THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Symposium organized on the occasion of the award of the Praemium Erasmianum to the International Commission of Jurists

STICHTING NJCM-BOEKERIJ
16

De Stichting NJCM-Boekerij heeft tot doel het uitgeven van wetenschappelijke en voorlichtende publikaties op het terrein van de mensenrechten. Dit geschiedt in samenwerking met het Nederlands Juristen Comité voor de Mensenrechten (NJCM). De Stichting is uitgeefster van het acht maal per jaar verschijnende NJCM-Bulletin/Nederlands tijdschrift voor de mensenrechten.
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CIP-Gegevens Koninklijke Bibliotheek, Den Haag

Role

The role of non-governmental organizations in the promotion and protection of human rights : symposium organized on the occasion of the award of the Praemium Erasmianum to the International Commission of Jurists / [contributions P.H. Kooijmans ... et al.]. - Leiden : Stichting NJCM-Boekerij

ISBN 90-6750-016-x

Trefw.: non-gouvernementele organisaties en Rechten van de mens.

Gedrukt door: Drukkerij Haveka B.V., Alblasserdam.

PREFACE

This publication, the 16th to be produced by the Stichting NJCM-Boekerij, contains the proceedings of the colloquy held in Amsterdam on November 22nd 1989, on the subject of "The role of non-governmental organizations in the promotion and protection of human rights".

Furthermore we have included the laudation by H.R.H. Prince Bernhard of the Netherlands and the speech made by Niall MacDermot O.B.E., Q.C., Secretary General of the ICJ.

Although publication follows some time after the colloquy this book and its subject have lost little of their relevance. Indeed events that have taken place since the colloquy underline the importance and create new challenges for NGO's in the field of human rights.

The editors wish to thank the "Stichting Praemium Erasmianum" for its generous contribution towards this publication.
Finally we thank all contributors and also ms Hedy Braun for her work in the word-processing of this book.

The Editors,

Alex Geert Castermans
Lydia Schut
Frank Steketee
Luc Verhey

CONTENTS

ORIGIN AND AIM OF THE PRAEMIUM ERASMIANUM FOUNDATION 1

THE INTERNATIONAL COMMISSION OF JURISTS 2

REASONS FOR GRANTING 4

LAUDATION BY H.R.H. PRINCE BERNHARD OF THE NETHERLANDS 5

SPEECH BY NIALL MACDERMOT, Secretary-General of the ICJ 9

THE AUTHORS 13

CONTRIBUTIONS

P.H. KOOIJMANS
The Non-Governmental Organizations and the Monitoring Activities of the United Nations in the Field of Human Rights 15

MS LAURIE WISEBERG
Human Rights NGO's 23

NIALL MACDERMOT
The Role of NGO's in the Promotion and Protection of Human Rights 45

THEO VAN BOVEN
The Role of NGO's in International Human Rights Standard-Setting: Non-Governmental Participation a Prerequisite of Democracy? 53

REPORT OF THE DISCUSSIONS 73
Chairman: Prof. P. van Dijk
Rapporteurs: Mr M. Zwamborn
Mr F.A. Steketee

ORIGIN AND AIM OF THE PRAEMIUM ERASMIANUM FOUNDATION

On 23 June 1958 His Royal Highness Prince Bernhard of the Netherlands founded the Praemium Erasmianum. The aim of the organisation, as described in article 2 of the articles of association is '... to honour persons or institutions that have made an important contribution to European culture'.

The amount of the prize is fixed at *f* 200,000.

The Board is made up of leading Dutch representatives of culture and scholarship, as well as of industry.

THE INTERNATIONAL COMMISSION OF JURISTS

The International Commission of Jurists is a non-governmental and non-political organisation which has consultative status with the United Nations Economic and Social Council, UNESCO and the Council of Europe. Its headquarters are in Geneva, Switzerland. It draws its support from judges, law teachers, practitioners of law and other members of the legal community and their associations.

OBJECTIVES

The Commission's object is to promote the understanding and observance of the rule of law throughout the world. It has defined this term as:

> *The principles, institutions and procedures, not always identical, but broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic background, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man.*

The Commission's work thus focuses on the legal promotion and protection of human rights and fundamental freedoms. The rule of law is seen as a dynamic concept to be used to advance not only the classical civil and political rights of the individual, but also economic, social and cultural rights, and to promote development policies and social reforms under which he and the community in which he lives may realise their full potentiality.

ORGANISATION

Membership

The Commission consists of up to 40 eminent jurists dedicated to the service of the rule of law and representative of the different legal systems of the world. Distinguished jurists, including former Members of the Commission, are eligible for election as Honorary Members. The Commission

meets triennially and elects an Executive Committee which meets two or three times a year. Other persons and organisations who subscribe to the objectives of the Commission may become Associates. Associates receive all publications.

International Secretariat

The Secretariat at Geneva comprises the Secretary-General, supported by a team of Legal Officers and administrative personnel. The present Secretary-General is Adama Dieng who on September 1st 1990 succeeded Mr Niall MacDermot, Q.C., former Minister of State of the United Kingdom.

