to economic actors. In addition, they will appeal to new human rights norms evolving out of the current political and economic trends in the international system.

This is a new pattern of action; rather than appealing to norms whose resonance is stronger in the international arena than in the target government, much ESC rights advocacy appeal to human rights standards that have stronger support in the global south. It reinforces State sovereignty rather than challenging it and may require calling for greater freedom for national governments and societies to set social policy. These advocacy strategies do not signal a complete reversal for international HRNGOs, as stronger international regimes continue to be required. But this new form of human rights advocacy does represent a significant shift towards a more complex and varied relationship between international NGOs, social movements and NGOs in the global South and poor country governments.<sup>28</sup>

*Can shame be mobilised?* Is there a constituency for ESC rights and advocacy on the interdependence of all rights? Can the historic constituency of traditional international human rights groups

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<sup>28</sup> A detailed description of new rights and the advocacy associated with it is provided in the summary chapter of NELSON and DORSEY, *op.cit.*

and, specifically, AI be brought into a concerted level of advocacy that will be effective in moving governments and economic actors alike? Can shame be mobilised when issues and targets are complex?

Complexity of targets is not a significant barrier. The international advocacy on the right-to-essential medicines where AI played a specialised advocacy role, demonstrated that activists could tackle multiple targets, shared accountability, and new human rights standards. If the issue is compelling, the violations egregious and the campaign is messaged effectively, the complexity of the issues should not represent a barrier to building constituency.

Can shame be mobilised in Western countries where development issues, as work on global economic and social issues has been previously defined, is predominantly viewed as market driven and charity based, rather than subject to human rights accountability? The public constituency for ESC rights in the wealthy industrialised countries varies greatly. The European tradition, with its history of public commitment to social development and the welfare State, coupled with tremendous financial support for development based on an abiding commitment to international responsibility, differs greatly from that of the United States. Engaging publics across these traditions requires clearly different approaches where popular education, advocacy messaging, and selection of targets will be tooled accordingly.

Perhaps most significantly, the shift in power across the international system to the emerging economies represents both a significant challenge and opportunity for building new constituencies for human rights. AI is already shifting resources and personnel to address research, campaigning, and membership development needs in these regions. This is a significant challenge to a complex bureaucracy of an international NGO. It is an empirical question whether constituencies for economic and social rights can be built more readily in these countries, but history and philosophical traditions would suggest it can be.

*Can Human Rights NGOs be effective with an expanded mission?* Ten years after AI voted to incorporate ESC right into its  
*SIM Special 36*

advocacy agenda, this is still a question debated by its supporters, members, and staff. Can AI remain an effective human rights organisation with an expanded and, arguably, more complicated mission? Some have argued that faced with the war on terror and backsliding by Western governments on civil and political rights, adoption of an expanded mission would diffuse critical human and political resources while trying to defend previous gains.

Additionally, those concerned with the expansion in mission, have argued that it will be difficult to distinguish AI from other NGOs working in the development and environmental sectors. Conversely, proponents of AI's embrace of all human rights argue that AI cannot be truly effective, representative or credible as a human rights NGO without upholding the fundamental principle of indivisibility of all rights. AI will bring its unique experiences and human rights methodology as value added to the work of NGOs in those different sectors.

Additional concerns have been expressed that to be effective, AI will need to expend resources to develop proficiency in new issues areas, new research and advocacy skills. This is an accurate concern. But it is not unique to AI's work on ESC rights or economic issues. Rather, it has been true throughout its history. Each expansion in issue coverage has required some degree of methodological innovation and skill development.

The challenge of addressing expanding priorities is a familiar one for human rights organisations. Arguably, expansion of issues human rights groups are working upon reflects the expanding coverage of human rights standards to support new rights demands. If the human rights system is constantly evolving to reflect both changes in circumstances and growing embrace by new populations claiming their rights, it is inevitable that the leading NGOs will be called upon to empower those claims by supporting the demands of rights holders.

Does Amnesty want to be a specialised human rights NGO, negating the indivisibility of rights and risk setting priorities that do not align with the realities of daily life for the majority of the world's

population? AI's members rejected that possibility and the decision to expand its mission is now irreversible. Pragmatic considerations of how to set priorities and what skills and methods are needed to be effective in this advocacy will be worked out over time. Questions over capacity and impact are now empirical ones.

## **6. THE NEXT 50 YEARS**

The world today is beset by a perfect storm of crises: a warming planet and environmental damage; global recession; threats to peace and security; and the plight of almost half the world's population, who live in poverty. These crises are interlinked, each impacting on the other. Climate change will, in most cases, be felt first and worst by those living in poverty. Many of the least developed countries are prone to conflict. Economic recession will set back progress in bringing people out of poverty and create more sources of instability. Solving any one of these crises is a challenge; put together they appear almost insurmountable.<sup>29</sup>

How will responding to these crises and the fundamental international system changes impact AI's methods, partners, strategies, and, ultimately, power moving forward? As stated in the introduction, to continue to be effective, AI will need to respond to changing international conditions, a changing world demographic, the shifting power of international actors, the emergence of new human rights issues and crises, changing methods of communications and delivery of information, and the shifting eco system of NGOs and social movements across the globe. AI needs to respond to new rights claims and critiques about its legitimacy to speak for rights holders. While it is impossible to project out into the future and anticipate what the next 50 years will bring, there are some clear and obvious major challenges for AI's priorities, methods, and partnerships. The three most challenging trends in the international

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<sup>29</sup> KAHN, I., *The Unheard Truth: Poverty and Human Rights*, W.W. Norton and Company, New York, 2009, p.19.

system are the global economy, the climate crises, and the erosion of the State.

First, the global economy will continue to be characterised by extreme inequities within and across societies and by the unchecked power of corporations. While the challenge of poverty is central to Amnesty's campaigning priorities today, the problem of extreme inequality and economic dislocation is spiralling to new heights. Conversely, the capacity of donor governments, as shared duty holders, is seriously undercut by recession. From its nascent advocacy on economic issues, AI will need to continue to advance new norms, partnerships, and leverage to meet the challenge of human rights in a global recession and with intensified levels of poverty.

Additionally, AI and other human rights NGOs have been slow to tackle the ascending power of corporations, directly or through critical trade and financing instruments used to advance their power. Addressing corporate accountability for human rights abuses requires a combination of advocacy on international standards and new enforcement institutions at the international, regional and national levels, monitoring of company practices, litigation, and campaigning.

Second, the epic battle over access to natural resources, in extraction and land grabbing, is intensifying at a pace parallel to the first colonial period. Related, the disruption of climate will continue largely unabated with profound consequences for basic human survival.<sup>30</sup> Economic, social and cultural rights will become more acutely impacted and HRNGOs will be responding to extreme dislocations, conflict, disease, and food and water shortages. Dislocation and social instability will drive new patterns of protest and resistance; with it, civil and political rights violations.

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<sup>30</sup> For an excellent overview of the impact of climate change on human rights, see INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, 'Climate Change and Human rights: a Rough Guide', 2008, *available at*: [www.ichrp.org/en/projects/136](http://www.ichrp.org/en/projects/136).

Movements throughout the poorest regions of the world will demand accountability of the consuming societies and governments driving resource colonialism and climate disruption. Weakened governments must choose to use their resources to respond to growing demands for climate justice by its people or give in to continued international pressure for access to natural resources.

Third, as discussed previously, the erosion of State power has multiple causes and multiple impacts. The complexity of issues surrounding a State's authority to control economic policy can place human rights activists in a position of sometimes partnering with and sometimes targeting the State to insure that human rights will be met. But ultimately to confront the impact of economic decisions and actors upon human rights, AI must uphold the responsibility of the State to respect, protect, and fulfil them.<sup>31</sup> AI needs to identify obligations of the State to deliver on specific rights and demand action to meet those obligations, even for weak States crippled by the demands of international donors and its place in the international economy. Government action can be used to protect against abuses committed by other actors, or sources of power from international donor driven mandates that put populations at risk to extraterritorial practices of companies that violate civil and economic rights. AI will need to develop new and more sophisticated instruments and policy tools for the international actors as duty holders.

Will these international system characteristics change AI's methodology and advocacy strategies? AI will adopt a myriad of new approaches, while strengthening its historic methods, to respond and adapt to these issues in the coming years. The following short analysis will attempt to highlight those that may be most critical.

A review of the basic methodology and functions of NGOs is instructive. Human rights organisations establish new human rights standards and institutions to uphold them, investigate and monitor human rights performance (of States and non-State actors), advocate for policy and legal reforms within the duty holders, specify and

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<sup>31</sup> KHAN, *op. cit.*, pp. 19-21; NELSON and DORSEY, *op.cit.*, pp. 172-175.  
*SIM Special 36*

advocate for remedies to redress abuses, and campaign to achieve these rights through direct advocacy and alliances.

*Standard setting and international policy change.* To be effective in addressing the changes in the international system and the human rights impacts of the global recession, extraction of resources and erosion of State authority, AI must exert crucial and profound leadership in setting new standards and creating institutions to advance them, popularise and empower new rights that emerge from economic and environmental struggles, and direct international advocacy at transformative policies that will work at the nexus of human rights, development and environmental protection. These are some brief examples.

There are two critical areas for advancement of standards and institutions setting. The first is already well underway, but still very nascent and weak. In June of 2011, The UN Human Rights Council endorsed a set of “Guiding Principles on Business and Human Rights” and established a working group focused on disseminating and discussing the principles that were drafted during a process led by UN Special Representative on business and human rights, Prof. John Ruggie. The working group will be comprised of business, civil society, and government representatives. AI and other human rights organisations have critiqued the Guiding Principles as falling far short of a global standard; the standards are voluntary, lack adequate oversight and enforcement mechanisms, and the working group has no mandate to redress these other failings.<sup>32</sup> Additionally, the Principles do not address the issue of extraterritoriality, failing to require States to put in place effective regulatory measures to prevent and punish companies for abuses abroad; they do not require

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<sup>32</sup> UN HUMAN RIGHTS COUNCIL: ‘Weak Stance on Business Standards’, Human Rights Watch press statement, released 16 June 2011, *available at*: [www.hrw.org/2011/06/16/un-human-rights-council-weak-stance-business-standards](http://www.hrw.org/2011/06/16/un-human-rights-council-weak-stance-business-standards); AMNESTY INTERNATIONAL, ‘United Nations: A Call for Action to Better Protect the Rights of Those Affected by Business Related Abuses’, press statement, 14 June 2011, Index: IOR 40/009/2011.

companies to undertake due diligence on human rights; nor incorporate the right-to-remedy as a human right.<sup>33</sup>

It will be difficult for AI and other NGOs to expand the content of the guidelines and push for a fundamental overhaul of its voluntary nature in the near term, but a longer term strategy can still be effective. AI will need to engage in continued and expanded campaigning on corporate practices and targeted advocacy with Member States to move towards international standards with teeth. Regional mechanisms offer additional opportunities to set and advance new norms, like the Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises, which go further in addressing the issues of due diligence, control over subsidiaries, stakeholder engagements, and transparency. Additionally, the OECD Guidelines incorporate the impact of climate change and human rights.<sup>34</sup> Moving the regional standards will put greater pressure on the international process.

In the coming decade, the call for standards around climate and human rights will only grow louder as the harshest effects of climate instability play out globally. Food shortages and famine, public health, access to water, population dislocation, and disaster preparedness will define the claims for new rights protections emerging out of the global crises. AI will be called upon to advance standards for States and corporations, while breathing life into the notion of international accountability for economic and social rights violation, found in Article 2 of the International Covenant on Economic, Social and Cultural Rights. To date, AI has done little work on climate and human rights.

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<sup>33</sup> AMNESTY INTERNATIONAL (*idem*).

<sup>34</sup> OECD WATCH, 'OECD Watch Statement on the Update of the OECD Guidelines for Multinational Enterprises', released 25 May 25, *available at*: [www.oecwatch.org](http://www.oecwatch.org).

## 6.1 STANDARD SETTING: PROMOTING NEW RIGHTS

Two specific ‘new rights’ have garnered support from human rights, environmental, and development NGOs, buoyed by the advocacy of social movements and community level campaigns the world over. The right to water has gone from popular demand to a new human rights norm to legal standing in a very short period of time. While water was addressed in international covenants for the rights of women and the rights of children, it was not until the campaigning against water privatisation in the 1990s took off on a global level that real progress to advance, define and operationalise the right occurred.<sup>35</sup> The pace and intensity of international water advocacy grew rapidly after General Comment 15 on the right to water was released in 2002. And in July of 2010, the UN General Assembly adopted a resolution recognising access to clean water and sanitation as a human right, calling on States and international organisations to provide financial resources, build capacity, transfer technology, in scaling up efforts to provide safe, clean accessible and affordable drinking water and sanitation.

Ultimately, political claims to the right to water draw on the rhetorical, moral and legal authority of “rights” to push for universal access to clean and safe water. And HRNGOs will advance both the political claims and insure State accountability, as they have done in the formation of new human rights in the past. Key NGOs have already worked to support the “new right” through reports, position papers, advocacy and litigation. Prominent players in that work are the Blue Planet Project, International Water Working Group, WaterAid, the Center for Economic and Social Rights, the Centre on Housing Rights and Evictions, and, recently, the Global Initiative for Economic, Social and Cultural Rights.

Similarly, though less developed, is another “new right” that has emerged out of the nexus of concerns advanced by indigenous rights advocacy, environmental, development and human rights

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<sup>35</sup> Blue Planet Project, *available at*: [www.blueplanetproject.net](http://www.blueplanetproject.net).

NGOs. Free, Prior and Informed Consent (FPIC) emerged through struggles by Indigenous advocates demanding that their governments, international agencies and organisations, and corporations respect their right to give or withhold consent to project development. Now known as FPIC, the right is defined in the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) as ‘to give or withhold their free, prior and informed consent to actions that affect their lands, territories and natural resources’. While defined in relationship to Indigenous peoples rights, FPIC is embraced by development, environmental and human rights organisations seeking to push back on large scale development projects that threaten grave environmental and human rights consequences, in extraction, dams, roads, logging, and so on. Historically, these projects have been imposed on communities, not only Indigenous people, without adequate information, participation, or consent. This “new right” is a powerful tool to thwart development of projects or to hold governments, international institutions and companies to account if they do not meet the standard.

In the case of the right to water, FPIC and other new rights that have emerged in the area of intellectual property and are emerging in regards to land, AI can help breathe life into them, through on-going monitoring and reporting, advocacy, litigation, and popular education.

While advancing new standards, AI must also insure that they are incorporated in pivotal international policies. In the coming decades, there will be many international fora that set international policy and guidelines for national policy, where AI and other HRNGOs will seek incorporation of strong human rights analysis and standards. In the near term, nowhere is this more important than for the development of the next round of Millennium Development Goals (MDGs). The first round was launched in 2000, as one of the most ambitious commitment of resources for a global development ever embraced by governments and international agencies. The MDGs set eight goals, with 18 standards, and 48 benchmarks to

reduce poverty, malnutrition, illiteracy, child mortality, gender discrimination and others. But the MDGs include no accountability measures for the rich countries and ignore access to land, employment, credit, and so on. In short, they do not incorporate and fully embrace a human rights approach that would establish accountability for poor governments *and* donor governments would demand non-discrimination and the inclusion of the most marginalised. It is based on the old development paradigm of goals, not rights; generosity, not obligations.

AI has participated actively in the ten-year assessment and evaluation of the MDGs, highlight how a rights-based approach (RBA) would differ in impact from the MDG model. It pressures for an immediate incorporation of rights standards. The real opportunity comes as all the major donor governments, international agencies, and financial institutions prepare for the next set of MDGs, to be launched in 2015. Here, AI has a unique and critical opportunity to broaden the call for full incorporation of human rights for the next round of policy setting and resource distribution, pressuring the key institutions to redefine the MDGs to – perhaps – Millennium Development Rights.<sup>36</sup> Such a priority on international policies would yield enormous benefits to both meeting human rights standards and preventing abuses for decades to come.

## 6.2 HIGH QUALITY MONITORING AND INVESTIGATIONS

AI is currently in the midst of a substantial review of how it conducts its research, investigations, and monitoring of human rights conditions around the world. It has begun to modify personnel placements, to do so effectively. Staff is being assigned to key countries and regions. Individual sections of AI will be given new authority and resources to take leadership in those investigations and

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<sup>36</sup> DORSEY et al, 'Falling Short of Our Goals: Transforming the Millennium Development Goals Into Millennium Development Rights', *Netherlands Quarterly of Human Rights*, Vol. 8, No. 4, 2010, pp. 516-523.

reporting, as well as specific and targeted advocacy. Responding to changing international conditions and bringing relevant expertise to emerging issues and concerns will require new research and advocacy skills. To address the three significant international trends identified above, new skills will be required to address issues of public health, natural resource management, land grabs, and financial policy, to name only a few. Exchange of personnel across the development, human rights, and environmental sectors and NGOs is already happening to a significant extent. Human rights specialists are working with development agencies and public health experts are providing depth to the growing work by HRNGOs on rights to health issues. This exchange of experience and skills will happen naturally and will contribute to the growing cross fertilisation of the fields, stronger alliances, and relationships.

### 6.3 ALLIANCES AND RELATIONSHIPS

To be effective in addressing challenging new shifts in power in the world, the nature of AI's relationships with other organisational sectors (development, environment, labour), NGOs, and social movements will necessarily change. Some alliances have already been built, to advance specific priorities and research skills. But they have largely been transactional. There will need to be a higher degree of coordination and sophistication in these alliances if sufficient power can be built to exert leverage on the duty holders and press for effective remedies in the increasingly complex international system. It is instructive to look at our history in several key areas and draw from those experiences as AI looks to the future.

**Women's rights.** The human rights movement was altered fundamentally by the women's human rights movement, that saw international agencies, NGOs, and community based organisations working together to advance new standards, new institutions, and new policies to fully address the myriad of violations women were confronted with in their daily lives. This is a model of alliance where NGOs historically focused on economic development, environment,

militarism and security, sexual and reproductive health, and human rights all came together to form unified advocacy agenda. Coalitions were built to advance gender-specific policies, weaving across international, national and local levels. In the process, the overall fabric of the human rights movement was strengthened and greater collaboration was built with the environmental and development sectors as a result of the women's rights advocacy.

**Development.** Much can also be learned from, and strengthened in, the alliances between the human rights and development sectors currently advancing a human rights approach to economic and social policy. The opportunity to expand this collaboration, and deepen the move by development agencies and NGOs into collaboration with the human rights sector, is still largely unrealised. Much has been written about the move by the development sector into “rights-based approaches”, or RBA. It emerged from the frustrations of the development sector with decades of concerted work that produced flashes of local success, but little in the way of transforming the global pattern of poverty. Furthermore, deepening inequalities, marginalisation and indignity has fuelled calls for a new paradigm. The RBA offers promise as it draws from internationally accepted standards to which governments and non-State actors alike can be held accountable, thereby shifting the paradigm away from the charity driven development model that sets goals for human dignity that can be ignored or missed with no recourse for affected populations.

From the perspective of the human rights movement, these relationships with the development sector offer greater power; the power to move development resources in ways that are consistent with international human rights norms and insure a greater commitment to inequity and the rights of the most marginalised populations. It also holds the promise of greatly expanded power to achieve its goals through joint advocacy with a sector that is both larger and more fully resourced. AI needs to thoroughly assess its relationships with the development sector and consciously strengthen its capacity to work in a more coordinated fashion, both to shore up

the move towards RBA within that sector and to leverage their enormous donor resources.

Importantly, tentative alliances with development groups have already fostered deeper analysis about the nature of the global economy, the role of international economic actors and donor governments and agencies, and the way that human rights can establish greater leverage over those entities as well as transform the power relationships between them and rights holders. This analysis is very much changing the way AI approaches its work on economic and social rights and questions of the poverty-rights nexus.

**Environment.** Relationships with the environmental sector are, conversely, underdeveloped. The human rights community has looked at environmental issues in a very transactional way, that is, when human rights abuses occur as a result of sectors that extract resources. It also questions how we can protect the rights of environmental defenders in their advocacy. Yet, the profound and transformative impact of climate change for all human rights will require a completely different approach to the environmental sector. Working to set new international standards that address the rights and environmental nexus, breathing life into nascent new rights, identifying the most significant duty holders as well as pressuring governments to respect the rights of affected populations, to control their resources and have informed consent over their extraction is all largely untested territory for AI and the more traditional international human rights NGOs.

## **7. LOOKING FORWARD: FINAL REMARKS**

Finally, AI will increasingly need to address its historic and future relationship with poor-people led movements. AI cannot engage in advocacy on the rights of participation for poor people in development projects, for communities over their natural resources without developing mechanisms for those same communities to participate in the design of AI's advocacy campaigns and priorities.

To do so requires perhaps the most fundamental shift in methodology since AI's inception. At its founding, AI brought its "expertise" to situations, issues, and conditions around the world. It determined the human rights issues to prioritise, identified who were the duty holders, and laid out the relevant remedies for the abuses. Little attention was paid to the community other than as a source of information. This has changed over 50 years, with the proliferation of demands from communities, other NGOs and social movements for a different type of partnership. Now, AI must define priorities and strategies with rights holders. How AI navigates this issue will be central to its authority and legitimacy to name rights and remedies and speak credibly about the issues most central to the majority of the world's population.

In conclusion, if economic disparity deepens within and across societies, if corporations continue to subvert democracy and remain largely unaccountable international actors, if unchecked climate change wreaks havoc for societies in access to resources, those that are most impacted must be at the forefront of the strategies to advance their rights. Ultimately, the most difficult and poignant challenge AI will face in the decades to come is responding to calls for more radical advocacy from poor people led movements, particularly those challenging the drivers of climate disruption and growing inequality in the global system. Focusing on the rights of the most impacted, and historically most excluded, will push the boundaries of AI's advocacy and potentially foster tension within its historic supporters.

Can Amnesty navigate the tension between responding to the needs and direction of the rights holders and its own organisational imperatives? Can Amnesty find the balance between supporting the demands of these movements and appealing to a crucial donor base that will question the need and efficacy of taking on positions and relationships that challenge dominant economic and political paradigms?

AI has walked that line between existing donor and member expectations and establishing uncomfortably new human rights

strategies many times before, often slowly moving forward and building out the foundation of new areas of work. It has brought its constituency along through values; based appeals supported by clear and compelling evidence, and drew legitimacy to its changes from the international standards that evolved to fit new economic and political realities.