National Sections

National Sections of the International Commission of Jurists have been established in over 50 countries in order to uphold and strengthen the principles of the rule of law in their respective countries. They supply the International Secretariat with material on legal developments in their respective countries, undertake research on matters of particular concern to their members or their country, hold local and regional meetings, organise public lectures, and occasionally hold joint session with other Sections to discuss matters of common interest and engage in other related activities. In a number of countries, they have taken the initiative in putting forward and elaborating proposals for law of their country. Pamphlets and special studies designed to this end are published from time to time. The Commission maintains contact with the legal profession at the local level through its National Sections.

In addition, other lawyers' organisations, such as Bar Associations, and human rights organisations are affiliated to the Commission.

REASONS FOR GRANTING

The 1989 Erasmus Prize for Human Rights is awarded to the International Commission for Jurists

because the ICJ does its utmost to foster the independence of the judiciary and the legal profession throughout the world;

because the ICJ is unrelenting in its efforts to support national networks of jurists in order to defend and strengthen the 'Rule of Law';

because the ICJ, notably in the Third World, provides knowledge and resources through training and education to people and organisations defending the rights of the poor and deprived, thus enabling them to act more effectively;

because the ICJ plays an important role in drafting and elaborating texts of international treaties in the field of human rights and makes a point of supervising enforcement of existing treaties;

because the ICJ contributes to promoting and protecting human rights where these are in grave jeopardy through the delegation of research missions and publication of findings;

because the quality and the objectivity of the ICJ is beyond all doubt, so that the ICJ has proved itself a worthy representative of the Erasmus tradition.

LAUDATION READ BY H.R.H. PRINCE BERNHARD OF THE NETHERLANDS

on the occasion of the awarding of the Erasmus Prize 1989 in the Royal Palace in Amsterdam on Tuesday 21st of November 1989

The United Nations Charter includes among its objectives the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian nature and the promotion and encouragement of respect for human rights and fundamental freedoms for all, irrespective of race, sex, language or religion.

Man had to come a long way to arrive at this charter. Respect for human rights goes hand in hand with our democratic way of thinking, a thinking that is based on the awareness of human dignity, on a feeling of responsibility and solidarity and on the conviction that people are of equal value.

The relationship between democracy and inalienable individual rights clearly emerged long ago when the Athenian statesman Pericles delivered his famous funeral oration. Pericles was referring specifically to an individual's equality before the law - in this case men only - in terms of civil rights and freedoms.

We can trace the fascinating relationship between the individual and government or community throughout the whole of European history. Everyone remembers the year 1215 in which the English King John was forced to agree to Magna Charta thus curtailing the divine right of kings in favour of certain personal rights. From the seventeenth century we have the Petition Rights, the Habeas Corpus Act and the Bill of Rights, while we in the Netherlands proudly refer to the "Placaat van Verlatinghe" dating from 1581.

The fundamental change, however, came in the eighteenth century.

The eighteenth century saw a radical break with all pre-existing attitudes which had in fact been based on the Christian sense of sin, belief in authority and the group ethic. They were replaced by a high level of self-awareness and individualism. The new ideology lent the concept of human dignity real substance, alongside the familiar feeling for universal humanity deriving from the Christian tradition.

Without the idea of human dignity the Declaration of Rights of Virginia and the subsequent American Declaration of Independence of 1776 and the "Déclaration des Droits de l'Homme et du Citoyen" of 1789 would have been inconceivable.

The concepts of humanity and human dignity are also the foundation of the International Commission of Jurists which we are honouring today.

This non-governmental organisation has as its goal the promotion of understanding and respect for the law and legal protection of human rights in the world. The way in which you, Mr. MacDermot as present Secretary-General, together with your devoted but extremely tiny staff in Geneva have sought to achieve these objectives deserves the greatest praise. Since 1952, the year in which the organisation was founded, numerous congresses and conferences have been held throughout the world on the principles of the rule of law. Valuable academic studies and penetrating reports appear in the newsletter and in the biennial review.

It is thus that reports have been published on the Hungarian insurrection, the Chinese invasion of Tibet, the Berlin Wall, Spain, Cuba, Apartheid, Brazil, East Pakistan, Uganda, Chile, and about numerous other countries and situations. Some years ago the African Charter of Human and Peoples' Rights was drafted as a result of two seminars held in Dakar. Recently the European Convention against Torture came into force which stipulates for one thing that lawyers and other observers must be allowed to visit prisons in contracting party states, which is expected to have an important preventive impact.

A revision of the Mental Health Act was recently introduced in Japan. This was a significant event, because in Japan patients are often concealed in an unacceptable way by their families, who are convinced that mental deficiency is hereditary, nor had patients in psychiatric hospitals any right or opportunity to appeal when they were involuntarily committed for many years.

And finally, to give another example, you introduced the First International Instrument on the Independence of the Judiciary on which work had been done for many years and which was adopted in 1985 at the Seventh Congress on the Prevention of Crime and Treatment of Offenders and endorsed in that year by the United Nations General Assembly.

Granted, most countries contend that they have an independent judiciary, but in many, if not in the majority, practice proves otherwise.