Ultimately, throughout its impressive and effective history of being the world's most prominent human rights NGO, AI has responded to incredible changes in its operating environment, and adapted to challenges from its partners, supports and adversaries. As an organisation, it has managed change and persevered. It has advanced new normative standards for human rights, advocated for adoption of new institutions and practices, conducted path-breaking research in the field, and mobilised its own and wider constituencies to advocate both for individuals and systemic policy change.

It has built alliances across geographic, political, and economic divisions and it has contributed to the development of movements, leadership, and organisations to carry forward local and issue-specific human rights work. It has attracted members (and lost some), recruited and retained top professional staff, and has kept a consistent, albeit limited, stream of resources flowing to its priorities. It has come under fire for not doing enough, not covering sufficient range of issues and remedies, and not representing its partners legitimately. It has angered its own supporters many times over many years. In addition, AI has advanced the wellbeing and dignity of untold tens of thousands of individuals across the globe, while advancing and popularising the revolutionary concept of human rights, inspiring millions to action. With a record like that, there is no reason to suspect it will do any different in the coming 50 years.



# WHO PARTICIPATES AND WHY?

BERT KLANDERMANS

## 1. INTRODUCTION

Some 20 years ago, I was contracted by the Dutch branch of Amnesty International (AINL) to evaluate the so-called 'mixed' character of the organisation. 'Mixed' referred to the presence of professionals and volunteers working together in the same organisation, a characteristic AI shares with many other voluntary organisations (VOs). Like many VOs, AINL displayed tension between the professionals and the volunteers. Many of the professionals were of the opinion that the volunteers were distracting them from their work. Volunteers have to be trained and need supervision. They have a high rate of turnover, which requires extra time to settle-in newcomers. On the other hand, the professionals tended to forget that supervising and training volunteers *was* part of their work.

We concluded at the time that organisations like AI cannot afford to do without volunteers. In the first place, because they do not have the resources to replace all volunteers by paid officials. Second, because a continuous influx of volunteers with their idealism and enthusiasm contributes significantly to the atmosphere and livelihood in the organisation. Therefore, having a constant influx of volunteers is crucial for organisations like AI. This raises the question of how to motivate people to volunteer; to contribute a smaller or larger part of their time and energy to AI?

AI accommodates several types of volunteers who serve in various tasks and duties within the organisation. Some serve for shorter or longer periods in the common organisational chorus. The majority of the volunteers, however, populates hundreds of groups spread all over the country, and, through assignment by the national

or international organisation engage in short-term group activities such as letter writing, internet action, local campaigns to draw attention to human right violations, and so on. Thousands of people have contributed in that manner to the success of AI and helped it to grow into one of the largest volunteer organisations in the world. In many ways, AI has the characteristics of a movement organisation, and participation in activities of AI is comparable to movement participation. Part of the answer to the question of how to motivate volunteers, therefore, can be found in the literature on social movement participation. This is why the pages to come will elaborate on what movement participation is like. Activities of AI volunteers will be characterised as various types of movement activities and discuss the motivational dynamics of such activities. Making use of studies conducted in the past among volunteers active in AI, such matters as what kind of people are actively involved in AI and what motivates them are discussed. Volunteers differ in terms of how actively they are involved; what accounts for such differences? Many a volunteer quits within a year. In that respect, AI is not different from other volunteer organisations. What are the reasons for volunteers to leave?

After having discussed engagement and disengagement in AI activities, the question of what this means in terms of AI as an organisation is discussed. Dynamics of engagement and disengagement have a supply-side – the organisation and its appeal – and a demand side – the people and their concerns. I will reflect on AI's appeal to its volunteers and the concerns that people seek to accommodate through their involvement in to AI.

## **2. PARTICIPATION**

Movement participation can be distinguished in terms of duration and effort (Figure 1). Some forms of participation are limited in time or of a once-only kind and involve little effort or risk – giving money,

signing a petition, or writing a letter. Other forms of participation are also short-lived, but involve considerable effort or risk – a sit-in, a site occupation or a strike. Furthermore, participation can also be indefinite but little demanding – paying a membership fee to an organisation or taking part in a local action group. Finally, there are forms of participation that are both enduring and taxing like being a member on a committee or a voluntary worker in a movement organisation.

Figure 1. *Forms of Participation*

|                            |      | DURATION  |  |
|----------------------------|------|---|--|
|                            |      | limited   | unlimited  |
| E<br>F<br>F<br>O<br>R<br>T | low  | I.<br>giving money<br>signing petition<br>writing letters | II.<br>paying membership fee<br>local action group |
|                            | high | I<br>sit-in<br>site occupation<br>strike                  | IV.<br>committee member<br>voluntary worker        |

From a social psychological perspective, such differences are relevant because the various forms of participation involve different motivational dynamics. The effort dimension obviously concerns the cost, benefits and risks of participation. One would typically expect levels of participation to go down if the costs and risks go up. The time dimension draws attention to two fundamentally different motivational dynamics. Long-term activities have in common that usually some relatively small number – say 10-15 people – is sufficient. In fact, beyond that number additional participants may be counterproductive. Indeed, thanks to the effort of these 10-15 people many others who sympathise as well with the cause can afford to take a free ride. Finite forms of collective action, on the other hand,

usually require some minimal numbers to be successful. Before that threshold is reached the action is unlikely to make any difference. One or two letters do not make much of a difference, but hundreds or even thousands may.

This distinction is so important because individual participants face different dilemmas when facing the decision to take part in either activity. In the case of a finite activity their concern is, obviously, will the threshold be reached? If not, participation will be in vain. In that context, expectations about the behaviour of others become of crucial importance. Indeed, optimism about the number of participants may pull ever more people into action and make the unthinkable conceivable. Social networks are of crucial importance in this context. Through their networks people are informed about the behaviour of others. In the case of a long-term activity, however, a different dilemma must be solved. The important question in this setting is whether participants are prepared to give the others the free ride? Indeed, most core activists of movement organisations are perfectly aware of the fact that they are giving 90 percent or more of the movement's supporters a free ride, but they do not care. On the contrary, this seems to be their very motivation: "if I don't do it, nobody else will" they seem to say.

<sup>1</sup> They are the true believers who care so much for the movement's cause that they are prepared to make that effort even though most others will not.

I do not think Amnesty's participants engage in short-term costly activities, but they do take part in the remaining three types. They write letters, donate money, are passive or active members, or are voluntary workers in the organisation. Who are they and what makes them participate?

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<sup>1</sup> OLIVER, P.E., 'If You Don't Do It, Nobody Else Will: Active and Token Contributors to Local Collective Action', *American Sociological Review*, Vol. 49, No. 5, 1984, pp. 601-610.

## 2.1 WHO PARTICIPATES IN AMNESTY?

Membership surveys in the Netherlands reveal that the average Dutch AI participant is highly educated, above average female breadwinner, biographically available, which is to say from one- or two person households, without full-time employment, often retired or student.<sup>2</sup> Their income is above average. Furthermore, they are socially and politically engaged, culturally educated, read newspapers and weekly magazines; watch the news, documentaries and educative programs. This characterises the AI participants as the typical new social movement crowd: highly educated, young, professionals, cosmopolitan, and adhering to so-called 'post material values'. In particular, active members – that is to say members of local groups or voluntary workers – are displaying these features.

The notion of new social movements was introduced some thirty years ago to distinguish 'new' movements, such as the women's movement, the peace movement, the environmental movement, the gay-movement, and the various solidarity movements (inter alia Amnesty International) from the 'old' labour and religious movements.

## 2.2 MOTIVATION TO PARTICIPATE

The social movement literature distinguishes three fundamental reasons why people participate in movement activities: they may want to change circumstances, act as members of their group, or act upon their principles.<sup>3</sup> Social movement organisations may supply the opportunity to fulfil these demands, and the better they do, the more movement participation turns into a satisfying experience. In

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<sup>2</sup> The figures in this and the following sections stem from two sources: BRANDENBURG, A., 'Participatie in sociale bewegingen. Verschillende vormen van participatie in Amnesty' (2003) Master thesis Sociology at Utrecht University, 2003; 'Vrijwilligerswerk bij Amnesty', Master thesis.

<sup>3</sup> KLANDERMANS, B., *The social psychology of protest*, Blackwell, Oxford, 1997.

brief, I will use as shortcuts: instrumentality, identity, and ideology. *Instrumentality* refers to movement participation as an attempt to influence the social and political environment; *identity* refers to movement participation as an expression of identification with a group; and *ideology* refers to movement participation as an expression of one's principles and values. Note that these are not mutually exclusive motives; however, approaches which neglect any of those three motives are fundamentally flawed. To be sure, individual participants may participate because of a single motive, but all three are needed to understand participation in collective political action. I will further elaborate the three motives.

*Instrumentality.* A demand for change begins with grievances. In the seventies, in reaction to approaches that tended to picture movement participation as irrational, social movement scholars began to emphasise the instrumental character of movement participation. No longer was it depicted as behaviour out of resentment by marginalised and isolated individuals, aggressive reaction to frustration, or politics of impatience, but as politics with other means.<sup>4</sup> Movement participants are people who believe that they can change their political environment and the instrumentality paradigm holds that their behaviour is controlled by the perceived costs and benefits of participation. Although it is taken for granted that they are aggrieved, it are presumably not so much the grievances *per se*, but the belief that the situation can be changed at affordable costs that make them participate. They have the resources and perceive the opportunities to make an impact. Thus, people participate in movement activities because of efficacy. People are more likely to participate in movement activities when they believe this will help to redress their grievances at affordable costs. The more effective an individual believes collective action participation

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<sup>4</sup> MCCARTHY, J.D. and ZALD, M., 'Resource Mobilization and Social Movements; A Partial Theory', *American Journal of Sociology*, Vol. 82, No. 6, 1976, pp. 1212 - 1241; TILLY, C, *From Mobilization to Revolution*, Addison-Wesley, Reading, Mass., 1978.

to be, the more likely the person is to participate. Embeddedness in social groups and organisations is of crucial importance for the generation of such feelings of efficacy.

*Identity.* However, instrumentality is not the only reason to participate. After all, much of the external goals are only reached in the long run, if at all. Similarly, when it comes to material benefits, costs frequently outweigh benefits. Apparently, there is more in being a movement participant than perceived costs and benefits. Indeed, belonging to a valued group is one of these other motives. People occupy many different places in society. They are students, unemployed, housewives, soccer players, politicians, farmers, and so on. All these different roles and positions a person occupies form his *personal identity*. At the same time, every place a person occupies is shared with other people. For instance, I am neither the only professor of social psychology, nor the only Dutch, nor the only European. Such a place shared with other people is a *collective identity*.

Most of the time collective identities remain latent. However, contextual factors may bring a collective identity to the fore. Obviously, this is often no matter of free choice. Circumstances may force a collective identity into awareness whether people like it or not, as the Yugoslavian and South African histories, and other dramatic examples throughout human history as AI's endeavours, have illustrated dramatically. Identification with a group makes people prepared to act as a member of that group. Identifying with a group may make a difference, especially in political contexts. Following this reasoning we may expect that strong identities make it more likely that people act on behalf of their group. The basic hypothesis regarding collective identity and movement participation is, thus, fairly straightforward: a strong identification with a group makes participation in collective political action on behalf of that group more likely.

*Ideology.* The third motive, acting upon one's principles and wanting to express one's views at the same time, refers to a longstanding theme in the social movement literature, and to a recent  
*SIM Special 36*

development. In classic studies of social movements the distinction was made between instrumental and expressive movements or protests. As movement scholars were increasingly unhappy with the distinction, it was felt that most movements had both instrumental and expressive aspects, and that the emphasis on the two could change over time – the distinction lost its use. Recently, however, the idea that people might participate in movements to express their anger and indignation over violated principles has received anew attention from movement scholars. These scholars put an emphasis on such aspects as emotions and moral indignation. People are angry, they develop feelings of moral indignation about some state of affairs or some government decision that violates values and principles they care about, and they want to make that known. As a consequence, they feel an inner moral obligation to protest. Such inner felt obligation is a strong motive to participate in collective action, especially if such collective action brings one into contact with equally indignant participants.

### 2.3 WHY PEOPLE PARTICIPATE IN AMNESTY

Of the three motives, instrumentality and ideology seem to be the most prominent among AINL participants. Findings of both survey and focus group studies reveal that idealism is the common denominator in the reasons why people participate in AINL. They participate to fight against the evils in the world out of feelings of injustice and solidarity with the victims. Obviously, these reasons are akin to ideological motives. In a similar vein, many participants mention the desire to spend their time in a meaningful manner. They describe their participation as a necessity, something they feel obliged to do. This relates, of course, to the inner felt moral obligation associated with the ideological motivation to participate. More in the domain of identity motives is the opportunity to maintain social relationships and enjoy being and acting together with like-minded people. Of an instrumental character, be it at the personal

level, are the motives mentioned by people who are involved in AINL as voluntary workers. They refer to personal motives such as the work experience they accumulate and the opportunity to acquire new knowledge and personal abilities. Also related to instrumentality, but more at the collective level, is an important difference between passive and active participants. The latter has much more the conviction that AI is effective as an organisation.

### 3. DYNAMICS OF DISENGAGEMENT

As mentioned, a fair proportion of the participants in AINL quit within a year after they joined. Indeed, the dynamics of sustained participation in social movements have a clear counterpart, namely the dynamics of disengagement. An estimated 25 percent of the volunteers at the secretariat of AINL give up participation annually, a percentage that is comparable to that in other voluntary organisations. Why do people defect the movement they have worked for so hard? Guiding principle of our discussion of disengagement is the following simple model (Figure 2).

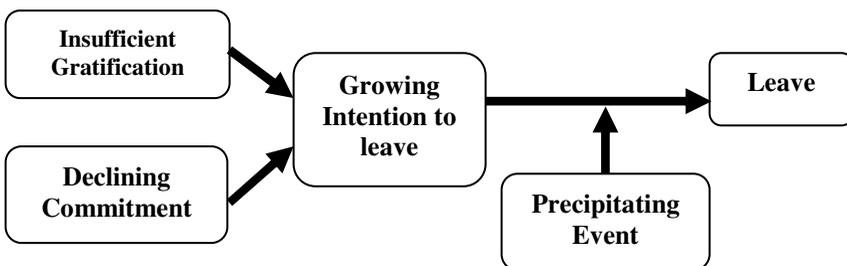


Figure 2: *The Dynamics of Disengagement*

Insufficient gratification, in combination with declining commitment produces a growing intention to leave. Eventually, some critical event tips the balance and makes the person quit. Obviously, the

event itself only triggers the final step. Against that background its impact may be overestimated. After all, it was the decline in gratification and commitment that causes defection; the critical event only precipitated matters.

*Insufficient gratification.* In the previous sections we distinguished three fundamental motives to participate: identification, instrumental, and ideological motivation. Social movements may supply the opportunity to fulfil these demands, and the better they do, the more movement participation turns into a satisfying experience. However, movements may also fall short on each of these motives. Most likely, the movements fall short in terms of instrumentality. Although it is difficult to assess the effectiveness of social movements, it is obvious that many movement goals are never reached. To be sure, most participants are very well aware of the fact that movement goals are not always easy to achieve, but they reason that nothing happens in any event if nobody takes any action. Yet, sooner or later some success must be achieved for instrumental motivation to continue to fuel participation. In addition to not being achieved, movement goals may lose their urgency and end lower at the societal agenda. Finally, the individual costs or risks of participation may be too high compared to the attraction of the movement's goals. Repression adds to the costs and might make participation too costly for people. Movements offer the opportunity to act on behalf of one's group. This is most attractive if people identify strongly with their group. However, the composition of a movement may change, and, as a consequence, people may feel less akin to the others in the movement. Schisms are another reason why movements fail to satisfy identity motives. Finally, people occupy a variety of positions in society, and consequently identify with a variety of collectives. A change in context may make the one collective identity more and the others less salient. Therefore, identification with a movement may wither. Social movements provide the opportunity to express one's indignation. This is not to say that they are always equally successful in that regard. Obviously,

there is not always full synchrony between a movement's ideology and a person's beliefs. Indeed, many a movement organisation ends in fights between ideological factions and schisms and defection as a consequence.

*Declining commitment.* Movement commitment does not last by itself. It must be maintained via interaction with the movement, and any measure which makes that interaction less gratifying helps to undermine commitment. Leadership, ideology, organisation, rituals, and social relations, which make up a friendship network, each contribute to sustaining commitment. The most effective is, of course, a combination of all five. Although not all of them are equally well researched, each of these five mechanisms are known from the literature on movement participation as factors which foster people's attachment to movements. For example, it is known from research on union participation that involving members in decision-making processes increases commitment to a union. Similarly, rituals function to strengthen the membership's bond to the movement. Unions and other movement organisations have developed all kind of services for their members to make membership more attractive. Such incentives may seldom be sufficient reasons to participate in a movement, but they do increase commitment.

*The role of precipitating events.* When gratification falls short and commitment declines an intention to leave develops. Yet, this intention to leave does not necessarily mean that a person leaves indeed. Many participants maintain a marginal level of participation for extended periods until some critical event makes them quit. Changing address may be seized as an opportunity to leave the movement simply by not renewing contacts in the new place of residence. More substantial reasons might be a conflict with others in the organisation, disappointing experiences in the movement, a failed protest, and so on.

### 3.1 WHY DO PARTICIPANTS QUIT AI?

Research among active members turning passive and members who have quit reveals a mixture of personal reasons and reasons in the organisation or the group one was a member of as reasons to scale down or leave. However, group related reasons are mentioned most frequently: that is to say, disagreement regarding the methods and procedures within the group, disappointing relations, fights and ideological disagreements. Lack of time is another frequently mentioned reason, especially by members who scaled their efforts down from active to passive. A comparison of those passive members with active members, however, suggests that lack of time is a matter of subjective evaluation, rather than actual spending, as it turns out that currently passive and active members spend their time in similar ways. Other reasons to leave or scale down are the bureaucratic character of AINL as an organisation, and lack of recognition and support from the central organisation. In addition to these reasons that reduce satisfaction and commitment, personal matters as moving to another city, a marriage, a new born child, a new job, and so on are reasons to leave. The challenge for AINL is to replenish the members that are leaving. The proportion of members leaving is fairly stable and comparable to that in other voluntary organisations. In order to keep the number of participants at the same level, equal numbers must be recruited again. This is not always easy as the next section elaborates.

## 4. DEMAND, SUPPLY AND MOBILISATION

Dynamics of collective action can be decomposed into dynamics of supply, demand, and mobilisation. Dynamics of supply are about organisations and their appeals, dynamics of demand about people and their motives, and dynamics of mobilisation about bringing

demand and supply together.<sup>5</sup> Although the three are interdependent, each concerns different aspects of the dynamics of collective action. The *supply side* of collective action concerns the characteristics of the movement. Is it strong; is it effective? Is it likely to achieve its goals at affordable costs? Does it have charismatic leaders? Is it an organisation people can identify with? What does its action repertoire look like? Does it stage activities that are appealing to people? Which ideology does the movement stand for, and what constituents of identification does it offer? The *demand side* of collective action concerns characteristics of a social movement's mobilisation potential. What is its demographic and political composition? Which collective identities does it comprise? What are the shared grievances and emotions? What is the composition of its organisational field and to what extent are individuals social and virtual embedded? Demand and supply do not automatically come together. In the market economy, marketing is employed to make sure that the public is aware of a supply that might meet its demand. *Mobilisation* is the marketing mechanism of the movement domain. The study of mobilisation concerns such matters as the effectiveness of (persuasive) communication, the influence of social networks, the role of new media such as the Internet, (smart)phones and social media.

*Dynamics of supply.* We may assume that movements that are successfully supplying what potential participants demand gain more support than movements that fail to do so. An important element of the supply-side of participation is the provision of information about the behaviour of others. Social networks – real and virtual – are of strategic importance in this respect, because it is through these networks that people are informed about the behaviour or intentions of others. Movements offer the opportunity to act on behalf of one's

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<sup>5</sup> KLANDERMANS, B., 'The demand and supply of participation: Social psychological correlates of participation in a social movement', in: SNOW, D.A., SOULE, S. and KREISE, H. (eds.), *Blackwell Companion to Social Movements*, Blackwell, Oxford, 2004, pp. 360-379.

group. This is the most attractive if people identify strongly with their group. Furthermore, social movements play a significant role in the diffusion of ideas and values. Social movements do not invent ideas from scratch; they build on an ideological heritage as they relate their claims to broader themes and values in society.

The supply side of collective action is neither static nor constant. In fact, it has to be constructed every mobilisation campaign again – be it not from scratch. In the literature this has been defined as assembling a mobilising structure. *Mobilising structures* are those collective vehicles, informal as well as formal, through which people mobilise and engage in collective action. Mobilising structures are the connecting tissue between organisers and participants. At any time, all kinds of groups, organisations and networks that exist in a society can become part of a mobilising structure. However, none can be assumed to automatically become part of it. Networks need to be adapted, appropriated, assembled and activated by organisers in order to function as mobilising structures. Social embeddedness plays a crucial role in these processes of mobilisation. Depending on their embeddedness organisers are naturally connected to some people rather than others. People whom they are connected with are not only more likely to be targeted, but also more susceptible to views disseminated by organisers they are affiliated with.

In processes of framing, social movement organisations work hard to turn grievances into claims, to point out targets to be addressed, to create moral outrage and anger, and to stage events where all this can be vented. They weave together a moral, cognitive, and ideological package, and communicate that appraisal of the situation to the movement's mobilisation potential. In doing so, social movement organisations play a significant role in the process of construction and reconstruction of collective beliefs and in the transformation of individual discontent into collective action. Grievances can be framed in terms of violated *interests* and/or violated *principles*. We hold that campaigns that emphasise the

violation of interests more likely resonate with instrumental motives, while campaigns that emphasise the violation of principles more likely resonate with ideological motives.

*Dynamics of demand.* Demand is about the characteristics of mobilisation potential. Who are the people who are ready to engage in activities of a specific social movement? What are their grievances and emotions? Which collective identity do they share? How are they embedded in social and virtual networks? A movement's mobilisation potential is not a collection of isolated individuals. Individuals are embedded in formal, informal and virtual networks. People's informal, formal and virtual embeddedness are key-factors in the formation of mobilisation potential.

*Social embeddedness.* A movement's mobilisation potential can be described in terms of the *social capital* accumulated in it. Social capital can be defined as resources embedded in a social structure which can be accessed and/or mobilised in purposive actions. The concept of social capital has important implications for advancing our understanding of the role of social embeddedness in protest participation. As a set of relationships, social capital has various attributes, which are categorised into three components: a structural, a relational, and a cognitive component. The *structural* component of social capital refers to the presence or absence of network ties between actors, and it essentially defines *who* can be reached. The *relational* component of social capital concerns the kinds of personal relationships people have developed through a history of interaction. It focuses on the particular relationships people have, such as respect, trust and friendship. The *cognitive* component is defined as those resources providing shared representations, interpretations and systems of meaning. The cognitive dimension is in protest literature referred to as "raised consciousness" – a set of political beliefs and action orientations arising out of an awareness of similarity. Consciousness-raising takes place within social networks. It is within these networks that individual processes such as grievance formation, strengthening of efficacy, identification and group-based emotions all synthesise into a motivational constellation

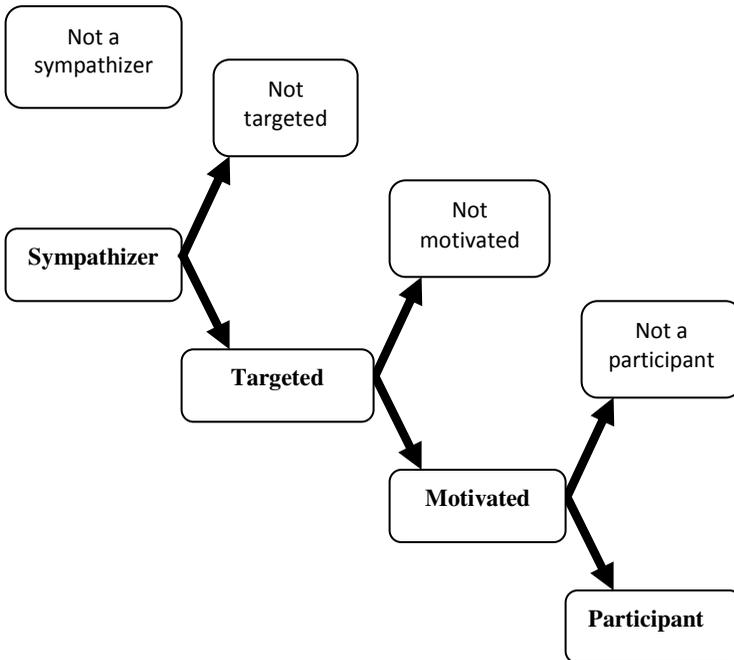
which prepares people for action and builds mobilisation potential. Social embeddedness plays a pivotal role in the context of protest, but why? The effect of interaction in networks on the propensity to participate in politics is contingent on the amount of political discussion that occurs in social networks, and the information that people are able to gather about politics as a result. Networks provide space for the creation and dissemination of discourse critical of authorities, and it provides a way for active opposition to these authorities to grow. In other words, this is where people talk politics and, thus, where the factuality of the socio-political world is constructed and people are mobilised for protest.

*Mobilisation.* Mobilisation is the process that gets the action going; demand and supply would remain potentials if processes of mobilisation would not bring the two together. Mobilisation is a complicated process that can be broken down into several, conceptually distinct steps. I proposed to break the process of mobilisation down into consensus and action mobilisation. *Consensus mobilisation* refers to dissemination of the views of the movement organisation, while *action mobilisation* refers to the transformation of those who adopted the view of the movement into active participants. The more successful consensus mobilisation has been, the larger the pool of sympathisers a mobilising movement organisation can draw from. The process of action mobilisation can be broken down further into four separate steps: people need to (1) *sympathise* with the cause, (2) *know* about the upcoming event, (3) must *want* to participate, (4) and they must be *able* to participate (see Figure 3).

Each step brings the supply and demand of protest closer together until an individual eventually takes the final step to participate in an instance of political protest. The first step accounts for the results of consensus mobilisation. It distinguishes the general public into those who sympathise with the cause and those who do not. A large pool of sympathisers is of strategic importance, because, for a variety of reasons, many a sympathiser never turns into a

participant. The second step is equally obvious as crucial; it divides the sympathisers into those who have been target of mobilisation attempts and those who have not. The third step concerns the social psychological core of the process. It divides the sympathisers who have been targeted into those who are motivated to participate in the specific activity and those who are not. Finally, the fourth step differentiates the people who are motivated into those who end up participating and those who do not.

Figure 3: *The process of action mobilisation*



#### 4.1 MOBILISING PARTICIPANTS OF AI

Applying this framework to AI, we may raise several questions; is there a substantial concern regarding human rights in the societies AI is based in? In other words, do we observe a demand for activities in

the context of AI? Does AI offer an attractive supply of activities and opportunities to participate to those who are interested? And does AI manage to bring demand and supply together? Or, in other words, how effective are its mobilisation campaigns? These are important questions to answer in order to assess the strength of AI as a movement organisation.

Although campaigns to mobilise consensus regarding AI's core mission remain important, we may assume that a large proportion of the population sympathises with the mission of AI. Therefore, the question is probably not so much how to make people sympathise, but how to make sympathisers participate. A strategic problem to be solved relates to the second step in the mobilisation process, namely how to target sympathisers? How do we know where to find them? Which networks are they embedded in? Obviously, the AINL participants are a special group of citizens, but what does that mean in terms of mobilisation? Must AINL aim its attempts to mobilise at those specific groups, or rather the other way around, at the people that are underrepresented? Next to the problem of targeting, motivating to participate is a challenge. How attractive is AINL as an organisation to participate in, and how attractive are the various options to participate to would-be participants? The fact that AINL is one of the largest NGOs in the country, suggests that it succeeds in activating sympathisers. Beliefs in the effectiveness of AINL's endeavours seem to make a difference between active and passive members. Obviously, active members do feel that AI's efforts are effective, it must, therefore, be possible to convince other sympathisers that active participation matters. Hence, campaigns that stress the effectiveness of AI's strategy might help to recruit more active members. Identity motives are hindered by people's experience with Amnesty as an organisation, and by the relationships in the group they are members of. The tension between professionals and volunteers seems to sustain, while local groups that are disappointing to its members continue to exist. Training the

professionals to supervise both volunteers and local groups might help.

## **5. CONCLUSION**

This chapter offered a comparison of AI with social movement organisations; in an attempt to better understand the working of AI. As AI's *raison d'être* will not disappear, this is done in the hope that it help AI to blossom in the next 50 years of its existence.



# EXPANDING INTERNATIONAL STANDARDS OF JUSTICE: AMNESTY INTERNATIONAL'S CLASSIC STRENGTHS AND CURRENT CHALLENGES

ANN MARIE CLARK

## 1. INTRODUCTION

Amnesty International (AI) is a unique human rights organisation that arguably has had an unexpectedly strong impact – on the lives of those it seeks to help, on the worldviews of its volunteer members, and on the world's conception of human rights – since its founding 50 years ago. When AI was only 30 years old, the author argued, with co-author James McCann,<sup>1</sup> that AI had three things going for it as a volunteer activist organisation in a world of governments. In its work on behalf of prisoners AI made ostensibly private conflicts public, it used symbols that both engaged its members and appealed to the public, and it issued pragmatic and focused demands. Those earlier arguments represent an academic discussion of AI's initial route to effectiveness. If that three-fold formula had some validity then, can it tell us something about AI's work today? Perhaps a reflection on AI's strengths in its early years can provide a useful lens through which to think about AI's expansion to addressing a wider range of rights, in a world with a wider range of fellow NGOs.

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<sup>1</sup> CLARK, A.M. and MCCANN, J.A., 'Enforcing International Standards of Justice: Amnesty International's Constructive Conflict Expansion', *Peace & Change*, Vol. 16, No. 4, 1991, pp. 379-99.

## 2. AMNESTY INTERNATIONAL'S EARLY FRAMEWORK OF HUMAN RIGHTS ACTIVISM

AI's earliest work focused on human rights protection as applied primarily to individual detainees.<sup>2</sup> In 1991, AI's stated goals were to abolish torture, execution, and other mistreatment of prisoners, to establish free and fair trials for those accused of crimes, and to free "Prisoners of Conscience", individuals taken into custody by governmental security forces because of their non-violent political stands. The creation of the concept of the Prisoner of Conscience (POC) with the campaign that launched Amnesty in 1961 had been a major innovation in work on human rights, and it had a very specific definition, which many saw as the source of the concept's strength.<sup>3</sup> Amnesty's method for pursuing its goals in the early years was straightforward and the 1991 piece summarised it in this way: when it receives reliable information concerning human rights violations, the organisation attempts to bring international public opinion to bear on the offending State by publicising its information through the international media and requesting that its individual members write letters of protest to government officials. AI based its pleas for justice on the Universal Declaration of Human Rights, calling on countries to abide by both their own stated domestic law and

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<sup>2</sup> The first part of this essay incorporates material from CLARK and MCCANN (*idem*). Permission for use is granted to the authors on the journal's website. Special thanks to James A. McCann for permission to revisit the ideas in the original article, and to Marybeth Lorbiecki Mataya for helpful discussion about this piece.

<sup>3</sup> See KAUFMAN, E., 'Prisoners of Conscience: The Shaping of a New Human Rights Concept', *Human Rights Quarterly*, Vol. 13, No. 3, 1991, pp. 339-367. For historical detail on the original 1961 campaign for 'the forgotten prisoner' and the origins of the Prisoner of Conscience idea in that campaign, see BUCHANAN, T., 'The Truth Will Set You Free': The Making of Amnesty International', *Journal of Contemporary History*, Vol. 37, No. 4, 2002, pp. 379-99.

international human rights standards.<sup>4</sup> At the time, AI had sometimes been criticised by outsiders and by its own members for sticking so close to its own mandate that cooperation with other groups was precluded, as was flexibility when human rights situations did not meet the strict terms of AI's work.<sup>5</sup> The organisational mandate itself was altered over the years, and is no longer articulated in the same way as part of the governing statute.<sup>6</sup> At its International Council Meeting in Dakar, Senegal, in 2001, AI changed its statute fundamentally when it updated its "mission" to include work for economic, social, and cultural rights.<sup>7</sup>

Drawing from social science and conflict resolution theory, the scholarly analysis published in 1991 suggested that AI's success as a mandate-based organisation stemmed from bringing in an outside audience, mobilisation of symbols, and structural attributes that enabled the focused application of demands. These ideas referred to AI's mandate-based activism at that time, but they still

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<sup>4</sup> Among the few early treatments of AI's approach and techniques in the context of other NGO work were WEISSBRODT, D.S., 'The Contribution of International Nongovernmental Organisations to the Protection of Human Rights', in: MERON, T. (ed.), *Human Rights in International Law: Legal and Policy Issues*, Clarendon, Oxford, 1984, pp. 403-438; and SCOBLE, H.M. and WISEBERG, L.S., 'Human Rights and Amnesty International', *Annals of the American Academy of Political and Social Science*, Vol. 413, No. 1, 1974, pp. 11-26.

<sup>5</sup> For a thorough discussion of mandate issues and debates, see BAEHR, P.R., 'Amnesty International and Its Self-Imposed Limited Mandate', *Netherlands Quarterly of Human Rights*, Vol. 12, no. 1, 1994, pp. 5-21.

<sup>6</sup> The word "mandate" does not appear in more recent AI literature.

<sup>7</sup> AMNESTY INTERNATIONAL, 'AI@50: The Amnesty International Timeline', 2011, AI Index no. ACT 30/018/2011, pdf available at: [www.amnesty.org/en/library/](http://www.amnesty.org/en/library/), access date 29 May 2011. The most recent plans for implementation from 2009 appear on AI's website. (See AMNESTY INTERNATIONAL, Amnesty International's Integrated Strategic Plan 2010-2016, adopted by the 29th International Council Meeting (ICM) held in August 9-14, 2009, available at: [www.amnesty.org/en/library/info/POL50/002/2010/en.](http://www.amnesty.org/en/library/info/POL50/002/2010/en.))

apply to much of AI's work. Discussion of those three aspects of AI's early work is incorporated below in the next three sections as a launching point for further discussion of AI's changing work to address an expanded group of rights in recent years.

## 2.1 EXPANDING THE SCOPE OF CONFLICT: 1991<sup>8</sup>

Most of the situations in which AI intervenes begin as essentially "private" (that is, local) matters. Violent political repression may be carried out in secret or in remote locations, where victims initially have no advocates, or only local ones, and government officials seek to conceal their repressive actions. AI attempts to set up a conflict between what governments might do in private and what they might do if outsider observers became involved, using international human rights standards as a backdrop. While in principle States have supported calls for greater human rights protection by adopting various legal standards in intergovernmental arenas, such as the United Nations, applying international standards of justice to concrete political disputes is more problematic. There are, of course, no international police agents enforcing international human rights policy, and States have tended to revert to historic patterns of "power politics" when challenged, resulting in the continued insulation of domestic affairs from international purview.

International institutions may be unable to bring peaceful and just resolutions to a large number of conflict situations, yet, the moral aspirations that originally gave rise to the Universal Declaration of Human Rights are widely accepted as legal standards. Most States will turn toward repressive policies in times of crisis, yet, all strive to

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<sup>8</sup> These propositions from the 1991 piece regarding AI's work are set forth below in the next three sections, with titles followed by "1991", and contain minimal editing from the original. Original citations also appear here. More recent research that speaks to these ideas is discussed in the second part of this chapter.

cultivate benevolent images abroad. When a government's domestic policies are labeled unjust by foreign critics, government officials often address the charges at great length, denying that the policies in question exist at all or claiming that they are necessary in the interest of self-defence or public tranquillity. In some cases, officials may even acknowledge past human rights abuses and promise to rectify the situation. Rarely, however, do governments justify their actions simply on the basis of traditional sovereign prerogative.

International conflict resolution theorists had something to say about States' levels of receptivity to human rights criticism. Governments tend to see themselves as "the good guys", and perhaps States are also sensitive to public criticism from a sense of national pride.<sup>9</sup> An international negotiation expert observed that governments usually act according to 'their own ideas of what is right', and 'must justify their decisions within the bureaucracy and to their own citizens'.<sup>10</sup> Furthermore, widespread international condemnation may pose an internal threat to the State by providing greater leverage to domestic opposition groups. In States aspiring to democratic representation, moreover, political elites always face a dilemma when choosing between their own 'notions of the national interests, the pressures of interest groups and the longer-term responsibilities of the electorate at large'.<sup>11</sup> In modern times, 'authorities can no longer manage conflicts by relying on coercion as the ultimate remedy'.<sup>12</sup>

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<sup>9</sup> See BILDER, R. 'Rethinking International Human Rights', *Wisconsin Law Review*, Vol. I, No. 1, 1969, pp. 171-217; SHESTACK, J.J., 'Sisyphus Endures: The International Human Rights NGO', *New York Law School Review*, Vol. 24, No. 1, 1978, pp. 89-123.

<sup>10</sup> FISHER, R., *International Conflict for Beginners*, Harper & Row, New York, 1969, p. 128, 131.

<sup>11</sup> BURTON, J., *Conflict: Resolution and Provention*, St. Martin, New York, 1990, pp. 130-131.

<sup>12</sup> *Idem.*

In large part, the just resolution of conflict within a State depends upon the institutional mechanisms available to citizens, and where few such resources exist, AI's intervention to transform a conflict into a public matter can help to protect those at risk. On one hand, conflicts between citizens and their governments may remain "private" affairs; that is, they may be confined within national or sub-national boundaries. If a particular complainant has access to legal representation, or if political parties or interest groups are present to channel the citizen's concerns, this private conflict may be justly resolved through accepted legal and institutional channels. Unfortunately, in many countries such mediating entities are ineffectual or do not exist, and conflicts kept at a national or sub-national level are often quieted through unjust, repressive State measures. On the other hand, if a conflict between an individual and his or her government expands to include participants from outside the nation, and, thus, becomes an international "public" affair, the norms associated with international human rights protection stand a better chance of being invoked, and State repression may be checked even if domestic representative institutions are absent.

The distinction between private conflict processes, frequently based on power relations, and international resolutions based on the norms governing human rights protections, was inspired by a classic discussion of conflict dynamics in the domestic politics of the United States. According to Schattschneider, deciding who is to participate in political conflicts is the most important aspect of all disputes. 'If a fight starts', he wrote, 'watch the crowd, because the crowd plays the decisive role [...]. Every conflict is determined by the extent to which the audience becomes involved in it'.<sup>13</sup> Those holding greater power in an altercation attempt to keep the scope of conflict narrow in order to preserve their position and gain a resolution that is in their favour. Contenders with fewer resources naturally attempt to widen

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<sup>13</sup> SCHATTSCHNEIDER, E.E., *The Semisovereign People; A Realist's View of Democracy in America*, Dryden Press, Hinsdale, 1975, pp. 2-3.

the scope of conflict by inviting others into it. To illustrate the dynamic of conflict expansion, Schattschneider used the American civil rights movement of the 1950s and 1960s, when activists in the southern United States effectively pushed for greater racial equality by appealing to the federal government and the mass public across the country.

In the international realm, “widening the conflict” operates on similar terms. ‘It is often the weaker party [...] that first calls in “outside” help’.<sup>14</sup> An early analysis argued that the most promising way of fighting human rights abuses within a given country was not to work through domestic legal channels or even the United Nations, but rather to create ‘competing centers of influence’ by marshalling world opinion against the offending State.<sup>15</sup> To do this, AI relies on certain symbols and organisational techniques that encourage the involvement of new participants and, at the same time, limit the ability of offending governments to call upon symbols and allies of its own.

## 2.2 SYMBOLS, MOBILISATION, AND STRUCTURE: 1991

Amnesty International brings individuals into the fight for human rights protection by using techniques that foster a sense of personal identification with the victims of governmental repression. The organisation traditionally focused on the “forgotten prisoner”, a phrase used in the original London *Observer* article that launched AI’s first campaign,<sup>16</sup> referring to an individual who had suffered injustice in some distant location. Working on a case-by-case basis, AI named potentially forgotten individuals and made their unique

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<sup>14</sup> MITCHELL, C.R., *The Structure of International Conflict*, St. Martin, New York, 1981, pp. 56-57.

<sup>15</sup> SHESTACK, *loc.cit.*, p. 108.

<sup>16</sup> BENENSON, P., ‘The Forgotten Prisoners’, *The Observer* (London), 28 May 1961, p. 20.

histories widely known to its membership. In so doing, AI motivated activists in a way that statistics regarding torture or proclamations about the significance of statutory international law could not. AI's best-known symbol is the shining candle wrapped in barbed wire, an image meant to inspire hope in spite of brutality. This symbol appeared in virtually all AI publications and correspondence in the English-speaking sections for example, and was sometimes accompanied by the phrase, 'It is better to light one candle than to curse the darkness'.<sup>17</sup>

That individuals are motivated to collective action through personal identification and symbolic appeals is not a novel theory. Many social change organisations operate on this premise. For instance, Roseman, Abelson, and Ewing found in an analysis of 42 self-description brochures of organisations, as different as the Lutheran Human Relations Association and the American Atheist Association, that these kinds of appeals played a prominent role in mobilisation strategies. Messages of hope, fear, anger, and pity were especially prevalent.<sup>18</sup> What makes AI unique in mobilising public opinion is that its symbols have no legitimate opposites in the international public eye. While law and order for example, or nationalism may serve important legitimising functions for an offending government's action among its own people, such symbols do not influence the external international audience that is provided with AI's well-substantiated evidence of the conditions and grounds of detention. As conflicts between prisoners and their governments become internationalised, torturers have no images at their disposal comparable in effect to the candle in barbed wire. This asymmetry

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<sup>17</sup> The candle as the common symbol was not included in every national section of AI until 2009. (Anja Mihr, personal correspondence, 4 July 2011.)

<sup>18</sup> ROSEMAN, I., ABELSON, R.P., and EWING M., 'Emotion and Political Cognition: Emotional Appeals in Political Communication', in: LAU, R.R. and SEARS, D.O. (eds.), *Political Cognition*, Lawrence Erlbaum Hillsdale, N.J., 1986, pp. 279-294.

becomes significant when one compares Amnesty to other public interest pressure groups. Environmentalists lobbying for greater protection of wilderness lands may be able to generate mass support through the same tactics Amnesty uses (for example, provocative posters, speeches, and demonstrations), but those favouring development may counter by using such techniques to invoke the powerful image of prosperity. Likewise, feminists calling for greater equality face an opposition that has access to contrasting symbols associated with family, religion, and tradition.

Mobilising people for sustained action is exceedingly difficult, whether one is interested in forming a community cooperative, a political party, or an international pressure group. Amnesty developed a multilayered organisational structure that allows for the orderly expansion of conflict by facilitating communication and concerted action from the grassroots to the elite level and back again. Within AI, local groups have been the point of entry for many activists. Members can participate in working to free Prisoners of Conscience, in campaigns, and in the Urgent Action Network, AI's emergency response system designed to mobilise members quickly when AI believes the wellbeing of a prisoner or individual at risk of human rights abuse is seriously threatened. In the United States, State and regional-level staff and volunteers work with AI's national office to help coordinate activities at both the national and grass-roots levels, provide assistance to local group leaders, and foster communication among area members. The International Secretariat in London represents the apex of the organisation's structure and, to the extent that it involves itself in the mobilisation of international public opinion, it does so at an "elite" level through press releases, formal communiqués to government officials, and testimony before the United Nations, the European Union and other international bodies. AI's organisational structure allows for great coordination of its activity, even though it aims at the involvement of many ordinary citizens. Information is gathered and disseminated from higher levels to a wider membership and to

the media and the international public, in a way that both protects those it is trying to aid and exposes offending governments to unwanted attention.

### 2.3 FOCUSING AND FRAMING DEMANDS: 1991

Amnesty International attempts to be objective in its assessments without regard to type of regime or political ideology, but it is not neutral. On the contrary, it intervenes in the international system squarely on behalf of the individual, according to specified principles.<sup>19</sup> According to the literature on conflict mediation, the act of intervention in a conflict ‘alters the power configuration in the social system in which it occurs, and, therefore, every intervener is an advocate’ in some sense, but particularly when intervention pertains to a power imbalance that requires redress.<sup>20</sup> In a situation in which the powerful would like to maintain the status quo, AI intervenes on behalf of individuals with less power, who ‘will more

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<sup>19</sup> A version of the core principles of Amnesty’s mandate similar to this one on the inside cover of its 1991 Annual Report appeared in most of its official publications in 1991:

Amnesty International is a worldwide movement independent of any government, political persuasion or religious creed. It plays a specific role in the international protection of human rights.