The International Commission of Jurists does all it can to promote the independence of the judiciary throughout the world and has sent observers for instance to trials in South Africa, Tunisia, Yugoslavia, Greece, Denmark, Sierra Leone, Malaysia, Singapore, Senegal, Mauritania, Algeria, Israel, South Korea and Pakistan. But you are not only active in addressing issues in the field of civil rights and political rights, but also in cases of flagrant economic or social injustice or where groups of people are the victim of discrimination such as psychiatric or AIDS patients.

Your authority rests on your broad international base in which, regrettably, up to now not all countries are represented; I am thinking of the eastern European countries. Your influence is based on the thoroughness and impartiality of your verdicts and reports. Of special importance is the influence exercised by the Commission in recent years on the 'Rule of Law' in countries becoming independent in the course of the decolonisation process.

Nor should I fail to mention the high quality of your successive Secretaries-General. I should like in this respect to mention our compatriot, Bart

van Dal, who was the first to head your organisation, his successors and your predecessor, Sean MacBride, who did such inspiring work through his creative contribution to the International law of Human Rights.

We realise how difficult your work is when you clash with the sovereignty of states in making an issue of a violation of human rights or wish to prevent this happening or condemn aggressive acts. You yourself said on one occasion, Mr. MacDermot, "The great obstacle to peace is the immense concentration of power in the nation's state, especially when fed by fanatical nationalism; great as our nations are they are not a sufficient end in themselves". Rightly you asked yourself, in accepting the Wateler Peace Prize in 1985 in The Hague, how the international community can legitimately intervene when the freedom of a nation or its human rights are violated by a tyrannical government or by the aggression of another country - often under the pretext of an liberation movement - as long as the "anarchic nature of the world of sovereign states" continues to exist.

Going over the effectiveness of your campaigns, a process which plays no negligible role in what is referred to as the 'Mobilisation of Shame', the mobilisation of public opinion as a means of exerting pressure. Often your organisation has thus been able to embarrass those involved and this has produced mitigating and corrective measures.

A telling example was the activity of the International Commission of Jurists - which I have already mentioned - which resulted in the revision of the Japanese Mental Health Act.

But in situations which we reject on the grounds of our views on human rights, the problem remains that the deepest questions relating to our convictions and views of man are ultimately existential ones which do not lend themselves to verification by logic or reason. These differences in convictions are deeply rooted; every individual assumes that his truth has universal validity. As far as respecting the otherness of other human beings is concerned, we still have a long way to go in religion and in politics.

In today's world, however, we are often compelled to join forces, not only on the grounds of our ethical convictions but increasingly for pragmatic reasons. The winner of the 1987 Erasmus Prize, Alexander King, demonstrated this using ecological examples. If we are to survive, the same must apply in politics.

Zia Rizvi, Secretary-General of the Independent Commission on International Humanitarian Issues, in a recent speech compared our world to the human body, all of which suffers if a part of it is ill or damaged and which must resort to action if it is to survive.

It is a great pleasure for me, Mr. MacDermot, to be able to present you with the Erasmus Prize for the International Commission of Jurists just before you step down as Secretary-General. Nobody has led the organisation for longer and with so much success. We know with you that we are only at the beginning of a hopeful future which, to judge by some changes in the world, would seem to lie ahead.

Perhaps out of necessity, a new feeling for humanity and human rights is on the horizon, a feeling - let us hope - that includes the whole of mankind and contributes to enriching the sense of world consciousness. It is

because the International Commission of Jurists is contributing to this development that I have the honour of presenting you with the 1989 Erasmus Prize.

SPEECH BY NIALL MACDERMOT, SECRETARY-GENERAL, INTERNATIONAL COMMISSION OF JURISTS

on the award to the Commission of the Erasmus Prize in Amsterdam, 21 November 1989

It is a great honour to receive on behalf of the International Commission of Jurists this prestigious prize. Our members greatly appreciate the award which adds our name to the list of individuals and organisations of outstanding distinction who have received the Erasmus Prize.

Under your statute the prize is awarded for contributions to European culture. As a lawyers' organisation devoted to the promotion and protection of human rights under the rule of law, we are heartened to have our work recognised as a contribution to culture. It is a double honour and a challenge for us to receive a prize bearing the name of Erasmus, who has been described as 'the greatest humanist of the Renaissance'.

We believe we are only the second human rights organisation to have received this prize, the first being our colleagues of Amnesty International.

For those interested in the law, and particular international law, the creation and development in the last 40 years of international human rights law is an extraordinary and unparalleled achievement. Last year we have celebrated the 40th anniversary of the adoption of the Universal Declaration of Human Rights. In those 40 years there has been a continuous flow of new international legal instruments. The United Nations Centre for Human Rights has recently published a book containing the text of 67 United Nations human rights conventions and declarations defining human rights in different fields and in many cases providing procedures for their enforcement. The process is still continuing, and we hope that the Draft Convention on the Rights of the Child, on which we have worked for many years, will shortly be adopted by the General Assembly. In addition, there has been a similar flow of regional human rights instruments in Europe and in the Americas, and we may expect a similar development in Africa following the coming into force of the African Charter of Human and Peoples' Rights.