– It seeks the *release of prisoners of conscience*. These are people detained for their beliefs, colour, sex, ethnic origin, language or religion who have not used or advocated violence;

– It works for *fair and prompt trials* for all *political prisoners*;

– It opposes the death penalty and torture or other cruel, inhuman, or degrading treatment or punishment of *all prisoners* without reservation.

(Amnesty International, *Annual Report 1991*, Amnesty International, London, 1991, inside cover.)

<sup>20</sup> LAUE, J.H., ‘Ethical Considerations in Choosing Intervention Roles’, *Peace & Change*, Vol. 8, no. 2/3, 1982, pp. 29-41, at p. 30.

likely be interested in instigating or agitating conflict'.<sup>21</sup> Confrontation 'changes the conflict to an open one'.<sup>22</sup>

AI's credibility rests in large part on the quality of its information about human rights violations. The International Secretariat maintains a large professional research staff, with a network of people throughout the world who maintain contact with those close to the POCs and others with knowledge of the day-to-day status of human rights violations within countries. In addition, at times, Amnesty sends delegations to visit countries where there are allegations of human rights violations.

A 1980 news interview indicated that Amnesty officials were already aware that the group was taken seriously by countries targeted for human rights pressure and that its work contributed to changing conditions of dialogue – in negative as well as positive directions. AI's then-Secretary-General, Thomas Hammarberg, observed that the group's work 'deeply irritated' governments.<sup>23</sup> He told the reporter that AI would occasionally be offered a "deal" of 'dialogue and a promise to release some prisoners if [AI] keeps quiet about others'.<sup>24</sup> As AI became more adept at gathering information and mobilising world opinion, the repressive tactics of target regimes also became more covert. Hammarberg observed: 'When we started, we found someone who had spoken out against the government and was arrested, tried and sentenced. Now that pattern is not so common. There is more kidnapping, assassination and disappearance

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<sup>21</sup> LAUE, J.H., 'The Emergence and Escalation of Third-party Roles in International Conflict', in: BURTON, J. and DUKES, F. (eds.), *Conflict Readings in Management and Resolution*, St. Martin, New York, 1990, at p. 258.

<sup>22</sup> KEENEY, W., 'Interrelating Theoretical Models of Conflict Resolution', *Peace & Change*, Vol. 8, No. 2-3, 1982, pp. 43-55.

<sup>23</sup> DOWDEN, R., 'Success Brings Added Problems to Amnesty', *The Times* (London), 11 August 1980, at p. 5, col. a.

<sup>24</sup> *Idem.*

of political opponents, which make it much more difficult for us to work'.<sup>25</sup>

To intervene on behalf of prisoners, Amnesty must concentrate on influencing the decisions of government officials. The key to Amnesty's effectiveness here lies in the practicality of making specific demands based on international norms. Amnesty achieves specificity and focus by concentrating on the conditions prisoners face, as well as on the basis for imprisonment. The request for a prisoner's release is the practical expression of principle. Although it may sound obvious, specific requests, in addition to the right "position" on the issues, are an important component of effectiveness. Fisher, a conflict resolution expert, observes, 'We would not think much of a doctor who, instead of dealing with actual patients and diseases, saw his function as that of announcing a proper attitude toward them'.<sup>26</sup> Likewise, in foreign affairs it is necessary for those who would achieve something to ask themselves 'what decisions we want the other governments to make' and concentrate on how to go about getting the target governments to make them.<sup>27</sup>

Amnesty's pleas for justice, directed at target-country officials, cite relevant law, both domestic and international. Amnesty influences decisions by documenting individual situations, then asking members to write courteous letters expressing 'concern' and, usually, requesting a specific action by the government. It is noteworthy that Amnesty asks for a certain amount of restraint on the part of its activists. In this respect, everyone is expected to show the courtesy requisite in diplomatic circles.<sup>28</sup>

Fisher further notes that a demand is much more likely to succeed if it is a request for specific action within a specified time

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<sup>25</sup> *Idem.*

<sup>26</sup> FISHER, *op.cit.*, p. 3.

<sup>27</sup> *Ibidem* at p. 7.

<sup>28</sup> Of course, the techniques of communication available to AI and its members have greatly expanded – and speeded up – today.

frame. Bureaucracy dictates that governments typically postpone a decision ‘unless there is some reason not to’, and a petitioner should seek to adjust the parameters of the decision such that the target government will prefer to act as requested.<sup>29</sup> The idea is to use legal norms and other principles of legitimacy to ‘shift the political situation [...] so that political forces which were previously on one side of the balance now find themselves on the other’; it helps to frame the request in terms of principles accepted by the target government.<sup>30</sup> When government officials receive letters and telegrams from all over the world, the international audience must be included in the target country’s calculations. Releasing prisoners or scaling down routine torture becomes preferable to bearing widespread international attention or even the pressure of a few hundred letters.

In 1991, then, this is the dynamic that, it was proposed, enabled AI to uphold international human rights standards in the face of obstacles, such as State sovereignty and incomplete compliance with international norms. The three factors noted as responsible for AI’s success – expansion of the scope of conflict, effective use of symbols, and pragmatic and principled demands for government action – were empirical assertions that represented an academic view of AI’s role in the international system of that time. The next section uses that analysis as a platform to think about the challenges AI faces now as a 50-year-old, rather than a 30-year-old, organisation, particularly with regard to AI’s expansion into focusing on a broader group of rights, rights-holders, and those who are answerable to rights claims.

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<sup>29</sup> FISHER, *op.cit.*, p. 158, 168.

<sup>30</sup> *Idem.*; see also FISHER, R., *Improving Compliance with International Law*, University Press of Virginia, Charlottesville, 1981, p. 302.

### 3. LOOKING BACK AND LOOKING FORWARD: AI'S VISION OF UNIVERSALITY AND INDIVISIBILITY

AI has grown from a narrow focus on Prisoners of Conscience and prisoner mistreatment to an organisation that, in 2001, decided to embrace the principles of universality and indivisibility of human rights even more ambitiously. Its 2002 Annual Report promised, 'we will not only work on those civil and political rights that have formed the heart of our campaigning for decades, we will also mobilize to ensure that economic, social and cultural rights are respected'.<sup>31</sup> This expansion of AI's planned campaigning goals marked a major shift in AI's vision and mission that will be the focus of discussion below.

AI's growth has brought changes that the earliest members of AI might never have envisioned. However, it is important to view the new aims with knowledge of AI's past. One simply has to consider in retrospect the original audacity of organising citizens to address governments other than their own on behalf of people who were targets of those governments' violent repressive tactics. Human rights conceptualisations that AI helped to develop are now baseline conceptions in the human rights world. For example, the idea of working for the abolition of torture from both a transnational citizen action perspective and a legal international perspective, which began with AI's Campaign against Torture in 1973, was also a major innovation. The approach to establishing international legal accountability for disappearances and political killings similarly owes much to AI's work on these issues.<sup>32</sup> Undoubtedly, AI has frequently taken up seemingly impossible challenges. This boldness is what attracts many AI members and intrigues external observers.

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<sup>31</sup> AMNESTY INTERNATIONAL, *Amnesty International Annual Report 2002*, Amnesty International: London, 2002, at p.8.

<sup>32</sup> See CLARK, A.M., *Diplomacy of Conscience: Amnesty International and Changing International Human Rights Norms*, Princeton University Press, Princeton, NJ, 2001.

Still, how does AI's expanded scope affect the workings of the three dynamics discussed above? The Table below sets out these questions schematically.

*Table. Applicability of AI's Classic Strengths to Increased Universality and Indivisibility of Rights*

|  | <b>Making the private public</b>  | <b>Compelling symbols and conflict framing</b>  | <b>Focused, pragmatic demands</b>  |
|--|---|---|--|
| <b>Universality: rights apply to all people everywhere</b>                             | Universal claims enhance potential call for accountability by new actors on new issues.     | Utopian ideals compatible with embrace of big problems – the candle in barbed wire.                 | AI still “knows how” to put pressure in its traditional focus areas. Can its broadened agenda (with different sets of problems related to different issues, for example) rely on rights as the solution? |
| <b>Indivisibility: no hierarchy of rights; all rights are potentially interrelated</b> | Choices about which problems to be addressed and which fights to take up may be less clear. | Settled symbols and consensual principles are still emerging, so framing requires more flexibility. | Structural problems such as those addressed within an economic, social, and cultural rights framework make links between focus and pragmatic demands more difficult.                                     |

AI's decision to address torture thematically in the early 1970s was perhaps the most critical change in its emergence as a modern human rights organisation. It was then that AI began to build the capacity, tools and techniques that enabled it to expand

effectively to other issues.<sup>33</sup> AI has broadened the themes of its work a number of times since, and it has never – at least publicly – made the decision to *stop* working on a particular thematic issue. Indeed, its story is one of expansion. In comparison with its relatively narrow focus in its first 30 years, however, substantive changes in AI’s *scope* of work have been especially great since 1991.<sup>34</sup> That year, AI committed itself to promoting the entire Universal Declaration of Human Rights. It also expanded its mandate to address the rights of people in situations of armed conflict and affirmed that people imprisoned due to their sexual orientation could be considered Prisoners of Conscience.<sup>35</sup> In ensuing years, the organisation initiated work against impunity and for the protection of human rights defenders and refugees,<sup>36</sup> and as mentioned above, AI made a major decision in 2001 to take on economic, social and cultural rights, with an emphasis on the indivisibility of all human rights. AI’s current statute affirms the organisation’s broad identity as a ‘global community of human rights defenders’ supporting ‘international solidarity, effective action for the individual victim, global coverage, the universality and indivisibility of human rights, impartiality and independence, and democracy and mutual respect’, and promises to address violations by ‘governments, intergovernmental

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<sup>33</sup> *Idem.*

<sup>34</sup> This essay does not claim to be historically comprehensive, nor do I attempt to represent the content of internal AI debates. Written accounts of AI’s development over time from varying perspectives on its work can be found in CLARK, *op.cit.*; HOPGOOD, S., *Keepers of the Flame: Understanding Amnesty International*, Cornell, Ithaca, NY, 2006; POWER, J., *Like Water on Stone: The Story of Amnesty International*, Northeastern University Press, Boston, 2001, and elsewhere. BUCHANAN, “The Truth Will Set You Free”, *loc.cit.*, offers a historian’s account of AI’s founding.

<sup>35</sup> AMNESTY INTERNATIONAL, “AI@50: The Amnesty International Timeline”, 2011, AI Index no. ACT 30/018/2011, pdf available at: [www.amnesty.org/en/library/](http://www.amnesty.org/en/library/), access date 29 May 2011.

<sup>36</sup> *Idem.*

organizations, armed political groups, companies and other non-State actors'.<sup>37</sup> To plan for this in a coherent way, the organisation has formalised concerted priority setting as part of its self-governance process.<sup>38</sup>

The expansion to include work for economic, social and cultural rights was made in the context of AI's long commitment to the universality and indivisibility of all human rights. Universality, of course, refers to the fact that all human beings are rights-holders, which enables global rights claims. Universality was an implicit principle for any of AI's work to get off the ground. However, as North-South and East-West differences at the 1993 UN World Conference on Human Rights and other UN world conferences on social issues in the 1990s illustrated, universality became more controversial in light of world politics and economic, social and cultural differences.<sup>39</sup> Although consensus among Non-Governmental Organisations (NGOs) over the importance of universality rarely wavered, it was certainly a wedge issue for governments. Even among NGOs, contention arose over more specific issues concerning strategies and access – for example, who participates in how rights are promoted, which rights are promoted, and how they are promoted – and such questions have motivated more recent scholarship on the relationships between large, global NGOs like AI and local and regional NGOs.<sup>40</sup>

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<sup>37</sup> AMNESTY INTERNATIONAL, *Statute of Amnesty International, As amended by the 29th International Council, meeting in Antalya, Turkey, 9 to 14 August 2009*, available at: [www.amnesty.org/en/who-we-are/accountability/statute-of-amnesty-international](http://www.amnesty.org/en/who-we-are/accountability/statute-of-amnesty-international), access date 29 May 2011.

<sup>38</sup> For example, AI's statute now requires an Integrated Strategic Plan every six years to guide its work (*Idem*, Item 4.).

<sup>39</sup> FRIEDMAN, E.J., HOCHSTETLER, K., and CLARK, A.M., *Sovereignty, Democracy, and Global Civil Society: State-Society Relations at UN World Conferences*, State University of New York Press, Albany, 2005.

<sup>40</sup> *Idem*. See also BOB, C., *The Marketing of Rebellion: Insurgents, Media, and International Activism*, Cambridge University Press, Cambridge, UK, 2005;

With reference to the three-part analysis outlined in the first part of this essay, indivisibility combined with universality broadens the scope and nature of AI's claims and makes it harder to determine what constitutes success. The idea of indivisibility 'reject[s] any implied hierarchy' among types of human rights – political, civil, economic, social, and cultural, as well as rights pertaining to the environment and development.<sup>41</sup> Despite the fact that AI has long affirmed the indivisibility of human rights, in its work it prioritised civil and political freedoms and freedom from violations of rights to physical integrity of the person. The focus was thought to be consistent with and suitable to its working methods.

In sum, the rights AI focused on traditionally (with the exception of the death penalty in the United States' context) were rights with high levels of consensus on the universality issue, but when action on economic, social and cultural rights is included in AI's work the traditional focus becomes less clear.<sup>42</sup> The argument posed above suggests that big universal principles (freedom of conscience, for example) worked well when narrowly focused with specific claims (attention to individuals and practical techniques). Amnesty had never argued that rights were divisible, but it did focus on certain particular rights within the civil and political rights framework. Its focus had already expanded in a very ambitious way when AI decided to concentrate on eliminating all forms of torture

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HERTEL, S., *Unexpected Power: Conflict and Change among Transnational Activists*, Cornell University Press, Ithaca, NY, 2006; and CLARK, A.M., 'Nongovernmental Organisations: Overview', in: FORSYTHE, D.P. (ed.), *Oxford Encyclopedia of Human Rights*, Oxford University Press, 2009, vol. 4, pp. 87-96.

<sup>41</sup> PAL, L.A., 'Competing Paradigms in Policy Discourse: The Case of International Human Rights', *Policy Sciences*, Vol. 28, No. 2, 1995, pp. 185-207, at p. 188.

<sup>42</sup> This statement is meant as an observation for further consideration, rather than a value judgment.

and determined that work to build norms against torture was part and parcel of that goal.

Recent academic debates parallel questions raised by consideration of AI's new ambitions. Debates over the "big picture" of human rights activism's goals and achievements run through recent historical, political science, and sociological scholarship. The historian Kenneth Cmiel notes that human rights talk is increasingly universal: it has become 'one way that peoples around the world now interact with each other'.<sup>43</sup> A social shift has occurred. The universal presence of human rights talk is not the same as the philosophical premise that human rights are universal in their application, but in some ways it is universal application of rights that makes local adaptation and interpretation of human rights possible.

Cmiel calls for attention to be paid to the unavoidable fact that the global discourse of human rights lands in 'local, political contexts'.<sup>44</sup> The forms of rights that AI now addresses are more contextual than were its narrow demands directed to governments for a stop to political repression and physical violations. However, Cmiel and others point out that more research is needed as to whether more human rights talk and activism has resulted in better conditions and fewer violations, even in the relatively circumscribed area of use of torture. Samuel Moyn's recent historical analysis of the human rights movement suggests that the increasingly broad aims of the human rights movement (not just AI) and its utopian vision may be at odds with what is needed to address political realities of incremental change within the narrower definition of human rights as civil and political rights.<sup>45</sup>

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<sup>43</sup> CMIEL, K., 'The Recent History of Human Rights', *American Historical Review*, Vol. 109, no. 1, 2004, pp. 117-135, at p. 126.

<sup>44</sup> *Idem.*

<sup>45</sup> MOYN, S., *The Last Utopia: Human Rights in History*, Belknap Press of Harvard University Press, Cambridge, Mass., 2010.

Thus, the broadened human rights context itself can be criticised for lack of acute political focus. But does that mean AI should not have changed its approach? To think about this question with a view to the future, it might be helpful to consider how useful the three parts of AI's traditional approach outlined above may be for its new tasks. Below, each of AI's classic strengths is considered in the context of universality and indivisibility.

### 3.1 EXPANDING THE SCOPE OF CONFLICT: 2011

The *universality* of human rights has always been central to Amnesty International's advocacy. In its 1977 and earlier human rights reports, the prefatory material acknowledged that AI sought 'observance throughout the world of the United Nations Universal Declaration of Human Rights'.<sup>46</sup> The 1978 report was the first to refer to economic, social and cultural rights. A note outlining AI's goals on the inside cover explained that 'through its practical work for prisoners within its mandate, Amnesty International participates in the wider promotion and protection of human rights in the civil, political, economic, social and cultural spheres'.<sup>47</sup> Expanding the scope of conflict to encompass all human rights is still key to AI work. AI is already well prepared to do this, and has long been doing so. AI's expression of commitment to universal rights is simpler these days: in the words of its current statute, AI 'seeks to disclose human rights abuses accurately, quickly and persistently'.<sup>48</sup>

There is no reason not to think that disclosure of the broad set of human rights abuses to a wider audience remains a powerful mechanism that AI can use to 'expand the scope of conflict' on

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<sup>46</sup> AMNESTY INTERNATIONAL, *Amnesty International Annual Report 1977*, Amnesty International, London, 1978, p. 2.

<sup>47</sup> AMNESTY INTERNATIONAL, *Amnesty International Annual Report 1978*, Amnesty International, London, 1979, p. ii.

<sup>48</sup> AMNESTY INTERNATIONAL, 2009, "Statute", Item 3.

behalf of the less powerful. Its current campaign, Demand Dignity, calls for stopping the 'human rights abuses that keep people poor'.<sup>49</sup> Here, the *indivisibility* of the set of rights now included in AI's goals as a global organisation makes the task of "picking fights" more complicated. In this regard, there are two major challenges.

First, in addressing a broader segment of the human rights spectrum AI increases the number of possible fights, although the continuing use of torture shows that the existence of too many possible cases for AI to address is nothing new. As the quotes from its reports above indicate, AI has worked to protect individuals at risk because of non-violent advocacy and identity related to economic, social and cultural issues for quite some time. Thus, its mission to make a difference for individual activists, who are working for all kinds of rights, can be held within the "classic" formulation.

A second challenge, however, is the complexity of the kinds of fights AI potentially faces within the realm of indivisible human rights. Applying human rights interpretations to thematic issues like the structural causes and effects of poverty is possible, but complicated. In these cases, it may simply be harder to focus blame on a specific actor and to call for a specific remedy, even if it is easy to see that rights violations are occurring. For example, economic rights abuses are often not discrete actions and not separable by individuals, making it more difficult to identify, communicate, and act on the abuse that keeps one individual poor, as opposed to the human rights violation that keeps a dissident in jail. Establishing accountability may be more difficult when the actions of corporations, intergovernmental economic organisations, or non-State entities are involved, if the implicit expectations of State-

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<sup>49</sup> AMNESTY INTERNATIONAL, *Demand Dignity*, Campaign website, International Secretariat, n.d. (access date 9 June 2011), available at: [demanddignity.amnesty.org/campaigns-en/](http://demanddignity.amnesty.org/campaigns-en/).

citizen accountability cannot be invoked. Considerable educational and conceptual work is likely to be required during such campaigns.

### 3.2 SYMBOLS, MOBILISATION, AND STRUCTURE: 2011

In the same vein, the complexity of issues involved when advocating a broader range of indivisible rights may at times divide AI's set of potential allies and supporters in the public sphere from one issue to another. To some in the global audience, the prospect of acting under AI's advocacy umbrella for a broader set of rights will be more appealing; to others, less so. A wider variety of expressions of human rights across societies and cultures may offer steeper challenges for bringing in the outside audience, both for engaging and educating supporters and for building clear and persuasive arguments regarding accountability for the violations.

In an example of how AI is now using symbols to make the new issue linkages, the candle in barbed wire appears in the animated video introducing the current Demand Dignity campaign on AI's website.<sup>50</sup> An artists' depiction in muddy green and brown colors illustrates people suffering from and later objecting to poor labor conditions, poverty as experienced by women and children, and environmental degradation. They are depicted as merging into a unified voice that overwhelms the "fat cats" made rich from exploitation, before the image dissolves into a representation of the AI candle. Although it was suggested above that environmental advocacy was more challenging than rights advocacy, because potential opponents could counter with alternative frames, such as economic growth, the cartoon demonstrates that even the alluring image of prosperity mentioned above can be associated with ugliness and exploitation.

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<sup>50</sup> AMNESTY INTERNATIONAL, "Demand Dignity", animated video, available at International Secretariat website ([www.amnesty.org/en/demand-dignity](http://www.amnesty.org/en/demand-dignity)), n.d. (access date 9 June 2011).

The symbolic aspect of participation in the struggle for *universal* human rights itself is highly legitimate in the public eye. Because AI is such a strong symbol itself, AI's involvement in the challenge of promoting the *indivisibility* of rights is likely to continue to be compelling for its members and supporters. AI's earliest work of prisoner adoption was in large part reactive.<sup>51</sup> Thematic campaign techniques sent AI into new territory to an extent, enabling AI to educate and participate in discussion and action on the causes of torture and other kinds of abuses. In that sense, movement to economic, social and cultural rights can, in theory, be made seamlessly. However, settled symbols and consensual principles seem still to be emerging on these kinds of rights, so framing the rights will be more difficult.

### 3.3 FOCUSING AND FRAMING DEMANDS: 2011

It is hard to see how AI as a vital organisation could avoid addressing the expansion of rights claims. On the one hand, the Universal Declaration of Human Rights, AI's touchstone, can be understood as a set of standards that help to define human dignity. The very logic of human rights presses for both universality and indivisibility. On the other hand, AI's early statements of the relevance of its then-narrower mandate to the economic, social and cultural realm already reflected this logic to a degree. A compelling case can be made that civil and political freedoms enable greater realisation of the broad spectrum of human rights.<sup>52</sup>

AI has not stopped working for civil and political freedoms, but the recent global politics of international human rights, which now include increased dialogue at the UN and among NGOs, suggests that the experiences of people on the ground also may

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<sup>51</sup> CLARK and MCCANN, *loc.cit.*, p. 395.