It has been an exciting and rewarding task for us to have been able to contribute as a non-governmental organisation to this process of standard setting as it is called. The fact that we have been able to do so is indicative of the immense change in international law. Until the Second World War international law was an exclusive prerogative of nation states. The individual human being and non-governmental organisations had no place in public international law. All that has changed. The contributions of organisations like ours to developing human rights law is now welcomed.

We are grateful for the assistance we have received in this work at the European level from members of our Netherlands national section, particularly those in the law faculties of the Universities of Leiden and Utrecht.

I hope it will not be out of place if I try to summarise briefly some of the turning points in the evolution of our policies and activities in the 35 years of our existence.

Broadly speaking the work of the International Commission of Jurists has since its inception been divided between the promotion and development of human rights under the rule of law on the one hand, and on the other hand investigating and publicising violations of human rights, and giving what assistance we can to their victims.

Apart from making representations to government about individual cases of violations which have been brought to our attention, we have sent missions to many countries in Asia, Africa, Latin and Central America to examine in depth violations occurring in them, and publishing their findings in our Review or in special reports. These reports have often made a considerable impact, both in the country concerned and in other countries which can be persuaded to bring pressure upon the offending state.

We have also made a regular practice since 1962 of sending distinguished jurists as observers to trials. These not only help to ensure a fairer trial for the accused, but their reports give us a better understanding of the administration of justice in those countries.

We also take the opportunity to make interventions based on all these reports in the meetings of the UN Commission on Human Rights and its Sub-Commission. We also bring them to the attention of regional intergovernmental organisations in Europe, in the Americas, and now in Africa.

Our work for the promotion and development of human rights under the law began with a series of third world congresses in Asia, Africa and Latin America between 1955 and 1962. This was during the period when many former colonies of the imperial powers achieved their independence. Most of the lawyers in these countries had been trained in the western systems of law, but the law which their countries inherited was colonial law. The purpose of our congresses was to invite the lawyers of these countries to formulate their proposals in their new States for the protection of human rights in their regions under the rule of law. Their conclusions were published by the ICJ under the title Human Rights and the Rule of Law in a handbook which is still quoted in articles by third world jurists. All this was done before the United Nations had got beyond the Universal Declaration, and it anticipated many later developments in the United Nations.

The next stage from 1962 to 1975 saw, among many other developments, the beginning of NGO contributions to standard setting at the Teheran Conference in 1968 under the leadership of my predecessor, Sean MacBride, and the forceful intervention by our and other non-governmental organisations in the Council of Europe and the Organisation of American States when human rights were being grossly violated under the military dictatorship in Greece and Chile.

The third stage was marked by a decision of our Commission meeting in Vienna in 1977 to approve a seminar in Tanzania on Human Rights in a One-Party State. It has by this time become clear that very few of the newly independent States were going to adopt or maintain a system of parliamentary democracy. The rest tended to be under military or other authoritarian rule or one-party States. If we were to have any influence in these countries we had to be ready to discuss human rights under their systems of government. In consequence we held this seminar on human rights in a one-party State, and this was followed by a series of seminars under different regimes in the Caribbean, in Senegal, in Latin America and in Kuwait, discussing the rule of law under the system of government in each of their regions.

Another major decision at Vienna was to create a Centre for the Independence of Judges and lawyers, on the grounds that it was of little value to educate people about their human rights if, when it came to the crunch, the judicial system proved unable to enforce their rights owing to improper pressures from the administration. This centre has been holding very effective seminars for judges and lawyers throughout the third world. In the past year it has held an international conference on this subject in Venezuela, a regional seminar in the Caribbean and national seminars in India, Nicaragua, Pakistan and Paraguay and one is now taking place in Peru.

At the following Commission meeting in The Hague in 1981 it was decided that we should relate our work in the third world to development, and deepen the understanding of the role that lawyers can play in the development process. This led to our holding since 1982 a series of seminars in Asia, Africa and South America on the provision of legal services in rural areas. There are no lawyers in the villages, where 60 to 90 percent of the population live, and the villagers have little if any knowledge or understanding of their rights. Inspired by the example of some groups working in South and South East Asia, we proposed the training of 'paralegals' to live with the rural folk, to educate them about their rights and to help them to assist and claim those rights. Where possible they should work with grassroots development organisations which have the confidence of the people. For the last seven years we have promoted this scheme in all three continents, and we have recently produced a handbook on the training of paralegals. We are greatly encouraged by the fact that human rights organisations in several of these countries have asked for permission to translate this handbook into their own languages and to distribute them widely.

Our next Commission meeting was held in Kenya in December 1985, and was combined with a conference on the proposed African Charter of Human and Peoples' Rights. The Charter had to be ratified by half the 52 States of Africa to bring it into force. After a quarter of the States had ratified, there was a lull for a year and a half with no further ratifications. The purpose of our conference was to stimulate action for obtaining the necessary number of ratifications. As a result of the conference and its fol-

low-up activities the requisite number of States had ratified in a little over six months.