<sup>52</sup> For example, SEN, A., 'Freedoms and Needs', *New Republic*, Vol. 210, no. 2/3, 1994, pp. 31-38.

contribute to a “reconceptualisation” of human rights. The democratisation of the human rights movement has demanded – and makes possible – more networking with local and global activists and organisations on both the action and policy-making level.

For AI, a pragmatic focus on how to translate principles into practical demands will likely remain important for effective research, education, and advocacy. Engaging the public for action requires guiding propositions, based on principle, that can be understood by many and have a chance to achieve identifiable short-term relief as well as a hope for lasting change. AI’s success in the past has rested on well-researched coordination of calls for a variety of specific solutions. AI has engaged in conceptual work as well as activism to address such calls to specific agents with the power to address the problem. Pragmatically, the renewed focus on the indivisibility of rights presents a challenge for action on some aspects of rights abuses because of their complicated roots in economic and social structures.

Other social science research backs this up. According to Keck and Sikkink’s study of transnational advocacy, activists have been the most successful when mobilising on issues involving legal equality of opportunity or the protection of the vulnerable from bodily harm.<sup>53</sup> AI and others sometimes refer to the latter as “physical integrity”. These two issues, particularly physical integrity, were also part and parcel of the classic AI focus. Vulnerability to harmful abuses is increased by denial of rights in the economic, social and cultural realm, and civil and political rights can be used to help remedy such abuses. AI’s increased emphasis on indivisibility appears to have been adopted and developed with intentional focus on “grave abuses”. AI’s Demand Dignity campaign emphasises such stories.

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<sup>53</sup> KECK, M. and SIKKINK, K., *Activists beyond Borders*, Cornell, Ithaca, NY, 1998, pp. 27-28.

In addition to these types of issues, Keck and Sikkink observe that it is also easier to mobilise for change when the harm that activists are trying to remedy has a brief, relatively clear causal story and attribution of responsibility.<sup>54</sup> If so, AI's efforts to enlist the public in a campaign against torture, carried out by State agents, appear to face fewer interpretive and educational challenges than, for example, the effects of economic development on poverty and environmental degradation. The effects of governments' economic development strategies or the impact of cultural traditions on human rights require interpretation via a longer, more complex and possibly ambiguous causal chain, and accountability is more diffuse. However, universal human rights may also begin to serve as local bases for action in unexpected ways and in unexpected places, as a recent study by Jackie Smith suggests, and other scholarship promises to address activism on this broader spectrum of human rights.<sup>55</sup>

#### **4. CONCLUSION**

Since AI's early successes were built on what seemed to be a natural objection to the abridgement of rights to freedom of conscience and expression, and the organisation helped make human rights a household word, it may seem odd to suggest that, now, education of the public about the possibility of new rights aspirations is of great importance for AI's continued effectiveness. But that is one issue

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<sup>54</sup> *Idem.*

<sup>55</sup> SMITH, J., *Social Movements for Global Democracy*, Johns Hopkins University Press, Baltimore, 2008; especially Chapter 8, "Domesticating International Human Rights Norms", pp. 158-176. See also chapters on addressing companies, rebel groups, and gender politics in RISSE, T., ROPP, S.C. and SIKKINK, K (eds.), *From Commitment to Compliance: The Persistent Power of Human Rights*, Cambridge University Press, Cambridge, U.K., forthcoming.

that was not considered at length in the 1991 assessment of AI's tools. By the time of AI's 30<sup>th</sup> anniversary, the organisation had brought advocacy of freedom to the fore as a popular and appealing global idea. AI applied it to local realities, closely focusing on recruiting global support for the individual "forgotten prisoner" or victim of State-sponsored violence. To be successful and relevant to those whose rights are harmed by the conditions of poverty, for example, AI will need to identify and publicise the causal links that it can best help to change. More people (and governmental allies) will need to be educated about the implications of the universality and indivisibility of rights with regard to the issues that AI chooses to address.

The singular but ambitious nature of AI's focus as a young organisation was a source of strength, consistency, and impartiality. AI's approach has shifted, as is apparent in its stated determination to work with local groups and other NGOs. AI's current strategic plan, posted on its website, articulates plans for outreach 'to other civil society movements to build a broad and strong human rights constituency while maintaining its impartiality', as well as openness engaging with 'rights-holders [...] local groups, as equal partners, as well as larger [...] NGOs'.<sup>56</sup> This approach marks a contrast with impressions of AI as late as 1995, when one author suggested that 'a group like Amnesty International [...] almost never acts formally in concert with other groups in order to protect its invaluable reputation for impartiality'.<sup>57</sup> In light of AI's expanded work, the evident shift to connections with other individuals and groups is important for developing the capacity to address a broader set of rights in local

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<sup>56</sup> See Item P1, "Developing and Growing the Human Rights Movement," and Item P2, "Building Effective Partnerships"; AMNESTY INTERNATIONAL, Amnesty International's Integrated Strategic Plan 2010-2016, adopted by the 29th International Council Meeting (ICM) held in August 9-14, 2009, available at: [www.amnesty.org/en/library/info/POL50/002/2010/en](http://www.amnesty.org/en/library/info/POL50/002/2010/en), p. 9-10, access date 29 May 2011.

<sup>57</sup> PAL, *loc.cit.*, p. 205.

contexts. Work with the many other new and existing human rights groups expands opportunities and capacity for action at all levels. Cooperation is needed to match the complexity and variety of rights-based issues that AI's fellow NGOs have helped bring to the fore. Expanding its scope of work entails a risk for AI, but the determination to address problems with complex roots and causes is an important commitment that continues to develop as AI turns 50. The classic tools of broadening the audience and interpreting rights in compelling ways can still be applied in light of AI's expanded vision and mission. The challenge in the areas new to AI will be to learn and educate while building capacity for practical action.



# AMNESTY INTERNATIONAL AND MULTINATIONAL CORPORATIONS IN 2061

NICOLA JÄGERS

*'We believe that human rights  
are the business of business'.*

*Irene Khan,  
Secretary General  
Amnesty International  
1 December 2005*

## 1. INTRODUCTION

Shortly before midnight on 2 December 1984, 41 tons of methyl isocyanate leaked from the pesticide plant owned by Union Carbide Corporation in Bhopal, India. The leak, which occurred as a result of negligence, exposed over half a million people to the deadly chemicals, killing between 7,000 and 10,000 people in its immediate aftermath and another 15,000 in the next 20 years. More than 100,000 people continue to suffer serious health problems as a consequence. Today, most victims are yet to be compensated. Union Carbide Corporation and its chairman have refused to accept responsibility and have continuously evaded legal proceedings.<sup>1</sup>

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<sup>1</sup> In June 2010, seven Indians that worked at the plant were convicted for negligence. The US based Union Carbide Corporation and its former chairman were charged in 1987, but continue to evade justice. Available at: [www.amnesty.org/en/news-and-updates/bhopal-end-25-years-injustice-20091030](http://www.amnesty.org/en/news-and-updates/bhopal-end-25-years-injustice-20091030); AMNESTY INTERNATIONAL, India: Dodging Responsibility:

The catastrophe in Bhopal has become emblematic for the negative impact corporations can have on human rights and the difficulties in holding these transnational entities accountable for abuses. Twenty-seven years after the disaster, victims are still waiting for justice to be done.

Corporate accountability (including specific attention for the case of Bhopal) is one of the key issues Amnesty International focuses on in its current campaign Demand Dignity.<sup>2</sup> It is now common place for Non-Governmental Organisations (NGOs), such as Amnesty International, to address the role of corporations in human rights abuse. However, the shift by NGOs to include non-State entities, such as corporations as a legitimate target of action, has come relatively late. Human rights have traditionally been seen as rights protecting the individual against abuse by the State and NGOs have for a long time focussed exclusively on the State in their campaigns. In today's globalised world, however, the achievements of the international human rights community are often threatened by non-State entities. The increased acknowledgment of this fact has resulted in a shift in the human rights movement to include these new challenges coming from non-State entities.

Regarding the corporate impact on human rights, the last three decades have witnessed an evolution of the debate into a truly global movement involving NGOs, international organisations, States and corporations themselves. This article deals with the role of NGOs, in particular Amnesty International, in the corporate human rights movement. What have the attempts by NGOs to influence corporate behaviour brought so far and what are the challenges that lie ahead?

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Corporations, Governments and the Bhopal Disaster: ASA 20/002/2009, 28 May 2009.

<sup>2</sup> AMNESTY INTERNATIONAL, 'Demand Dignity', available at: [demanddignity.amnesty.org/en-gb/campaign/corporate-accountability](http://demanddignity.amnesty.org/en-gb/campaign/corporate-accountability).

The challenges to State-centric international law posed by the rise of non-State actors, such as multinational corporations, have been increasingly recognised. The augmented attention can be explained and has contributed to changes in the landscapes of international (human rights) law. This is discussed in the following section. Section 3 sets the stage by providing an overview of the corporate social responsibility debate. Subsequently, the role NGOs have played in the debate will first be discussed in general before turning to the role of Amnesty International in particular. In section 6, attention will be given to the attempts to regulate corporate behaviour and the role NGOs have played in these processes. This is a stepping stone to the last section, which discusses the challenges that lie ahead for NGOs, such as Amnesty International. Suggestions are put forward that Amnesty International might focus on in the coming decade. But it is clear that several of the identified outstanding issues will require a longer-term commitment, in fact, most likely for another 50 years to come.

## **2. CHANGING LANDSCAPES OF INTERNATIONAL HUMAN RIGHTS LAW**

The period after the Second World War witnessed a proliferation of instruments aimed at the protection and promotion of human rights. As instruments of international law they all share the characteristic of being adopted by and aimed at the State. With a few narrow exceptions - such as the recognition of the international crimes of piracy and slave trade - international treaties have bestowed legal obligations exclusively on States.

This development of international human rights law has not kept pace with processes of globalisation that have propelled non-State entities towards great prominence. The term 'non-State actors' refers to a broad range of entities ranging from international financial institutions, such as the International Monetary Fund (IMF), to

terrorist organisations, such as Al Qaeda. The potential challenges to human rights protection emanating from the various non-State actors differ considerably, and a profound discussion of these challenges and how they are being addressed goes beyond the scope of this contribution.<sup>3</sup> The focus in this article will, therefore, be on the most visible manifestation of globalisation: the multinational corporation (MNC).

Today, it is estimated that there are 80,000 MNCs, 10 times as many subsidiaries and countless millions of national firms conducting business spanning every corner of the globe.<sup>4</sup> As engines of growth, corporations can improve the lives of people, but corporate activities can also affect people in a negative sense. There are ample examples of corporate involvement in human rights

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<sup>3</sup> To mention just a few examples of the ever expanding literature on the topic of non-State actors and human rights: [general] ALSTON, P., *Non-State Actors and Human Rights*, Oxford University Press, Oxford, 2005; CLAPHAM, A., *Human Rights Obligations of Non State Actors*, Oxford University Press, Oxford, 2006; [on the human rights obligations of international financial institutions] SKOGLY, S.I., *The Human Rights Obligations of the World Bank and the International Monetary Fund*, Cavendish Publishing, London, 2001; DARROW, M., *Between Light and Shadow. The World Bank, the International Monetary Fund and International Human Rights Law*, Hart Publishing, Portland, Ore, 2003; [on the human rights obligations of multinational corporations] LETNAR CERNIC, J., *Human Rights Law and Business. Corporate responsibility for fundamental human rights*, Europa Law Publishing, Groningen, 2010; KINLEY, D., *Human Rights and Obligations*, Ashgate Publishing, London, 2009; DE SCHUTTER, O., (ed.), *Transnational corporations and Human Rights*, Hart Publishing, Oxford, 2006; JÄGERS, N., *Corporate human rights obligations: in search of accountability*, Intersentia, Antwerp, 2002.

<sup>4</sup> HUMAN RIGHTS COUNCIL, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31, 21 March 2011, para.15.

abuses.<sup>5</sup> The UN Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises (SRSG),<sup>6</sup> has conducted a survey into reports of such abuses to see if any patterns can be detected.<sup>7</sup> This survey, which included 65 instances of corporate human rights abuse reported by NGOs, showed that the majority of these cases (2/3) concerned the extractive industry. Corporations working in this sector were allegedly involved in the worst kind of human rights abuses, including complicity in crimes against humanity. Typically, these acts were committed by public and private security forces affecting local communities.<sup>8</sup> A distant second in the SRSG survey concerned the food and beverage industry, which faced allegations concerning land and water tenure coupled with labour rights.<sup>9</sup> Labour rights were also under threat in the apparel and footwear industry, the industry that occupied the third place in the survey of the UN Special Representative.<sup>10</sup> Allegations against both these sectors concerned mainly problems in the supply chain. Finally, the information and communication technology sector faced allegations of abuse of the freedom of expression and privacy rights, with possible adverse consequences for the right to life, liberty and security of person.<sup>11</sup>

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<sup>5</sup> See, for example, the website of the Business and Human Rights Resource Centre: [www.business-humanrights.org](http://www.business-humanrights.org). This website covers the social and environmental impacts of over 5000 companies, operating in over 180 countries. The Resource Centre was founded in 2002 by Christopher Avery, who first starting working on the topic of human rights and business at Amnesty International in the context of the UK business Group. For more on this see *infra* section 5.

<sup>6</sup> For more on the work of the UN Special Representative see *infra* section 6.3.

<sup>7</sup> *Interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*, UN Doc. E/CN.4/2006/97 (22 February 2006).

<sup>8</sup> *Idem*, para. 25.

<sup>9</sup> *Ibidem*, para. 26.

<sup>10</sup> *Idem*.

<sup>11</sup> *Idem*.

Corporate human rights abuse was reported mostly in low-income countries that have either just emerged from or are still engulfed in conflict. Moreover, weak governance was a common feature in most of the countries where abuses occurred.<sup>12</sup>

Despite mounting evidence of corporate involvement in human rights abuses it took, as will be discussed *infra*, until the mid 1990s for NGOs to take up the issue in earnest. After this relatively slow start, NGOs have now fully included MNCs as a legitimate target of their campaigning, and, time and again, expose the intrusive impact MNCs can have on the effective enjoyment of human rights.

Two developments can be distinguished in international human rights law that have contributed to the increased role NGOs play in exposing the way in which corporate activities impinge on the effective enjoyment of human rights.

First, NGOs have acquired a position in the international (human rights) community that has enabled them to fill the void left by States that, as will be discussed *infra*, have proven incapable or unwilling to address in earnest the challenges corporate activities can pose to human rights. Like MNCs, NGOs have also undergone a process of globalisation, and, as a result, many have become organisations with a global reach able to address transnational issues. NGOs have come to the fore as strong, influential participants in the international (human rights) community. NGOs have proven to be the motor behind many developments by placing human rights issues on the international agenda. Importantly, NGOs have matured and they are no longer limited to playing a supervisory role.<sup>13</sup> They have acquired *locus standi* as a party in legal disputes and have been responsible for bringing human rights claims before courts.<sup>14</sup> This

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<sup>12</sup> *Ibidem*, para. 27.

<sup>13</sup> Such as recognised, for example, in the Convention on the Rights of the Child, which recognises a formal role for NGOs in providing expert advice on the implementation of the Convention in article 45.

<sup>14</sup> In many national jurisdictions it is quite common for NGOs to bring human rights claims before national courts. However, this possibility has also been

evolution of NGO participation is reflected in international human rights law.<sup>15</sup> The gradual moving in on the formerly exclusive domain of States further challenges the strict statist approach to international (human rights) law.

Second, the heightened attention for corporations coincides with, and can be partly explained by, the increased concern for economic, social and cultural rights (ESC) in the human rights community. Many participants in the global human rights movement have drawn the conclusion that there has been a greater focus on civil and political rights at the expense of ESC rights. This set in motion a trend towards including ESC rights in human rights campaigning. For example, in 2001, Amnesty International amended its mandate to allow for more research to be done on ESC rights, paving the way for more attention to the activities of corporations as they may have a disproportional effect on this category of rights.<sup>16</sup> The developments

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realised before several international human rights court and committees such as is, for example, the case before the African Commission on Human and People's Rights (see Article 55, 56 of the African Charter on Human and People's Rights).

<sup>15</sup> For an analysis of this development see, JÄGERS, N., 'Mainstreaming Human Rights in International economic Organisations: Improving Judicial Access for NGOs to the World Trade Organisation', in *Netherlands Quarterly of Human Rights*, Vol. 24, No. 2, June 2006, pp. 229-270; and EDWARDS, G.E., 'Assessing the effectiveness of Human Rights Non-Governmental Organisations (NGOs) from the birth of the United Nations to the 21<sup>st</sup> century: ten attributed of highly successful human rights NGOs', in: *Michigan Journal of International Law*, Vol. 18, No.2, 2009-2010, pp. 165-228.

<sup>16</sup> The revision of Amnesty's organisational statute to allow for more research and campaigning of ESC rights occurred at its 25<sup>th</sup> International Council meeting in Dakar, Senegal in 2001. For an example of the arguments that played a role in the charged debate leading to that decision see: COX, K.E., 'Should Amnesty International Expand Its Mandate to Cover Economic, Social, and Cultural Rights', *Arizona Journal of International and Comparative Law*, Vol. 16, No.2, 1999, pp. 261-284.

sketched in this section have contributed to the increased attention by NGOs for the impact of corporate activities on human rights. The next section will give an overview of the evolution of the debate on corporate responsibility for human rights.

### 3. THE EVOLUTION OF THE DEBATE ON CORPORATIONS AND HUMAN RIGHTS

In a time span of just a couple of decades, the issue of corporate responsibility for human rights has been put firmly on the international agenda. The tone of the debate has undergone a major shift from the infamous words of the economist Milton Friedman in the 1960s, ‘The only business of business is doing business’, to the widely embraced values expressed in the Triple Bottom Line, which maintain that corporations should account for: people, planet and profit.<sup>17</sup> More specifically, with regard to human rights, the corporate responsibility to respect has been broadly acknowledged.<sup>18</sup>

The increased internationalisation of the world economy after the Cold War intensified the spread of corporations ever more widely into all corners of the world including developing countries. During the 1970s, these developing countries first drew attention to the

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According to Milton Friedman ‘there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud’, FRIEDMAN, M., *Capitalism and Freedom*, University of Chicago Press, Chicago, 1962, p. 133; see also, FRIEDMAN, M., ‘The Social Responsibility of a Business is to Increase its Profits’, *New York Times Magazine*, 13 September, 1970 at 32, 125.

<sup>17</sup> The phrase was coined by ELKINGTON, J.M, in his book *Cannibals with Forks, the Triple Bottom Line of 21<sup>st</sup> Century Business*, New Society Publishers, Gabriola Island, 1998.

<sup>18</sup> See *infra* on the responsibility to respect as introduced by the SRSRG, section 6.3.

negative impact of multinational corporations. Examples of corporate interference in internal political affairs, such as the high profile involvement of the telephone company ITT in the violent overthrow of the democratically elected president of Chile Salvador Allende,<sup>19</sup> raised the call to reign in multinational corporations. This call should be placed in the context of the broader drive towards a “New International Economic Order”. The newly independent States considered the activities of MNCs to be a threat to their economic and political sovereignty.<sup>20</sup> At that time, the debate took place in the context of decolonisation and was very much geared to corporations not interfering in internal affairs. In reaction, international organizations, such as the UN, the Organisation for Economic Cooperation and Development (OECD), and the International Labour Organisation (ILO) drew up international codes of conduct.<sup>21</sup> This early attention for corporate misconduct was, however, outweighed by the growth of trade as a result of trade agreements and liberalisation. MNCs remained relatively immune from effective international regulation in any area, let alone in the field of human rights protection.

Multinational corporations in general seemed to be of the opinion that human rights were the business of governments. Nevertheless, economic globalisation brought companies into near proximity with corrupt regimes that blatantly violated human rights. The risks of being complicit to human rights violations, either those

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<sup>19</sup> On 11 September 1973, Augusto Pinochet led a *coup d'état* that overthrew the democratically elected president of Chile, Salvador Allende. ITT owned 70% of Chitelco, the Chilean Telephone Company, and funded *El Mercurio*, a Chilean right-wing newspaper. Declassified documents released by the CIA in 2000, suggest that ITT financially helped opponents of Salvador Allende's government prepare the military coup.

<sup>20</sup> See JOCHNICK, C. and RABAEUS, N., ‘Business and Human Rights Revitalized: A New Framework Meets Texaco in the Amazon’, in: *Suffolk Transnational Law Review*, Vol. 33, No.3, 2010, pp. 413-437, at p. 415.

<sup>21</sup> See *infra* section 6.3.

committed by governments or by business partners in the supply chain, increased significantly. Inevitably, the issue of corporate responsibility for human rights gained prominence over the years, especially given the Internet revolution that brought exposure to corporate human rights abuses. It was, however, a number of notorious cases of corporate misconduct that proved the catalyst for the development of the current movement for corporate human rights responsibility.

In 1984, there was the catastrophic gas leak in Bhopal, as described in the introduction, which caused a public outcry. The call for corporate social responsibility became stronger following a number of well-known cases in the mid-1990s. In 1995, Shell received international criticism for its silence in the process leading up to the arbitrary execution of Ken Saro-Wiwa and eight others in Nigeria.<sup>22</sup> Allegations of bad labour conditions in the supply chain of apparel brands Nike and Gap<sup>23</sup> further fuelled the debate on the

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<sup>22</sup> Saro Wiwa, the leader of Movement for the Survival of the Ogoni People (MOSOP), led a non-violent campaign against environmental degradation of the land and waters of Ogoniland by the operations of the multinational petroleum industry, especially Shell. At the peak of his non-violent campaign, Saro-Wiwa was arrested, hastily tried by a special military tribunal, and hanged in 1995 by the military government of General Sani Abacha, all on charges widely viewed as entirely politically motivated and completely unfounded. See generally EIDE, A., et al. (eds.), *Human rights and the Oil industry*, Intersentia, Antwerp, 2000. HUMAN RIGHTS WATCH, *The price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities*, 9, HRW Index No. 1-56432-225-4, 1999. The situation was aggravated by the environmental damage following from Shell's activities in the Niger Delta and the human rights abuses that were occurring at the hands of those hired to provide security for Shell. Just prior to these events Shell had already been targeted following its plans to sink the Brent Spar oil platform into the ocean.