To indicate the variety of our work let me mention three other activities which have recently come to fruition after many years of work in which we can claim to have played a decisive part. These are:

(1) the coming into force this year of the European Convention against Torture which we drafted and promoted together with the Swiss Committee against Torture;

(2) the amendment of the Japanese Mental Health law in 1987, to give mental patients for the first time some basic legal rights and procedures for their implementation; and

(3) the Basic Principles on the Independence of the Judiciary, approved by the UN General Assembly as the first international instrument on this subject. The General Assembly requested all nations, where necessary, to bring their legislation and practice into conformity with its provisions. We are now working closely with the UN on a set of principles on the independence and role of lawyers.

I should add that over the years we have recognised some fifty national sections and affiliated organisations which are entirely independent but which contribute greatly to our work in Europe, in the Americas and in Africa and Asia. Among these are two particularly active organisations we helped to bring into existence, the Andean Commission of Jurists and Al Haq in the Occupied West Bank of Palestine.

If I can end on a more personal note, I should like to pay tribute to the work of our small staff of six lawyers, five secretarial assistants and a part-time administrative officer. They have worked indefatigably to organise and carry out the programmes approved by our Executive Committee. Their reward has certainly not been monetary. Rather it has been the stimulating nature of the work, the opportunity to make friendships with exceptional and courageous people in many parts of the world, and a deeper understanding of the problems facing others, especially among the poor and disadvantaged.

The receipt of this award on behalf of the International Commission of Jurists is for them, as it is for me, a culmination of many years of inspiring work.

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NIALL MACDERMOT, O.B.E., Q.C.

Secretary-General of the ICJ, 1970-1990

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THE NON-GOVERNMENTAL ORGANIZATIONS AND THE MONITORING ACTIVITIES OF THE UNITED NATIONS IN THE FIELD OF HUMAN RIGHTS

P.H. Kooijmans

Non-governmental organizations in the field of human rights are - nearly without exception - born out of concern with the plight of individuals or groups of individuals. As such they are the natural opponents of governments since human rights cover that extremely fragile relationship between on the one hand the individual and on the other hand the State in whose jurisdiction that individual finds himself. This goes true even where the rule of law is generally upheld by the State-authorities. To give only one example: when in early 1988 rumour had it that the Government of the Netherlands considered the possibility of denouncing the 1966 UN Covenant on Civil and Political Rights in order to ratify it again with a reservation to Article 26 (the non-discrimination provision), it was the Dutch Section of the International Commission of Jurists which in a strongly-worded letter to the Government voiced a vehement protest. And, more in general, national NGO's tend to carefully scrutinize the human rights policies of their own government.

Even more important is the role played by NGO's on the international level, in particular within the context of intergovernmental organizations. Since I am not very familiar with the role played by NGO's in regional organizations but have the feeling that their activities, at least within the Council of Europe, are more focused on standard-setting and the creation and streamlining of mechanisms than on the exposure of human rights violations, I will deal mainly with the role of NGO's in the organization of the United Nations.

The United Nations is an organization of States represented by their governments. Gradually we have come to see the United Nations as an independent organization with a personality of its own and a human rights policy of its own. To a certain extent this certainly is true but in the field of standard-setting and the establishment of monitoring mechanisms, the decisions are taken by the deliberative bodies and it is here that *government* representatives cast their vote. In order to make progress in these fields of standard-setting and establishing mechanisms, NGO's therefore have to co-operate with governments, they have to persuade them, they have to form alliances with them. At the same time, the NGO's see it quite correctly as their duty to expose human rights violations by at least a number of

the very same governments whose support they need in order to achieve progress in the fields just-mentioned. The relationship between the NGO's and the United Nations is therefore a peculiar one which by its very nature cannot but be 'an uneasy partnership'.

Before dealing more in detail with this uneasy partnership, it seems useful to point out that in talking about NGO's one talks about a highly diverse group. For the 1988 session of the UN Commission on Human Rights 119 NGO's had registered themselves. The composition of this group is as diverse as the membership of the Untied Nations itself or even more so the only thing they have in common is that they are non-governmental. Some of them are world-wide, others concentrate on one region or one country; some of them cover all human rights questions, others deal with one specific human rights issue, like e.g. torture or racial discrimination; some claim to be a-political in the sense that they expose human rights violations wherever and under what kind of political system they may occur; others are highly politicized. But practically all of them collect, process and publish data on human rights violations. The way in which this is done again varies greatly. With some NGO's it is done in a nearly scientific way by carefully checking and rechecking sources and verifying as far as possible the information received by missions to the country concerned; in other cases data-collection seems to be done in a much more amateurish way or on a basis of politically motivated selectivity. The country which is the target of human rights violations exposure nearly invariably contends that the allegations are politically motivated and, consequently, biased, in particular when a NGO allows a representative of an oppositional movement to speak on its behalf in the meetings of the Commission. Some NGO's, like e.g. Amnesty International, therefore prefer to speak only on their own behalf, whereas others, like the International Commission of Jurists, take the opposite approach in order to lend a voice to the victims of human rights violations. In short, the picture presented by NGO's in the UN is a nearly chaotic amalgam.