<sup>23</sup> LOCKE, R. et al, 'Does monitoring improve labor standards?: Lessons from Nike', Massachusetts Institute of Technology, Sloan School of Management, 2006, available at: [www.reports-and-materials.org/Does-monitoring-improve-labor-standards-July-2006.pdf](http://www.reports-and-materials.org/Does-monitoring-improve-labor-standards-July-2006.pdf); BAEZ, C. et al, 'Multinational

responsibility of corporations for human rights. Finally, another high profile case concerned the human rights consequences of the security arrangements of BP in Colombia.<sup>24</sup> These cases led to international condemnation and have become emblematic for the quest for corporate responsibility that was to follow. In the late 1990s, the awareness about corporate responsibility gathered steam and heightened the demand for regulation.<sup>25</sup>

The Business and Human Rights Resource Center, widely acknowledged as a leading resource centre on the issue in business and human rights, distinguishes three stages in the evolution of the business and human rights debate since the late 1990s.<sup>26</sup> During the first stage (1998-2000), which followed the symbolic cases described above, the debate mainly took place in the North, in Europe and North America. Mostly Northern NGOs drew attention to the headquarters of mostly apparel and extractive corporations. According to the Resource Center, this stage was characterised more by rhetoric than by action. While during the second stage (2003-2006) the debate remained in the Northern hemisphere, the attention shifted to include operations in the global South. The focus widened to embrace not only policies, but also the actual impact of more industries, notably pharmaceutical and finance industries. Finally,

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Enterprises and Human Rights', *U. Miami International law & Comparative Law Review*, Vol. 8, 1999-2000, pp. 183, 234-37, 244-49.

<sup>24</sup> The allegations concerned the construction of an oil pipeline by OCENSA (a consortium led by BP) which, besides severe environmental damage to the lands of farmers, gave rise to allegations of complicity on the part of BP in human rights violations committed by the security guards they hired to guard the pipeline. BP also allegedly benefited from activities of paramilitaries who intimidated the local population, obstructed farming and suppressed legitimate opposition to the pipeline.

<sup>25</sup> The attempt towards regulation and governance of multinational corporations and the role of NGOs in these attempts will be discussed in section 6.3.

<sup>26</sup> BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, 'Business and Human Rights – A Brief Introduction', *available at*: [www.business-humanrights.org/GettingStartedPortal/Intro](http://www.business-humanrights.org/GettingStartedPortal/Intro).

since 2007, the debate on business and human rights has broadened to become truly global with active NGOs from the South taking part and covering all industries, with a focus on the conduct on the ground.

Contrary to the behaviour of many corporations in the 1970s, many are now actively involved in the debate on corporate human rights responsibility. There has been a true proliferation of codes of conduct developed by corporations themselves, industry associations and other international organisations. Human rights now feature prominently in most. Moreover, business and human rights has now become an (academic) industry, fostering countless conferences and spawning numerous consultancy agencies.

#### **4. ON THE BARRICADES OR IN THE BOARDROOM: HOW DO NGOS ATTEMPT TO INFLUENCE CORPORATIONS?**

Despite the potential importance of corporate conduct for the enjoyment of human rights, the human rights NGO community – as pointed out by the founding father of the Amnesty International UK Business Group, the late Sir Geoffrey Chandler – has been relatively slow to react.<sup>27</sup> During the 1970s and 1980s, there was attention for the intrusive corporate footprint on the environment, and, in the context of anti-Apartheid campaigns, the role of corporations did draw some NGO interest. Civil society had started to attack certain corporate activity, such as the marketing practices of tobacco corporations and firms producing breast-milk substitutes. However,

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<sup>27</sup> SIR CHANDLER, G., 'The Evolution of the Business and Human Rights Debate', in: SULLIVAN, R., (ed.), *Business and Human Rights. Dilemmas and Solutions*, Greenleaf Publishing, Sheffield, 2003, pp.22-32, at p.23; and SIR CHANDLER, G., 'The Amnesty International UK Business Group: Putting Human Rights on the Corporate Agenda', in: *The Journal of Corporate Citizenship*, Issue 33, April 2009, pp. 29-34, at p. 29.

the impact of business was general not framed in human rights terms and human rights NGOs were not addressing corporations.<sup>28</sup> NGO attention on the impact of corporations on human rights only really increased in the 1990s. The main catalyst for the debate on business and human rights turned out to be, as described above, not so much NGO activity, but rather the corporate misconduct that occurred especially in the 1990s. This slow start can partly be explained by the fact that international human rights NGOs were firmly grounded in liberal Western legal ideology and, consequently, focussed on civil and political rights, such as extra judicial killing and torture, which would seem to belong to the domain of governments.<sup>29</sup>

Absent State action, NGOs have, after this rather late start, taken the lead in formulating the human rights expectations of companies. Today, it is not an exaggeration to state that the global human rights movement is carried by NGOs. Moreover, most major human rights NGOs have included corporations in their campaigning. Indeed, several NGOs have been established with the exclusive aim to ensure that corporations respect human rights.<sup>30</sup>

The different roles that NGOs play in the international human rights community, as crusaders, supervisor or even legal party, can all be discerned in the corporate human rights movement. NGO campaigns have been crucial in shining a spotlight on corporate

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<sup>28</sup> FRANKENTHAL, P., 'The Reshaping of Amnesty International's Business and Human Rights Work', *Guest Commentary*, May 2011, *available at*: [www.ihrb.org/commentary/guest/amnesty\\_international\\_business\\_human\\_rights.html](http://www.ihrb.org/commentary/guest/amnesty_international_business_human_rights.html) [hereinafter: *Guest Commentary*].

<sup>29</sup> JOCHNICK and RABAEUS, *loc.cit.*, p. 415.

<sup>30</sup> To name just a few: Global Witness ([www.globalwitness.org](http://www.globalwitness.org)), Global Business Initiative on Human Rights ([www.global-business-initiative.org](http://www.global-business-initiative.org)), the Business and Human Rights Resource Centre ([www.business-humanrights.org](http://www.business-humanrights.org)), Institute for Human Rights and Business ([www.institutehrb.org](http://www.institutehrb.org)), SOMO – Centre for Research on Multinational Corporations ([www.somo.nl](http://www.somo.nl)).

human rights abuses and getting the issues on the agenda. Moreover, NGOs are increasingly bringing cases before the courts.<sup>31</sup>

Several different approaches employed by NGOs in attempting to influence the behaviour of corporations can be discerned. Winston makes a distinction between ‘engagers’ and ‘confronters’.<sup>32</sup> Engagers try to enter into dialogue with corporations in order to persuade them to adopt voluntary codes of conduct by invoking moral or prudential arguments.<sup>33</sup> A motive to engage with businesses on human rights issues lies in the hope that those corporations can actually be partners in promoting human rights globally. NGOs have come to see the potential of the private sector as a way to achieve their goals absent effective State action.<sup>34</sup> There are numerous examples of NGOs that have wholeheartedly embraced the engagement approach.<sup>35</sup>

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<sup>31</sup> Examples are the high-profile cases brought against Shell before a Dutch court for alleged abuses in Nigeria. The cases are being brought by the NGO *Friends of the Earth* (and several Nigerian farmers). See, *inter alia*, the decision of the Court in The Hague, which declared the case admissible in 2009: *Milieudefensie c.s. vs. Royal Dutch Shell plc./The Shell Petroleum Development Company of Nigeria Ltd.* (Rb. Den Haag, 30 December 2009, Ha-Za 09-579).

<sup>32</sup> WINSTON, M., ‘NGOs Strategies for Promoting Corporate Social Responsibility’, *Ethics and International Affairs*, Vol. 16, No.2, 2002 pp. 71-87.

<sup>33</sup> *Idem*, p. 71.

<sup>34</sup> ECONOMIC AND SOCIAL COUNCIL, Promotion and Protection of Human Rights; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (Mr. John Ruggie), UN Doc. E/CN.4/2006/97, paras. 16-17.

<sup>35</sup> To name just a few examples, *Social Accountability International*, this NGO oversees the SA8000 certification standard (and the 2010 ISO26000 with a wider reach) which enables MNCs to monitor the labour practices of their suppliers and subcontractors ([www.sa-intl.org](http://www.sa-intl.org)) or the *Ethical Trading Initiative*, a partnership between corporations, trade unions and voluntary organisations ([www.ethicaltrade.org](http://www.ethicaltrade.org)).

When engaging with corporations on the issue of human rights, NGOs have tried to find a common ‘language’. One way of doing so is by presenting the ‘business-case for human rights’. As a point-of-entry, NGOs present supposed commercial benefits for corporations engaging in the promotion and protection of human rights. There are several problems associated with such an approach. Firstly, the approach will only provide a point of leverage over companies with high profile brands that are vulnerable for adverse publicity. Second, research is inconclusive whether there indeed are commercial benefits following from a pro-active approach to human rights. Finally, as rightly pointed out by Sullivan, this approach has the inherent danger of actually weakening the arguments for why companies must address human rights concerns. Casting human rights in terms of a cost-benefit analysis undermines the moral force of the human rights argument.<sup>36</sup>

Consequently, the engagement-approach has encountered critique, especially from the circles of labour unions that traditionally have employed a more adversarial stance towards corporations. NGOs that belong to the category of confronters are antagonists using “naming and shaming” as their instrument. This category of NGOs is inclined to believe that corporations will only act if their financial interests are threatened.<sup>37</sup>

The two approaches – engagement and confrontation – can work in a complementary fashion. It takes confrontation to draw attention to the abuses and engagement to achieve results, or, in the words of Sir Chandler, ‘Protest could raise issues, engagement was needed to win the argument’.<sup>38</sup> Most NGOs do not deploy an

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<sup>36</sup> SULLIVAN, R., ‘NGO Expectations of Companies and Human Rights’, in: *Non-State Actors*, Vol. 3, 2003, No. 2-3, pp. 303-322, at pp. 314-35.

<sup>37</sup> WINSTON, *loc.cit.*, p. 71. Examples of NGOs that belong to the category of confronters are NGOs such as *Global Exchange* ([www.globalexchange.org/](http://www.globalexchange.org/)) and *Global Witness* ([www.globalwitness.org/](http://www.globalwitness.org/)).

<sup>38</sup> SIR CHANDLER, *loc.cit.*, 2009, p.25.

exclusively confrontational or engagement approach, but try to pursue the two tactics simultaneously.

## 5. THE ROLE OF AMNESTY INTERNATIONAL

The work of Amnesty International on the issue of corporations and human rights,<sup>39</sup> to a certain extent, can be seen as a break with the traditional approach of the organisation. Transfer of military, security and police equipment for purposes of torture (“torture trade”), on the other hand, did receive attention by Amnesty International in a much earlier stage. This fitted in the traditional focus on civil and political rights, such as extra judicial killing and torture, which would seem to belong to the domain of governments. The fundamental difference that the work on business and human rights brought along was that this concerned non-State actors. Campaigning against non-State actors required a whole new technique as companies proved much more able to distance themselves from alleged violations, not in the least because they are often not the primary violators, but in a position of aiding and abetting, which is much more difficult to prove.<sup>40</sup> The work of Amnesty International on corporations must, therefore, be viewed as distinct from its work on military, security and police issues. The working method of Amnesty International has been conditioned by dealing with human rights violations, and, consequently, when the issue of corporations and human rights abuse came first on the agenda, the attitude toward these entities was adversarial.<sup>41</sup> Some feared that putting more focus on corporations would imply letting States off the hook.

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<sup>39</sup> AI does not limit its advocacy to corporations but rather speaks of economic actors which includes international financial organisations. See: AMNESTY INTERNATIONAL, *Business and Human Rights*, available at: [www.amnesty.org/en/business-and-human-rights](http://www.amnesty.org/en/business-and-human-rights).

<sup>40</sup> FRANKENTHAL, *Guest Commentary*, *supra* note 29.

<sup>41</sup> SIR CHANDLER, *loc.cit.*, 2009, p. 30.

The involvement of Amnesty International with the issue of corporate responsibility for human rights can be traced back to 1991, when the United Kingdom Branch established the Amnesty International (UK) Business group. This Amnesty group, consisting of Amnesty members with a business or industrial background, clearly opted for the engagement approach, focussing on the positive contribution corporations can make to the better enjoyment of human rights. As pointed out by Sir Chandler, the founding father of the UK Business Group, this was a careful decision taken in a time when most corporations were of the mind that human rights were solely a responsibility for governments.<sup>42</sup> According to the 1991 Statement of Intent, the aim of the Group was ‘to make the business community in the UK more aware of human rights issues around the world in the belief that corporate management can help to put an end to human rights abuses’ and to ‘encourage companies and business people involved in overseas trade and investment to use their international links to work for an improvement in human rights’.<sup>43</sup>

Within Amnesty International, the initiative was initially met with official indifference, and little administrative support was given. It took until September 1995 for Amnesty International to adopt a resolution stating that the international movement as a whole should ‘carefully develop outreach to members of the business community [...] in order to motivate constructive action by them against the violations within AI’s mandate’.<sup>44</sup> Following adoption of the resolution, some action was taken. For example, in 1996, the Amnesty International Australia Business Group was established.<sup>45</sup>

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<sup>42</sup> *Idem.*

<sup>43</sup> *Ibidem*, p. 29.

<sup>44</sup> In January of that same year Human Rights Watch had also started to target Shell for its activities in the Niger Delta of Nigeria. SIR CHANDLER, *op.cit.*, 2003, p.24.

<sup>45</sup> SULLIVAN, R., and HOGAN, D., ‘The Business Case for Human Rights – The Amnesty International Perspective’, in: BOTTOMLEY, S. and KINLEY, D. (eds.),

However, it would take several years for the issue to really gain prominence in the work of Amnesty.

The relative indifference from Amnesty International, according to Chandler, was to be the strength of the UK Business Group because the outside world came to view it as a semi-independent group. This proved useful as most corporations were very wary towards NGOs, such as Amnesty International.<sup>46</sup> The first strategy, which merely consisted of writing to corporations asking them to become active in this field, proved ineffective. In 1992, the UK Business Group decided to focus on corporations operating in particular countries, such as South Africa and China, which did stir some interest.<sup>47</sup> However, in the first few years, the UK Business group did not succeed in really getting through their message.

For Amnesty International, the catalyst for change turned out to be corporate behaviour itself. The high profile cases, such as the activities of Shell in Nigeria and BP in Colombia, generated a huge amount of international attention on the issue of the corporate impact on human rights. The reaction of Amnesty International to the role of Shell in the arbitrary execution of Ken Saro Wiwa was in a sense traditional. The NGO first protested at the Shell headquarters. In an unprecedented reaction Shell admitted that it had not kept pace with society's views.<sup>48</sup> A long process of dialogue followed between the company and Amnesty, both in the UK and in the Netherlands. This resulted in the reference to human rights in Shell's Statement of General Business Principles in 1997, even though at the time an explicit reference to the Universal Declaration of Human Rights (UDHR) was still a bridge too far. A dialogue also started with BP, whose security arrangements had caused public outrage.

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*Commercial Law and Human Rights*, Dartmouth Publishing Co., Aldershot, 2001, pp. 69-87, at p.73.

<sup>46</sup> SIR CHANDLER, *loc.cit.*, 2009, p. 30.

<sup>47</sup> *Ibidem*, p. 30-31.

<sup>48</sup> *Ibidem*, p. 32.

Subsequently, BP also revised its set of business principles.<sup>49</sup> In 1997, Amnesty International published the Human Rights Guidelines for Companies,<sup>50</sup> outlining in quite some detail its expectations towards companies. The Guidelines were launched at the first public conference on business and human rights in Birmingham.<sup>51</sup>

The issue of corporate responsibility for human rights was now firmly placed on the agenda of Amnesty International and most national branches, and they succeeded in entering into dialogue with a small number of MNCs that subsequently followed the examples set by Shell and BP.

The Dutch branch of Amnesty International, for example, got involved in the issue relatively early together with the NGO Pax Christi International. The NGOs organised a roundtable with several multinational enterprises, which in 1998 resulted in the report 'Multinational Enterprises and Human Rights'.<sup>52</sup> This report is one of the earliest contributions to the body of knowledge on the responsibilities of corporations for human rights.

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<sup>49</sup> SIR CHANDLER, *loc.cit.*, 2009, p. 32.

<sup>50</sup> AMNESTY INTERNATIONAL, *Human Rights Guidelines for Companies*, Amnesty International (UK) Business Group, 1997.

<sup>51</sup> After this, the UK Business Group continued for another three and a half years independently from Amnesty International. In this period, the Group continued to publish valuable documents on the issue of corporate responsibility for human rights such as: *Business and Human Rights: A geography of corporate risk*, Amnesty International and International Business Leaders Forum, 2002 and the management Guide: FRANKENTHAL, P., and HOUSE, F., 'Human Rights: is it any of your business?', Amnesty International and the Prince of Wales International Business leaders Forum, 2000.

<sup>52</sup> The study followed after an, at the time quite unique, extensive round of consultations with nine multinational enterprises, ABN AMRO Bank, Heineken, ING Group, Royal Ahold, KPMG Accountants, Philips, Rabobank, Shell, Unilever, three trade unions, Confederation of Christian Trade Unions in the Netherlands (CNV), Confederation of Netherlands Industry and Employers (VNO NVW), Netherlands Trade Union Confederation (FNV) and a group of academics.

This overview of the involvement of Amnesty International in the corporate human rights movement shows that the organisation started out by engaging corporations. In 2002, however, a quote from the then Secretary General Irene Kahn, shows that Amnesty was struggling which position to take:

We're having a big discussion within our internal business group... The big question is: When do you move from a promotional, friendly relationship with a company to an oppositional relationship [...]. There are Amnesty members who probably say the only way you can deal with business is on the barricades. Others say the best way is to go and speak with the board. There will also be a range of views between the two extremes.<sup>53</sup>

Today, the approach of Amnesty International to the issue of corporations and human rights seems to be a juggling act of both engaging corporations and confronting them when necessary. The limited effectiveness of the initial exclusive focus on constructive engagement led to a review of strategy. The emphasis has since been placed on governments and inter-governmental bodies to raise global standards and to develop regulatory systems aimed at holding corporations accountable for complying with them.<sup>54</sup> From the cautious beginnings in the 1990s, the quest for corporate accountability has become one of the central issues of the work of Amnesty. The organisation now, by means of research and analysis, aims to:

[...] highlight human rights abuses in which companies are implicated and how governments fail to prevent these abuses or hold companies to account when they occur. The organisation is

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<sup>53</sup> Quoted in SANTORO, M.A., 'Defending Labor Rights: On the Barricades and In the Boardroom', *Brown Journal of World Affairs*, Vol. 9, No. 2, 2002-2003, pp. 303-320, at p. 303.

<sup>54</sup> FRANKENTHAL, *Guest Commentary*, *supra* note 29.

campaigning for global standards on business and human rights and stronger legal frameworks at both national and international level to hold companies to account for their human rights impact.<sup>55</sup>

Besides the direct engagement with corporations and the exposure of corporate human rights abuses, Amnesty International participates in numerous initiatives aimed at regulating corporate behaviour as will be discussed in the following section.

## **6. GOVERNANCE AND REGULATORY RESPONSES**

The increased attention for the negative impact corporations can have on the enjoyment of human rights has fueled the demand for regulation. This section will discuss various governance and regulatory responses to the heightened demand for corporate accountability and the role NGOs, such as Amnesty International, have played in these responses.

Human rights law has been critical in shaping the expectations of NGOs, in particular Amnesty International, towards

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<sup>55</sup> AMNESTY INTERNATIONAL, 'Business and Human Rights', available at: [www.amnesty.org/en/business-and-human-rights](http://www.amnesty.org/en/business-and-human-rights). The degree to which the issue of corporations and human rights has been integrated into the work of Amnesty International is also clearly reflected in the latest Integrated Strategic Plan (ISP) 2010-2016. According to the ISP, Amnesty International is committed to, *inter alia*, 'empowering people living in poverty (C1)' by protecting them against grave human rights abuses 'including corruption and other abuses perpetrated by the state and non-state actors, including economic actors'. A sign of success will be the development of binding international standards and effective mechanisms for corporate accountability. Moreover, the ISP contains a whole section (C3) on 'defending people from violence by state and non state actors' which includes the quest for standards for corporate accountability in areas of conflict. See AMNESTY INTERNATIONAL, Amnesty International's Integrated Strategic Plan 2010-2016, AI Index Pol/002.2010, 29 April 2010, available at: [www.amnesty.org/sites/impact.amnesty.org/files/POL%2050\\_002\\_2010%20Public%20ISP.pdf](http://www.amnesty.org/sites/impact.amnesty.org/files/POL%2050_002_2010%20Public%20ISP.pdf).

companies.<sup>56</sup> Human rights advocates have taken the UDHR as their starting point. The preamble calls upon every individual and every organ of society to protect and promote human rights. As stated by Professor Louis Henkin at the 50th anniversary of the UDHR: ‘Every individual includes juridical persons. Every individual and every organ of society, excludes no one, no company, no market, no cyberspace’.<sup>57</sup>

Amnesty International has argued that this responsibility entails that corporations must use their influence in support of human rights. This includes a specific commitment to human rights in their statements of business principles and codes of conduct. Moreover, corporations should produce explicit human rights policies and ensure that they are integrated, monitored and audited across their operations and beyond borders. Furthermore, corporations should put in place the necessary internal management systems to ensure that human rights policies are acted upon.<sup>58</sup> Against this background, Amnesty International has taken an active role in many different developments aimed at better governing and regulating the impact of corporations on human rights.

The dizzying array of governance and regulatory initiatives that has emerged in recent years makes it impossible to provide a comprehensive overview. For the sake of clarity, it is useful to provide a tripartite categorisation of the multitude of governance and regulatory responses.<sup>59</sup> Several initiatives in the different categories

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<sup>56</sup> SULLIVAN, *op.cit.*, 2009, p. 309.

<sup>57</sup> HENKIN, L., ‘The Universal Declaration at 50 and the Challenges of Global Markets’, *Brooklyn Journal of International Law*, Vol. 25, No. 1, 1999, p. 25 [emphasis in the original].

<sup>58</sup> AMNESTY INTERNATIONAL, ‘Business and Human Rights’, available at: [www.amnesty.org/en/business-and-human-rights](http://www.amnesty.org/en/business-and-human-rights). See also, for an early elaboration of Amnesties expectations towards business: AMNESTY INTERNATIONAL, *Human Rights Guidelines for Companies*, Amnesty International (UK) Business Group, 1997.

<sup>59</sup> This categorisation is inspired by the four regimes identified by Ralph Steinhart who distinguishes (i) a market-based regime, (ii) a regime of

will be highlighted. First, the least coercive category of initiatives that has taken off in a big way is that of self-regulation. Second, there have been a number of significant attempts to regulate the corporate impact on human rights at the national level. Finally, the attempts to come to international regulation will be discussed.

## 6.1 SELF-REGULATION

Classically, the reflex is to seek a governmental response to the human rights problems posed by corporations. However, governments remain unwilling to contemplate binding obligations for corporations.<sup>60</sup> The void that is left has stimulated the growth of all kinds of transnational private responses aimed at regulating the corporate impact on human rights. This is one of the most interesting features in the corporate human rights responsibility debate; the fact that much of the discussions are taking place outside of the traditional government-dominated locations where international law is usually discussed. The involvement of NGOs in the debate on corporate responsibility for human rights has brought the novel feature of one non-State entity trying to regulate the impact on human rights by another non-State entity. This is not unique to the field of corporations and human rights. In many areas actors distinct from governments are increasingly exercising governance powers. Coalitions of businesses, trade associations, and NGOs have emerged in various sectors ranging from advertising to payment systems. A common characteristic of this private regulation is that NGOs have often taken the lead in developing and monitoring standards with a

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domestic regulation, (iii) a regime of civil liability and (iv) a regime of international (quasi) regulation. See STEINHARDT, R.G., 'Soft law, hard markets: competitive self-interest and the emergence of human rights responsibilities for multinational corporations', *Brooklyn Journal of International Law*, Vol. 33, No. 3, 2007-2008, pp. 933-954.

<sup>60</sup> As became clear in the process leading up to the rejection of the UN Norms. See *infra* section 6.3.

transnational reach. The role of the nation State is either a limited one or completely missing. The possible strengths of such a pluralistic approach to regulation are gradually being acknowledged.<sup>61</sup> Arguably, such regulation has the potential of better embracing the activities of private actors than conventional international lawmaking.<sup>62</sup>

There are numerous examples of such transnational private regulatory regimes in the field of corporations and human rights, like, *inter alia*: the Electronics Industry Citizenship Coalition;<sup>63</sup> the Equator Principles;<sup>64</sup> the Extractive Industries Transparency Initiative;<sup>65</sup> the Fair Labor Association;<sup>66</sup> the Global Reporting Initiative;<sup>67</sup> the Kimberley Process;<sup>68</sup> and the Voluntary Principles on Security and Human Rights.<sup>69</sup> NGOs have frequently taken the lead in the elaboration and monitoring of these standards. For example, Amnesty International was one of the leading NGOs in the process leading up to the launch of the Voluntary Principles on Security and Human Rights (VPSHR) in 2000. Amnesty International continues to be one of the driving NGOs behind this ongoing mechanism.<sup>70</sup>

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<sup>61</sup> See, for example, the project *Private Transnational Regulation: Constitutional Foundations and Governance Design*, which, by means of 11 case studies investigates the emergence, legitimacy and effectiveness of such transnational private regulatory regimes ([www.privateregulation.eu](http://www.privateregulation.eu)).

<sup>62</sup> SCOTT, C., FABRIZIO, C., and SENDEN, L., 'The Conceptual and Constitutional Challenge of Transnational Private Regulation', in: *Journal of Law and Society*, Vol. 38, No. 1, March 2011, pp. 1-19.

<sup>63</sup> [www.eicc.info](http://www.eicc.info).

<sup>64</sup> [www.equator-principles.org](http://www.equator-principles.org).

<sup>65</sup> [eti.org](http://eti.org).

<sup>66</sup> [www.fairlabor.org](http://www.fairlabor.org).

<sup>67</sup> [www.globalreporting.org](http://www.globalreporting.org).

<sup>68</sup> [www.kimberlyprocess.com](http://www.kimberlyprocess.com).

<sup>69</sup> [www.voluntaryprinciples.org](http://www.voluntaryprinciples.org).

<sup>70</sup> The VPSHR are a transnational semi private regulatory regime launched in 2000 by the US and the UK with support from major extractive industry companies. The aim of this multi-stakeholder initiative is to provide guidance to States and the extractive industry on three aspects of security operations:

Competition for consumers and investors by conforming to international human rights standards is a main driver for corporations to join these multi-stakeholder or hybrid initiatives, and, therefore, these voluntary initiatives can be referred to as a market-based regime.<sup>71</sup> This market-driven commitment to human rights can take different forms besides the above-mentioned multi-stakeholder or hybrid initiatives. Many corporations have adopted unilateral corporate codes of conduct or joined codes drawn up by industry associations and the like. Other manifestations are ‘rights-sensitive’ branding and product-lines, such as ethical bananas or coffee, social accounting and certification,<sup>72</sup> and ethical investment or shareholder pressure.<sup>73</sup> The sum of these developments is that corporations have taken on some public commitment to the protection of human rights. NGOs have played a crucial guiding role in many of these initiatives by, inter alia, developing (reporting) guidelines or by monitoring social standards.

The flag under which many companies develop these market-based policies is that of “corporate social responsibility” (CSR). The problem with the term corporate social responsibility is that a clear definition is lacking,<sup>74</sup> and it has become a container for all kinds of

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first, risk assessments; second, the interactions between these companies and public security forces and, finally, the interactions with private security forces. Currently, the regime involves 7 States, 9 NGOs and 18 companies in the extractive and energy sectors. For more information, see: [www.voluntaryprinciples.org](http://www.voluntaryprinciples.org).

<sup>71</sup> STEINHARDT, *loc.cit.*

<sup>72</sup> See, for example, the reporting standards SA 8000 and ISO 26000, *supra* note 36.

<sup>73</sup> See generally, JACKSON, K., ‘Global Corporate Governance: Soft Law and Reputational Accountability’, *Brooklyn Journal of International Law*, Vol. 35, No. 1, 2010, pp. 41-106.

<sup>74</sup> One of many definitions is provided by the 2001 EU Green Paper, which states that corporate social responsibility is ‘a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with stakeholders on a voluntary basis’. EUR. COMM’N

community developments focusing on voluntary activities companies might want to engage in to provide them an advantage over competitors. Inclusion of corporate human rights responsibility in the CSR-movement has resulted in underlining the voluntary nature of adhering to human rights. Also, the market-based regime has encountered critique that, in some cases, regulatory initiatives amount to little more than window dressing. However, as will be discussed in section 7, dismissing transnational private regulation as purely voluntary and, therefore, useless is oversimplifying matters. Nevertheless, like many other NGOs, Amnesty International is of the opinion that non-binding mechanisms do not provide the ultimate answer to the problems posed by some corporations and, therefore, continues to campaign for global standards on business and human rights and stronger legal frameworks.<sup>75</sup>

## 6.2 NATIONAL LEVEL

Besides a company's desire to distinguish itself from competitors by adhering to international human rights standards, the threat of civil litigation in various national jurisdictions has undoubtedly also played an important role in the proliferation of voluntary responses over the last decades. The corporate human rights debate accelerated following the 'rediscovery' of the US Alien Tort Statute (ATS).<sup>76</sup> This 1789 US federal law allows foreign plaintiffs (referred to as "aliens") to sue in US federal courts for torts that also constitute

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OFFICE OF EMP & SOCIAL AFFAIRS, *Promoting a European Framework for Corporate Social Responsibility: Green paper 5-28* (2001).

<sup>75</sup> AMNESTY INTERNATIONAL, 'Business and Human Rights', available at: [www.amnesty.org/en/business-and-human-rights](http://www.amnesty.org/en/business-and-human-rights). See also, AMNESTY INTERNATIONAL, ISP 2010-2016, *loc.cit.*

<sup>76</sup> For more on the ATS: STEPHENS, B., et.al., *International Human Rights Litigation in U.S.Courts*, Martinus Nijhoff Publishers, Leiden, 2008.

violations of the “law of nations” (customary international law).<sup>77</sup> Starting with the first case against a corporation under the ATS, *Doe vs. Unocal* in 1997,<sup>78</sup> a string of cases in which corporations faced multi-million dollar claims have been brought against corporations before US federal district courts.<sup>79</sup> The US federal courts have heard cases against a number of corporations, including ExxonMobil, Texaco, Coca-Cola and Chevron, concerning a wide range of allegations, including torture and crimes against humanity. However, the potential of the ATS as an effective avenue for obtaining redress for corporate human rights abuses has been overestimated given the many potential hurdles to be overcome by plaintiffs resulting in most cases being dismissed.<sup>80</sup> Moreover, the 2010 case of *Kiobel vs. Shell* before the US Court of Appeals for the Second Circuit<sup>81</sup> seems to

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<sup>77</sup> The exact wording is: The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States 28 U.S.C. § 1350. The ATS is also called the Alien Tort Claims Act (ATCA). “Violations of the law of nations” – is interpreted to cover a limited class of alleged harms including genocide, torture, extra-judicial killing, war crimes, crimes against humanity, forced labour and slave labour, forced disappearances, prolonged arbitrary detention or arrest, forced exile, rights of association, systematic racial discrimination and cruel, inhuman or degrading treatment.

<sup>78</sup> *Doe vs. Unocal*, 1997, 248 F.3d 915 (9<sup>th</sup> Cir. 2001). The plaintiffs in this case alleged that the corporation Unocal that was building a pipeline together with the government of Burma was complicit in the human rights violations committed by Burmese security forces. The Ninth Circuit ruled that the plaintiffs could pursue a claim against Unocal for aiding and abetting human rights violations. The case was eventually settled.

<sup>79</sup> Over 155 cases have been filed against corporations under the ATS. More than 80% of these cases have been filed in the past 15 years. DRIMMER, J.C., and PHILLIPS, N.J., ‘Sunlight for the Heart of Darkness: Conflict Minerals and the First Wave of SEC Regulation of Social Issues’, *Human Rights and International Legal Discourse*, forthcoming 2012.

<sup>80</sup> STEPHENS, *op.cit.*

<sup>81</sup> The plaintiffs in *Kiobel* were citizens of Nigeria who alleged Shell, through its Nigerian subsidiary Shell Petroleum Development Company of Nigeria (SPDC), provided transport to Nigerian troops, allowed company property to

have closed the door to this avenue altogether by its ruling that despite previous ATS jurisprudence, corporations cannot be held liable for violations of customary international law.<sup>82</sup>

Nevertheless, the litigation proceedings under the ATS have prompted several MNCs to settle for substantial amounts with the victims. Moreover, the developments under the ATS have drawn considerable attention for the possibilities of bringing legal proceedings against corporations before national courts for violations committed abroad.<sup>83</sup> There are a growing number of cases aimed at holding parent companies legally accountable for negative environmental and/or human rights impacts associated with their affiliates and subsidiaries in developing countries. Besides the lawsuits being brought in the US and Europe, MNCs are increasingly being brought in developing countries. As a result, companies that do not respect human rights run a growing risk of facing human rights litigation.

The time and costs associated with the long-winded litigation are a potential stumbling block for victims of corporate human rights abuses. NGOs play an indispensable role in corporate human rights litigation.<sup>84</sup> In many of the corporate cases brought under the ATS,

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be used as staging areas for attacks against the Ogoni, and provided food to the soldiers and paid them. The plaintiffs claimed the defendant companies were complicit in the commission of torture, extrajudicial killing and other violations. See *Kiobel vs. Shell*, 621 F.3d 111 (2d Cir. Sept. 17, 2010).

<sup>82</sup> The court of appeals, on 4 February 2011, refused to rehear the case. The plaintiffs have indicated that they intend to petition the Supreme Court to hear their appeal.

<sup>83</sup> See, *inter alia*, ENNEKING, L., 'Crossing the Atlantic? The political and Legal Feasibility of European Foreign Direct Liability Cases', *George Washington International Law Review*, 2009, pp. 903-941; *Business and International Crimes. Assessing the Liability of Business Entities for Grave violations of International Law*, FAFO, 2006,/2009; JOSEPH, S., *Corporations and Transnational Human Rights Litigation*, Hart, Oxford, 2004.

<sup>84</sup> On the role of NGOs in ATS litigation see DAVIS, J., *Justice across borders. The struggle for human rights in US Courts*, Cambridge University Press,

the costs have been born by NGOs, such as the Centre for Constitutional Rights (CCR) and Earthrights International (ERI).<sup>85</sup>

Besides national laws that enable victims to litigate against corporations for human rights abuses, there exists a range of other regulations at the national level that aim to regulate the corporate impact on human rights. One may think of regulation where foreign policy objectives are advanced by channeling corporate behaviour by means of boycott legislation and sanctions. A well-known example is the US sanction legislation prohibiting investment by US firms in Burma<sup>86</sup>, and the import of goods from that country.<sup>87</sup> The tool of economic sanctions is used by and against many other countries as well. The effectiveness of economic sanctions is, however, much debated.

An increasingly utilised noteworthy tool for regulating corporate behaviour is the body of rules aimed at obliging corporations to report and disclose on social issues. Here, one recent potentially potent and rather innovative example will be highlighted. In 2010, a new securities regulation was adopted in the US as part of the sprawling financial reform legislation. Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter: Section 1502 or the Conflict Minerals Provision) is the first securities regulation aimed specifically at human rights.<sup>88</sup> Section 1502 seeks to eliminate funding for conflicts in Sub-Saharan Africa by requiring

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Cambridge, 2008, Chapter 3 “Human rights entrepreneurs: NGOs and the ATS revolution”, pp. 44-88.

<sup>85</sup> The Center for Constitutional Rights is based in New York, US. For more information see: Earthrights International has offices in Washington D.C., US and in Chiang Mai, Thailand ([www.earthrights.org](http://www.earthrights.org)).

<sup>86</sup> Executive Order 12047 of 20 May 1997.

<sup>87</sup> Burmese Freedom and Democracy Act of 2003, P.L. 108-61.

<sup>88</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. No. 111-203), at 124 Stat 2213-18; codified at 15 USC 78m note. Section 1502 is inspired by the Kimberly process which requires transparency on the origins of diamonds in order to combat so-called “blood-diamonds”. See: [kimberlyprocess.com](http://kimberlyprocess.com). DRIMMER and PHILLIPS, *forthcoming 2012*.

corporations that use specified minerals,<sup>89</sup> commonly found in the Democratic Republic of Congo (DRC) and adjoining States, to make certain disclosures in their filings with the US Securities and Exchange Commission (SEC). The conflict minerals provision essentially requires publicly traded companies (US and foreign) to submit annual reports to the SEC disclosing whether their products contain minerals from Congo or adjacent countries. If so, these companies must explain in their annual report, and, on their website, the due diligence steps taken to trace the origin of the minerals and whether they come from mines that help fund armed conflict. If they cannot determine whether this is the case, the corporation is required to label their products as “not DRC conflict free”.

The impact of Section 1502 is likely to be significant. The identified minerals are present in a wide range of goods, implying a great number of corporations will have to conduct a due diligence investigation into the origin of the minerals.<sup>90</sup> It is expected that the due diligence process, combined with scrutiny by human rights NGOs, will result in widely accepted standardisation.<sup>91</sup>

Amnesty International has welcomed Section 1502 as ‘a crucial step towards bringing about the greater transparency and accountability in mineral supply chains urgently needed to combat the trade in conflict minerals’.<sup>92</sup> Section 1502 will provide NGOs with a potentially powerful means of pursuing human rights claims against companies. First, it is a good starting point for advocacy as it enables NGOs to

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<sup>89</sup> Cassiterite, coltan, wolframite, gold, and their derivatives (as well as other minerals later determined by the U.S. Department of State to be financing conflict).

<sup>90</sup> SEC has estimated that at least 1,200 corporations will be required to investigate their supply chain. DRIMMER and PHILLIPS, *op.cit.*, p. 14.

<sup>91</sup> *Idem.*

<sup>92</sup> Letter dated 1 March 2011 from AI (and 9 other NGOs) to Secretary Clinton, urging the timely and effective implementation of section 1502 ([www.sec.gov/comments/s7-40-10/s74010-104.pdf](http://www.sec.gov/comments/s7-40-10/s74010-104.pdf)). At the time of writing, the SEC has postponed issuing rules on exact implementation that were expected in April 2011 until August 2011.

obtain information; since the provision requires statements not only to the SEC, but also to the public through postings on company websites. NGOs can play an important monitoring role and provide information to the SEC (the most powerful financial regulatory body in the US). Moreover, inaccurate or misleading statements may even provide grounds to take a corporation to court.<sup>93</sup>

Section 1502 has been elaborated upon in somewhat more detail in order to provide an example of a potentially effective regulatory tool to ensure corporations respect human rights at the national level. Corporate transparency is key when one wants to push for improved corporate human rights performance. Enhancing transparency by means of disclosing non-financial information has also been introduced elsewhere, frequently starting off as a voluntary commitment and developing into a mandatory obligation.<sup>94</sup> At the level of the EU, a legislative proposal for obligatory disclosure will be drafted before the end of 2011.<sup>95</sup>

This brief overview of the multitude of regulatory and governance responses to the increased demand for corporate accountability, at both the corporate and the national level, nonetheless shows a revolutionary development. Yet, the above described governance and regulatory responses have several inherent shortcomings. Most

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<sup>93</sup> DRIMMER and PHILLIPS, *op.cit.*, p. 15.

<sup>94</sup> To mention a few examples: since 2001, disclosure on non-financial issues is mandatory in France. In the United Kingdom, Section 417 of the 2006 Companies Act requires companies to produce annual reports on, *inter alia*, environmental and social issues and about essential sub-contractors or other partners. Since 2009, Sweden requires State owned companies to prepare an annual sustainability report.

<sup>95</sup> The decision to draft a legislative proposal on non-financial disclosure by private companies such as social aspects, environmental information, human rights and sustainable development followed after a public consultation. A summary of the public consultation, which started in November 2010 and ended on the 28 January 2011, can be found at: [ec.europa.eu/internal\\_market/consultations/docs/2010/non-financial\\_reporting/summary\\_report\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2010/non-financial_reporting/summary_report_en.pdf).

shortcomings relate to a lack of effectiveness resulting from the voluntary character or the fact that regulations are limited to a certain jurisdiction. Hence, Amnesty International and many other NGOs continue to stress the need for binding global regulation.

### 6.3 INTERNATIONAL LEVEL

At the international level, especially at the UN,<sup>96</sup> there have been several initiatives to establish international standards for corporate actions. By no means has it proven to be an easy task, and most efforts have proven to be unproductive and lacking in enough political support and implementation methods.

The focus of this section will be on developments within the UN, but also on other international organisations that have drawn up (non-legally binding) standards directly addressing corporations. In 1977, the ILO developed its Tripartite Declaration of Principles Concerning Multinational Enterprises.<sup>97</sup> By its very nature, the ILO includes NGOs, albeit limited to representatives of employers and employees. In 1976, the Organisation for Economic Cooperation (OECD) drew up its Guidelines for Multinational Enterprises, a set of voluntary principles and standards, which aim to promote the positive contributions multinationals can make to economic, environmental and social progress.<sup>98</sup> The strong evolution of the

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<sup>96</sup> Given space constraints the approach of the EU in the corporations and human rights debate will not be considered here. For more on this see: [ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm).

<sup>97</sup> *International Labour Organisation Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* 16 November 1977, 17 ILM 422.

<sup>98</sup> Organisation for Economic Cooperation and Development Declaration on International Investment and Multinational Enterprises, *Guidelines for Multinational Enterprises*, 21 June 1976, 15 ILM 967, 969. Adhering Governments are expected to comply with the OECD Council Decision and Procedural Guidance, and recommend the guidelines to multinational

debate on corporations and human rights is reflected in the review process of the OECD that was concluded in May 2011. Whereas human rights were only briefly referred to in the 2000 version of the OECD Guidelines,<sup>99</sup> a whole chapter on human rights has been incorporated in the new version of the guidelines adopted on 25 May 2011.<sup>100</sup> NGOs played an important role in the revision process of the OECD Guidelines.

At the UN, the first effort to draw up an international code directly applicable to corporations was the unsuccessful attempts in the 1970s and 1980s by the UN Commission on Transnational Corporations (UNCTC).<sup>101</sup> As mentioned *supra*, this effort was a response to the critique coming from the newly independent States against the interference of corporations with their political and economic sovereignty. The endeavour to draw up a global code in this context was abandoned in 1992. The work of the UNCTC was taken over in a less ambitious form under the UN Conference on Trade and Development (UNCTAD).

The desire to formulate a global standard on the issue of corporations and human rights were regenerated in 1998 by the UN

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enterprises operating in or from their territory. Government offices, called National Contact Points (NCPs), are mandated to ensure that national business community and other interested parties understand the guidelines, encourage adherence, solve related problems and report annually to the OECD Investment Committee. The OECD Guidelines were revised in 2000 and, at the time of writing, are again undergoing a revision.

<sup>99</sup> Paragraph 8 of the preamble mentions the UDHR and para. 2 of Chapter II on general policies states that ‘enterprises should [...] respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments’. See also, para. 4 of the Commentary on the General Policies.

<sup>100</sup> The updated Guidelines are available on the website of the OECD: [www.oecd.org](http://www.oecd.org).

<sup>101</sup> Development and International Economic Cooperation: Transnational Corporations, UN. Doc. E/1990/94 (1990). See also United Nations Draft International Code of Conduct on Transnational Corporations, 23 ILM 626 (1984).

Sub-commission on the promotion and protection of human rights. In August 2003, the UN Sub-Commission approved the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (the UN Norms).<sup>102</sup> To date, this document remains the most far-reaching, comprehensive document on human rights responsibilities for corporations that has been developed at the international level. NGOs provided input during the drafting process and many, including Amnesty,<sup>103</sup> viewed the UN Norms as an important step toward legal accountability for corporations and, therefore, they broadly supported the norms. However, States, as well as the business community, were very much opposed. Some of the paragraphs in the UN Norms are far-reaching,<sup>104</sup> and the strong legalistic approach caused vehement opposition from business and States. As a result, the then UN Commission adopted the report transmitting the UN Norms, but emphasised that the norms had no legal standing.<sup>105</sup> Even though NGOs tried to push the document, it proved too contentious for it to receive wider support.