Nevertheless the United Nations is virtually completely dependent on human rights data collected and presented by NGO's for their own activities in the field of supervision and monitoring, since generally these are the only readily accessible data available (a notable exception in this respect is the US State Department's annual report on human rights practices, a compilation of country reports which can be compared, as far as its scope is concerned, with Amnesty International's Yearbook).

Information about the human rights-situation in a specific country is important for the treaty-based supervising bodies when they have to evaluate the periodic reports submitted by a government in conformity with its reporting-obligation under the convention concerned. It will in particular be of importance for the Committee against Torture, when it decides to set into motion the procedure provided in Article 20 of the 1984 Convention against Torture, authorizing it to start an independent inquiry

if it receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party.

Such information, however, is of incomparably greater importance for the deliberative bodies of the United Nations and for the monitoring mechanisms established by them. In the first place, information provided by NGO's may be instrumental in inducing Members of the Commission to establish a certain mandate, e.g. to appoint a Special Rapporteur for a specific country. Once appointed, such a mandatory will certainly profit from further information provided by NGO's, but he is no longer completely dependent on it since he will be in a position to verify or falsify such information by his own observations, in particular if he gets permission the visit the country concerned. This is different, however, with the so-called thematic procedures which deal with the violation of a specific human right, wherever such violation may occur; their province of action, consequently, is global and the life-line to their province of action is information provided by the NGO's.

At present, there are five of such thematic procedures but for convenience's sake I will confine myself to the working-group on enforced or involuntary disappearances and the special rapporteurs on summary or arbitrary executions and on torture, since their mandates are closely inter-related and they have to a certain extent the same working-method, in particular with regard to the most important part of their work which deals with individual cases. In carrying out their mandate these mandatories may act upon information received from outside sources. In practice this means that whenever information has reached them that an individual has been the victim of a violation of the human right covered by their mandate, they may transmit this information to the government concerned with the request to investigate the alleged case and to report on the outcome of that investigation. What distinguishes these procedures from all other UN-procedures is that the information provided not merely has relevance for the general representation of the human rights situation in a specific country but that this information is of direct relevance for the situation of a specific individual or his relatives. In fact, these are the first examples of mandatories of the international community who are entitled to take up the case of individuals vis-à-vis their governments and who can do so on their own initiative. In order to do so, however, they have to rely on information provided by others since they have no staff at their disposal which is in a capacity to verify the information received. According to their mandate, they can seek and receive information from a variety of sources. Strangely enough, this part of their mandate is worded differently in all the three mandates under consideration. The Working Group on Disappearances may seek and receive information from 'Governments, intergovernmental organizations, humanitarian organizations and other reliable sources', the Special Rapporteur on Summary and Arbitrary Executions from 'Governments as well as specialized agencies, inter-governmental organizations and

non-governmental organizations in consultative status with the Economic and Social Council' and the Special Rapporteur on Torture from 'Governments, as well as specialized agencies, inter-governmental organizations and non-governmental organizations', '*tout court*'. This difference in wording hardly can be explained by the subject-matter of their mandate and must therefore be attributed to the negotiating-process between the Members of the Human Rights Commission leading to the establishment of the procedure.

Since hardly any information on individual cases has been provided up till now by governments or inter-governmental organizations, it may be said that in about hundred percent of the cases, these mandatories act on information provided by private sources, information which cannot be checked by the mandatory itself. In general, these private sources are non-governmental organizations; only the working-group on disappearances formally is entitled to receive information from private individuals, like, e.g. relatives.

According to all three mandates, however, action may only be taken on the basis of 'credible and reliable information'. (Strangely enough the mandate of the working group on disappearance does not speak of reliable information but of information received from reliable sources.) Since, however, these mandatories have not been provided with staff to ascertain the credibility and reliability of the information received, the burden of this reliability lies completely with the non-governmental organizations themselves.

This condition of reliability and credibility, stipulated by the mandates, creates a number of problems, some of them virtually insolvable.

1. In order to enable the mandatories to take action upon information received, such information must be detailed enough to enable the authorities in the country to which the information refers to start an inquiry. Such information therefore must contain the identity of the victim, the date and the place of the alleged violation and, preferably, the circumstances under which it happened. In my own case, that of the Special Rapporteur on Torture, it is also highly essential to be informed about the type of torture which has been practised. The majority of the information, received by this Special Rapporteur at least, does not satisfy these requirements and, consequently, cannot be used by him. This goes true, in particular, for information received from NGO's which do not have a wide experience in the collection and processing of data on human rights violations. Often I am convinced that these NGO's *have* the necessary details but tend to forget to transmit them since the only thing which interests them is that torture reportedly has been practised. It is therefore of utmost importance that steps have been undertaken (amongst others by HURIDOCS in co-operation with SIM) to standardize the reporting of human rights violations by using

forms which contain an itemization of all the required details and which, therefore, function as a check-list lest no essential data are forgotten. This need to provide the UN mandatories with information which is as exhaustive as is possible, perhaps is most compelling in the case of torture-allegations. Allegations about disappearances and executions are based upon facts: there is an empty place, there is a dead body. Unless marks of torture are clearly visible and are beyond any doubt the result of torture, allegations are based on stories; torture hardly even takes place on the market-place, it is practised in secluded places and there are hardly ever witnesses to such practices who have not been victimized themselves. Moreover, disappearances and killings can be explained away: killings can be attributed to private groups and disappearances can be ascribed to a variety of motives; from *chagrin d'amour* to economic emigration. Torture-allegations in most cases refer to places of detention under state-control and, therefore, cannot as easily explained away. Since torture is absolutely forbidden and consequently can never be justified, lack of detail is often given as an excuse for not starting an inquiry. Since governments are extremely sensitive about allegations of torture, and since the practice of torture can never be justified, other tactics, however, are more common. The counter-attack is opened and the reliability of the information is put into question.

2. And this brings me to the second problem: the credibility and reliability of the information received is nearly inevitably connected with the reliability of the source. It is contended by the government concerned that the allegation is politically motivated and slanderous. Often the UN mandatory is asked to divulge the identity of his source.
I have sketched the diversity in NGO's before in order to make clear that NGO's may act from a variety of motives. These motives are irrelevant as long as the exposure of human rights violations is based on reality. The fact that human rights violations are often reported by groups which are affiliated to oppositional forces in a certain country and are therefore undoubtedly politically motivated does not by itself mean that these allegations are untrue, since in general it are persons belonging to those oppositional forces which will be the victim of such violations. UN mandatories have made it a policy to refuse to disclose their sources saying that they themselves are accountable for the decision to transmit the allegation received to the Government and therefore for the finding that the information received was credible. Such a reply, politically unavoidable as it may be, does not, however, solve the problem of the mandatory himself, because in his case the credibility of the information received and the reliability of the source are inextricably linked. As long as he receives information from NGO's which are generally respected and with whose working-methods he is familiar, the reliability of the source will be highly indicative for the credibility of the information. In many cases, however, the information emanates from NGO's which are completely unknown to him. Usually

this information is received either directly from the NGO concerned or through a network which channels information from local or regional NGO's. The wider the mandate gets known, the greater is the number of allegations received from such sources. Such information usually will be transmitted to the government concerned if a) the information is sufficiently detailed to give it at least a semblance of credibility and b) its verisimilitude is confirmed by other documentation which is available with regard to the human rights situation in the country concerned. In this respect, therefore, the general information provided by non-governmental organizations on the human rights situation in a country is an important auxiliary.

Although, in actual practice this seems to be, and in fact, is a workable arrangement there are some pitfalls which must be mentioned. If an allegation is actually false (and this happens to be the case from time to time blame for which should not always be put on the NGO which provided the information), a government usually is only too willing to inform the UN mandatory on the outcome of the inquiry, which must be duly represented in the mandatory's annual report to the Commission on Human Rights. If this happens more than once with regard to a specific country, it is not the reliability of the - non-disclosed - source which is tainted but rather the reliability of the UN mandatory himself.

In this context specific mention may be made of the so-called urgent action procedure. According to their mandate, all UN mandatories are requested 'to bear in mind the need to be able to respond effectively to credible and reliable information that comes before them'. The crucial word here is 'effectively'. In case the alleged violation has recently happened, is still being practised or is about to occur, the mandatory can transmit the information not by letter, as is routinely done, but by cable directly to the capital. This urgent action procedure is of utmost importance since it can contribute to the discontinuance or the prevention of a human rights violation like e.g. torture. The Working Group on disappearances uses it whenever it is informed that a disappearance has taken place very recently, the Special Rapporteur on Summary or Arbitrary Executions uses it when he is informed that a person has been summarily sentenced to death and usually asks for a stay of execution; the Special Rapporteur on Torture is requested to make use of this mechanism if a person has been arrested and it is feared that he will be subjected to torture. But here again, torture is a specific case. In the case of disappearances, the disappearance is a fact; in the case of summary or arbitrary executions, there is a death-sentence; in the case of torture, however, the person is still under detention and in most cases there is no certified evidence that torture actually has been practised. The fear for torture, expressed in the allegation, should therefore be substantiated, either by referring to eye-witnesses who have seen the detainee or to cases where detainees actually were tortured under similar circumstances. This is all the more important since urgent action procedures are the most effective tools the UN mandatories have

at their disposal and this effectiveness may be fatally damaged if the information on which this kind of action is taken turns out to be incorrect. Governmental awareness that a certain case has drawn international attention, may induce such government to take the necessary steps to prevent or stop the violation since the person concerned has become a liability. In order to enable the UN mandatories to use this tool to the maximum, the information provided should be as specific and detailed as possible, and this all the more so since the urgency required often makes checking and rechecking by the head-office of the NGO concerned virtually impossible.