To break the stalemate that followed, the UN Secretary-General in August 2005 appointed a Special Representative of the UN Secretary-General on Business and Human Rights (SRSG),

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<sup>102</sup> *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights*, UN ESCOR, 55<sup>th</sup> session, Agenda item 4, UN Doc. E/CN.4/Sub.2/2003/12 (2003).

<sup>103</sup> See, for example, AMNESTY INTERNATIONAL, 2005 UN Commission on Human Rights, 'Amnesty International welcomes new UN mechanism on business and human rights', Public Statement, IOR 41/044/2005, 21 April 2005.

<sup>104</sup> See, for example, para. 12 'a TNC shall respect civil, cultural, economic, political, and social rights, and contribute to the realization of, especially, the right to development'. Or, part E and H, which states that TNCs shall provide 'effective and adequate reparation to those persons, entities, and communities that have been adversely affected by failures to comply with these Norms'.

<sup>105</sup> UN ESCOR, 60<sup>th</sup> Session, Agenda item 21 (b) UN Doc. E/CN.4/2004/L.11/Add.7 (2004).

professor John Ruggie, with the mandate to ‘identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights’.<sup>106</sup>

The SRSG has managed to revitalise the debate on corporations and human rights by producing a slew of important reports fleshing out many aspects of the role of business in human rights violations. In the patchwork of disconnected regulatory initiatives that have sprung up in this field over the years, the work of the SRSG has become an authoritative focal point embraced by many of the stakeholders involved. The momentum his work has brought to the debate on the role of corporations in human rights warrants a somewhat more detailed discussion here.

In 2008, the SRSG presented his policy framework to protect, respect and remedy (SRSG framework).<sup>107</sup> This framework rest on three pillars: the duty of States, or governments, to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights, by acting with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur; and greater access for victims to effective remedies, both judicial and non-judicial. In June 2011, the UN Human Rights Council unanimously endorsed Guiding Principles developed by the SRSG meant to guide operationalisation of the Framework.<sup>108</sup> Compared to the UN Norms, the SRSG Framework and the Guiding Principles are much more moderate, emphasising

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<sup>106</sup> *UN Human Rights Commission Resolution 2005/69*, UN Doc. E/CN.4/2005/L.87 (15 April 2005).

<sup>107</sup> HUMAN RIGHTS COUNCIL, *Protect, Respect and Remedy, A Framework for Business and Human Rights*, UN Doc. A/HRC/8/5 (7 April 2008). The Framework was unanimously adopted.

<sup>108</sup> BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, ‘The Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, UN Doc. A/HRC/17/31 (21 March 2011).

the duties of States and the responsibilities of corporations “to do no harm”.

The work of the Special Representative has been characterised by broad consultations with stakeholders, and many NGOs have provided a significant amount of input.<sup>109</sup> Amnesty International generally has demonstrated support during the process leading up to the SRSG Framework, acknowledging the significant achievement of the SRSG who has succeeded at bringing all stakeholders to the table. The SRSG Framework and the Guiding Principles have been widely embraced by the business community. This provides a common language for communication between corporations, NGOs, investors, and local communities. However, Amnesty International has, along with several other NGOs, also articulated critique on the SRSG Framework and especially its Guiding Principles.<sup>110</sup> The critique boils down to the fact that, according to Amnesty International, the guidance provided to companies is insufficient and in some respects even misleading. According to Amnesty, the interpretation of the SRSG of current obligations of States is too restrictive.<sup>111</sup>

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<sup>109</sup> For example, from November 2010 until the end of January 2011, the Draft Guiding Principles were posted online for public consultation. Paragraph-by-paragraph changes could be submitted on a specially created forum that attracted visitors from over 120 countries. To see the commentaries, visit the portal of the SRSG: [www.business-humanrights.org/SpecialRepPortal/Home](http://www.business-humanrights.org/SpecialRepPortal/Home).

<sup>110</sup> In a strongly-worded Statement Amnesty International and six other NGOs argued that the Guiding Principles should not be adopted by the HRC because they fail to outline clearly enough how governments should regulate business activity, and how companies should avoid abusing (*Joint Civil Society Statement on the Draft Guiding Principles on Business and Human Rights*, 14 January 2011). The SRSG reacted and Amnesty subsequently issues a rejoinder. All these documents are *available at*: [www.business-humanrights.org/Documents/RuggiedebateAmnestyFIDHHRWothersreGPs2011](http://www.business-humanrights.org/Documents/RuggiedebateAmnestyFIDHHRWothersreGPs2011).

<sup>111</sup> See the Amnesty Statement mentioned *supra*.

Even though the SRSB has been able to advance the debate beyond the stalemate that occurred with the UN Norms, his rather pragmatic approach has also steered the debate away from the notion of corporate accountability by exclusively focussing on corporate responsibility. In light of the fact that Amnesty International pursues the establishment of binding global rules for corporations, the expressed critique is understandable.

From this overview of regulatory and governance responses<sup>112</sup> it becomes clear that Amnesty International has maintained its focus on corporate accountability rather than mere corporate responsibility, in spite of the fact that current developments spurred on by the work of the SRSB point more in the direction of the latter.

## **7. WHAT CHALLENGES LIE AHEAD?**

It is difficult to draw any firm conclusions regarding the impact of the work of Amnesty International, or NGOs in general, on companies so far. What is clear is that allegations of corporate

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<sup>112</sup> Besides the developments discussed here, another initiative at the UN must be mentioned. In 1999, the UN Secretary-General Kofi Annan proposed the *Global Compact*, bringing new hope of a global standard. The *Global Compact* consists of 10 voluntary principles that corporations can sign up to. One of these principles refers to human rights. Several NGOs have been critical concerning the Global Compact, which according to these NGOs at times boils down to an undeserved seal of approval for corporations. AI has also voiced concerns about the effectiveness of the Global Compact. In 2008, AI stated its concern that ‘both States and companies use such mechanisms to deflect calls for initiatives that could advance corporate accountability and access to justice’. See: AMNESTY INTERNATIONAL, ‘Submission to the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises’, July 2008, available at: [www.reports-and-materials.org/Amnesty-submission-to-Ruggie-Jul-2008.doc](http://www.reports-and-materials.org/Amnesty-submission-to-Ruggie-Jul-2008.doc).

involvement in human rights abuses continue to emerge. Nevertheless, a dramatic shift has occurred with regard to the attention paid to human rights over the last few decades, as highlighted by the incorporation of human rights policies and processes companies have implemented. The Business and Human Rights Resource Centre provides a list of companies that have adopted a formal company policy explicitly referring to human rights.<sup>113</sup> At the time of writing, this list consists of 289 companies. Even though this is a significant increase compared to, for example, eight years ago, when the lists contained a mere 38 companies,<sup>114</sup> the number still seems insignificant in light of the estimated 80,000 transnational enterprises and countless millions of other firms.<sup>115</sup> Yet, it should be noted that the lists includes many of the world's leading MNCs, and a lot of the 289 companies with a human rights policy in place have implemented such a policy following NGO scrutiny. The incessant reports of corporate involvement in human rights abuses, however, make poignantly clear that much more remains to be done.

Looking at what lies ahead for Amnesty International, it is clear that Amnesty will need to work on many different levels simultaneously. As pointed out by the SRSG 'there is no single silver bullet solution to business and human rights challenges. There are only many small ones'.<sup>116</sup> The increased attention for the adverse effects of corporate activities has led other disciplines also to seek

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<sup>113</sup> BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, 'Company policy statements on human rights', *available at*: [www.business-humanrights.org/Documents/Policies](http://www.business-humanrights.org/Documents/Policies).

<sup>114</sup> SULLIVAN, 2003, *loc.cit.*, p. 316.

<sup>115</sup> Special Representative to the Secretary General, Prof John Ruggie, A/HRC/17/31, para.15.

<sup>116</sup> Remarks by SRSG RUGGIE, J, 'Engaging Export Credit Agencies in Respecting Human Rights', OECD Export Credit Group's "Common Approaches" Meeting Paris, 23 June 2010, *available at*: [www.rightrespect.com/wp-content/uploads/2010/08/Ruggie-remarks-to-OECD-re-export-credit-agencies-23-Jun-2010-3.pdf](http://www.rightrespect.com/wp-content/uploads/2010/08/Ruggie-remarks-to-OECD-re-export-credit-agencies-23-Jun-2010-3.pdf), pp. 5-6.

higher standards for corporations. Amnesty International must stress the importance of framing issues, such as development, climate-change, and security in human rights terms.<sup>117</sup> Given the widespread support for the three-pillar framework of SRSG Ruggie, it is to be expected that this will continue to be the lingua franca for the time to come. Therefore, this section will identify a selection of future challenges for Amnesty International relating to the three dimensions of the SRSG Framework: the obligation of States to protect; the responsibility of corporations to respect; and the need to ensure access to remedies.

The SRSG has stressed the obligation that States carry to protect individuals against harmful corporate practices. As can be deduced from the previous sections, the debate on corporations and human rights has been characterised by the fact that the role of the State has been minimal and often even absent. It is crucial that Amnesty International continues to underline the obligation of States under international human rights law to regulate corporations and generally become more actively involved. An important flaw in the SRSG Framework is the weak language concerning the role of home States.<sup>118</sup> In fact, one is left with the impression that not much can be expected from the home State. However, these States have the ability, and sometimes even the obligation, to increase their regulation of corporations in a manner that can effectively increase corporate respect for human rights.<sup>119</sup> There are several ways in

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<sup>117</sup> FRANKENTHAL, *Guest Commentary, supra* note 29.

<sup>118</sup> The home State refers to the State of incorporation or registration. See *supra* note 109; and JÄGERS, N., 'UN Guiding Principles on Business and Human Rights: Making Headway towards Real Corporate Accountability?', *Netherlands Quarterly of Human Rights*, Vol. 29, No.2, 2011, pp. 159-163.

<sup>119</sup> The exact extent of this obligation is not yet clear. It is accepted that home States are under the obligation to establish jurisdiction over a legal person that commits international crimes. Moreover, an obligation can possibly be deduced from the obligation of international cooperation as articulated under article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). For a comprehensive analysis of the issue of extraterritorial

which home States can do so. They can improve extra-territorial corporate behaviour by adopting or adjusting national laws that enable victims to bring cases against parent companies for corporate abuses abroad.<sup>120</sup> Furthermore, they can adopt mandatory reporting obligations given the need for transparency to ensure better corporate human rights performance. For example, the model provided by the US conflict minerals provision (Section 1502)<sup>121</sup> can be duplicated to cover other sectors. Amnesty International has recognised the potential of disclosure regulation and must continue to push developments in that direction and monitor implementation, such as those currently taking place at the level of the European Union.<sup>122</sup> Essential for any regulation on disclosure is that the results are made accessible to the general public.

The second pillar of the SRSG Framework, the corporate responsibility to respect, has been taken up by quite a number of MNCs. It is, however, important to realise that these corporations still only concern a minor share of business worldwide. Amnesty International will need to continue its endeavour to get more corporations, both by means of engagement and when necessary by confrontation, to accept their responsibility to respect human rights. Amnesty International has recognised, for example, the need to address Chinese corporations in their advocacy efforts. Of the 289 companies listed by the Business and Human Rights Resource Centre as having a formal and explicit human rights policy in place, none are Chinese.<sup>123</sup> This is worrisome given the propagation of Chinese

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regulation by home States, see BROECKER, C., "'Better the Devil You Know": Home State Approaches to Transnational Corporate Accountability', *NYU Journal of International Law and Politics*, 2009, Vol. 41, No.1, pp. 159-217.

<sup>120</sup> See also *infra* concerning the third pillar of the SRSG framework: the access to remedies.

<sup>121</sup> See *supra* note 89.

<sup>122</sup> See *supra* note 96.

<sup>123</sup> Several Chinese companies do however participate in the UN Global Compact. In general, there is an increase in CSR policies in Chinese

corporations, especially in conflict-ridden, weak-governance areas in Africa where the chances of becoming involved in human rights violations are considerable.<sup>124</sup> As Irene Khan noted in 2007, ‘The Chinese government and Chinese companies have shown little regard for their “human rights footprint” on the continent.’<sup>125</sup> It has been pointed out that the Chinese corporations operating in Africa have started taking CSR considerations into account.<sup>126</sup> Accusations concerning Chinese corporations involved in human rights abuses or allegations of Chinese corporations propping up regimes with bad human rights records nevertheless continue.<sup>127</sup>

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corporations. Human rights, however, are hardly mentioned in these CSR policies. This is hardly surprising as, as pointed by Sutherland and Whelan ‘the hand of the State is very much present in the development of CSR in China’ (p.19), SUTHERLAND, D., and WHELAN, G., ‘Corporate Social Responsibility in China’s largest TNCs’, Discussion paper 51, China Policy Institute, University of Nottingham. Available at: [www.nottingham.ac.uk/cpi/documents/discussion-papers/discussion-paper-51-csr-ds.pdf](http://www.nottingham.ac.uk/cpi/documents/discussion-papers/discussion-paper-51-csr-ds.pdf).

<sup>124</sup> For example, the World Bank estimates that Chinese commitment to African infrastructure projects grew from less than US\$ 1 billion per year in 2001 – 03 to around US\$ 1,5 billion per year in 2004-05, and reached at least US\$ 7 billion in 2006, before dropping back to US\$ 4,5 billion in 2007. Quoted in: FORSTATER, M., et al, ‘Corporate responsibility in African Development: Insights from an emerging dialogue’, *Working Paper No. 60 of the Corporate Responsibility Initiative*, October 2010, available at: [www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper\\_60.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_60.pdf).

<sup>125</sup> NCLG BLOG, ‘Irene Kahn: Freedom from fear’, available at: [nclgblog.blogspot.com/2007/05/irene-khan-freedom-from-fear.html](http://nclgblog.blogspot.com/2007/05/irene-khan-freedom-from-fear.html).

<sup>126</sup> *Idem*; and FORSTATER, *loc.cit.*

<sup>127</sup> An example concerns the construction of the Merowe Dam in Sudan by Chinese (and German and French) companies. The project displaced more than 50 000 people from the Nile Valley to arid desert locations. Thousands of people who refused to leave their homes were flushed out by the reservoir, and protests were violently suppressed. The United Nations Rapporteur on Housing Rights expressed “deep concern” about the human rights violations in the project, and asked the dam builders to halt construction in 2007 – to no avail. See: Report of the Special Rapporteur on the right to adequate housing,

Besides aiming advocacy-efforts at widening the range of corporations willing to take on the responsibility to respect, Amnesty International must invest in existing and future transnational private regulatory regimes.<sup>128</sup> Stressing the lack of enforcement mechanisms of private regulatory schemes, such as the Voluntary Principles on Security and Human Rights (VPSHR), many have criticised these regulatory frameworks. Characterising the private regimes as purely voluntary is, however, over-simplifying matters. Even voluntary commitments may ultimately have legal effect, for example, by shaping standards of care or by being included into contracts. The potential added value of private transnational regulation lies especially in this process of redeployment,<sup>129</sup> where voluntary norms acquire a compulsory status over time. The VPSHR, for example, require participants to include the guidelines into contracts. These non-binding principles subsequently become legally binding when included in contracts between corporations and their clients, and, in that sense, such private regulation can be considered to be legally stronger than international treaties. Therefore, standard setting by NGOs, either in a purely private or in a hybrid form, is interesting from the perspective of the development of soft law that can ‘harden’ into binding obligations. Absent State action toward binding obligations for corporations this is an avenue worth pursuing for NGOs. Moreover, voluntary commitments may help prepare the groundwork for legislative reforms. In other words, initiatives that start out as purely voluntary can be the blueprint for rules with a more authoritative cap.<sup>130</sup> This development has occurred in the field

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Summary of communications sent and replies received from Governments and other actors, A/HRC/4/18/Add.1, 27 August 2007. Chinese corporations have won contracts to build three more hydropower projects in the country.

<sup>128</sup> See *supra* note 62.

<sup>129</sup> CURTIN, D., and SENDEN, I., ‘Public Accountability of Transnational private regulation: Chimera of Reality?’, *Journal of Law and Society*, Vol. 38, No. 1, March 2011, pp. 163-88.

<sup>130</sup> See STEINHARDT, *loc.cit.*

of disclosure-requirements (see *infra*) where the step from voluntary to mandatory has already been taken.<sup>131</sup>

Notwithstanding the important potential of the many voluntary initiatives, it should be acknowledged that some sort of coercive power is ultimately needed to bring to heel those corporations not willing to abide with any voluntary standards, but which are involved in sometimes heinous crimes. Amnesty International must, therefore, continue its advocacy efforts for corporate accountability, an approach firmly rooted in international law, instead of mere corporate responsibility. The development in international law, tending towards more legally binding standards for MNCs, must be emphasised. The quest for legally binding standards and procedures has come under pressure resulting from the fact that the issue of corporations and human rights has been swallowed up by the CSR movement with its strong emphasis on the voluntary nature of such activities. This has been reinforced by the widely embraced work of the SRSG who has firmly rejected the notion of obligations for corporations. Amnesty International must continue to emphasise the fact that the observance of human rights cannot be a voluntary activity. The leading idea must be that, in the words of Andrew Clapham, ‘human rights [...] is [sic] not something one can opt in or out of’.<sup>132</sup>

Finally, the third pillar of the SRSG Framework, concerning the access to justice, also provides several challenges for Amnesty International to address. It is to be expected that transnational human rights litigation will further increase,<sup>133</sup> but significant stumbling

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<sup>131</sup> In several of the countries referred to in note 95 *supra* the disclosure of critical non-financial information started out as a voluntary undertaking and has now been made mandatory. As mentioned, now also in the EU a legislative proposal is being drafted.

<sup>132</sup> CLAPHAM, *op.cit.*, p.14.

<sup>133</sup> See, for a recent example, the case before the Superior Court of Quebec. In this action against the Canadian corporation Anvil Mining, the NGO Canadian Association against Impunity accuses the corporation of providing logistical

blocks for victims remain. Amnesty International has an important role to play here. First, Amnesty International can offer support to claimants through their broad networks, which, it has been pointed out, in many ways makes NGOs better suited than private counsel to pursue litigation.<sup>134</sup> Moreover, Amnesty International must aim its advocacy at lowering the practical hurdles that exist at the national and regional level for victims that want to litigate against MNCs. For example, to improve the access to domestic courts in European countries, EU law will need to be reformed in a similar way, as private international law, the law that governs access to justice, which is largely harmonised by European regulations. To mention but one example where campaigning for reform is worthwhile, European regulation currently does not yet harmonise access to EU Member States courts for claims against third-country subsidiaries and contractors of European corporations.<sup>135</sup>

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support to the Congolese army who raped, murdered, and brutalised the people of Kilwa in a massacre in 2004. In April 2011, the Court held that the case can proceed to the next stage as ‘at this stage of the proceedings, everything indicates that if the Tribunal dismissed the action on the basis of article 3135 C.C.Q. [which allows the court to decline jurisdiction if another forum is more appropriate], there would exist no other possibility for the victims to be heard by civil justice [translation]. See: Cour Supérieure, Canada Province de Quebec, No. 500-06-000530-101, 27 April 2011, *Association Canadienne Contre l’Impunité c. AnvilMining Limited*. Available at: [www.globalwitness.org/sites/default/files/library/Anvil %20decision.pdf](http://www.globalwitness.org/sites/default/files/library/Anvil_%20decision.pdf).

<sup>134</sup> DAVIS, *op.cit.*

<sup>135</sup> The regulation governing this specific aspect, the so-called Brussels I regulation, is currently being reviewed. For more on this and practical suggestions for reforming EU law to improve access to justice in general see: AUGUNSTEIN, D., *Study of the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside the European Union*, Study prepared for the European Commission, October 2010. Available at: [ec.europa.eu/enterprise/policies/sustainable-business/files/business-human-rights/101025\\_ec\\_study\\_final\\_report\\_en.pdf](http://ec.europa.eu/enterprise/policies/sustainable-business/files/business-human-rights/101025_ec_study_final_report_en.pdf), and EUROPEAN COALITION FOR CORPORATE JUSTICE (ECCJ), ‘Principles and pathways: legal opportunities to improve Europe’s corporate accountability

## **8. CONCLUSION**

In a relatively short period of time, the world has witnessed a revolutionary development in the field of corporations and human rights. Significant progress has been made as is reflected in the adoption of human rights policies by corporations, the widely accepted notion of the corporate responsibility to respect, and the proliferation of a myriad of mostly voluntary initiatives. Undeniably, the global business and human rights movement is essentially carried by NGOs. Amnesty International has played a major role in this development, being one of the first human rights NGOs to actively engage with several major MNCs on the issue of human rights. Amnesty International has continuously participated in many of the initiatives aimed at improving corporate human rights performance ever since. A lot remains to be done however. NGOs, such as Amnesty International, will need to continue to work simultaneously on multiple levels, with a focus on corporations, international organisations and States strengthening and deepening the developments underway. This article has identified some of the challenges that lie ahead. In the final analysis, however, it must be concluded that notwithstanding the importance of current developments, they still fall short of ensuring human rights are adequately protected against the threat posed by private actors. Therefore, it is essential that the leading idea for Amnesty International in its advocacy continues to be the quest for corporate accountability instead of mere corporate responsibility. The idea of corporate human rights obligations might seem too far-fetched for some but the paradigm shift broadening the scope of international law to include non-State entities is unmistakable. The radical steps taken in the field of individual criminal responsibility at the international level over the last couple of decades provide an

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framework', 2010. Available at: [www.corporatejustice.org/IMG/pdf/eccj\\_principles\\_pathways\\_webuseblack.pdf](http://www.corporatejustice.org/IMG/pdf/eccj_principles_pathways_webuseblack.pdf).

example of what is possible in this respect. Amnesty International must continue to point out the importance of human rights accountability for corporations by highlighting the impact of these entities. Looking ahead at the next 50 years, human rights abuses by corporations will no doubt remain one of the major challenges on the agenda of Amnesty International. However, it is hoped that by 2061, when Amnesty International marks its 100<sup>th</sup> anniversary, the focus of the organisation on corporate accountability will have led to a decrease of corporate involvement in human rights abuses.

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