Often UN mandatories are asked by NGO's to inform them of the steps taken by them on the receipt of information and about the content of replies given by Governments. All this information is contained in the mandatories' annual reports to the Human Rights Commission, but the NGO's prefer to have an earlier reaction in order to be enabled to provide additional information if the Government-reply is ostensibly incorrect. The working-group on disappearances usually furnishes this information for conveyance to the relatives of the disappeared person; the other two mechanisms have been more hesitant to do so. Partly this is due to administrative reasons (lack of staff) but partly also to other reasons. Since the background of a number of sources is not well-known it cannot be excluded that not the alleged and denied violation itself but the fact that the UN mandatory has brought it to the Government's attention will be used as a weapon in a political struggle. In that case the UN mandatory would be involved in a political controversy and not in a human rights-oriented controversy and that would damage his credibility and, consequently, his effectiveness.

And this brings me to a final observation. Precisely because the UN mandatory is nearly completely dependent for his functioning on information provided by NGO's there is always the risk that these mechanisms are seen as an extension of the work of NGO's - a kind of NGO in UN disguise - both by the Governments to whom they transmit the information received and by the NGO's themselves. Governments who have already been the target of NGO's for a long time and have continuously disqualified such NGO's as being biased and politically motivated, have a natural inclination to follow a similar approach with regard to UN mandatories who present them with the same allegations. NGO's on the other hand sometimes have criticized UN mandatories not about the quality of their reports - this they are fully entitled to do - but for the fact that the UN mandatories have not explicitly drawn the same conclusions from these allegations as they have done themselves.

NGO's usually do not hesitate to condemn and to pass judgments and they are right in doing so. It is their function to expose human rights violations and to point a finger to those responsible. They have to sensitize public opinion and their weapon is the mobilization of shame. Partly the political mechanisms of the UN Commission on Human Rights have a similar

function - the mobilization of shame also is one of their tools - but the way in which they carry out this function is decidedly different. It is my considered opinion that it is in the interest both of the UN mechanisms and the NGO's to recognize and honor this difference. The mobilization of shame is effected by the fact that the UN mandatories report on their activities without explicitly commenting on the replies received from Government. It is highly significant that that part of their mandate which instructs them to carry out their work with discretion, gradually has eroded into non-existence since publicity is one of the most effective tools in the human rights struggle. Their function, however, should not be confounded with that of a public prosecutor or a judge; it is, e.g., completely different from that of the treaty-based mechanisms which is a quasi-judicial one and it serves no purpose to confuse the two. Precisely because their function is different, UN mandatories can take action on reported human rights violations on their own initiative without having to comply with all kinds of procedural requirements like the exhaustion of the local remedies rule. They constantly have typified their mandate as humanitarian and this characterization is incompatible with a quasi-judicial function. That does not mean that they have to be colourless. They may qualify a government-reply as unsatisfactory since it is not based on a serious investigation into the alleged case. They may point to weaknesses and shortcomings in a particular system and make recommendations in order to improve upon them, as I myself have done in my reports to governments which have invited me to visit their country. Most important, however, is that UN mandatories are representatives of the organized community of States and, therefore, can only function through contacts with governments; part of their function consequently is to keep open the channels of communication with governments. This most decidedly should not be understood as a justification of colourlessness or ambiguity; it is by a calculated mix of challenge and persuasion that UN mandatories can most effectively carry out their task.

Completely dependent upon information collected by others, powerless without the co-operation of the NGO's UN mandatories have to keep open channels of communication with those governments which according to that information are responsible for human rights violations but usually deny such violations or deny any involvement in them if the violations themselves cannot be denied. UN mandatories serve the same cause as the NGO's which provide them with information, viz. the eradication of human rights violations, but they serve this cause in a different way. Really, all the ingredients for an uneasy partnership between UN mandatories and NGO's are there. I sincerely hope that this partnership will remain uneasy, for only be keeping it uneasy the common cause can effectively be served.

HUMAN RIGHTS NGO's

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I. INTRODUCTION

There are moments in time, conjunctures in history, when one senses a qualitative change in the social fabric. This is one such moment. The dismantlement of the Berlin Wall; the ascendancy of a non-communist government in Poland; the Hungarian government's refusal to close its borders on the grounds that the Helsinki process guarantees everyone the right to leave any country, including his own; the changes that glasnost and perestroika have wrought, not only in the Soviet Union and Eastern Europe, but in the global power structure - these revolutionary changes have totally shattered the Jeanne Kirkpatrick thesis that totalitarian regimes differ from authoritarian ones in that they are not susceptible to liberalization or democratization.[1] When historians chronicle the 1980's, Mikhail Gorbachev will undoubtedly be hailed as the statesman of the decade, whose leadership and vision gave birth to this revolution. Yet, there is another hypothesis of equal weight: that Gorbachev was not father or mother but midwife, assisting at a difficult birth. The seeds for the change were planted by human rights activists and the womb that nurtured them was the human rights movement.

In trying to understand social change, cause and effect are always difficult to establish with any degree of definitiveness, and for this - and other reasons - human rights NGO's are reluctant to take credit for positive change. When political prisoners are released from detention, when a state of emergency is lifted, when a military regime falls, when a dictator flees, human rights NGO's never know with any degree of certainty how their actions weighed in the balance of forces. Yet it is increasingly clear that the human rights movement, spearheaded by non-governmental organizations, has become a significant force in both national and international arenas. It is this movement, and particularly the role of human rights NGO's, that I have been asked to address.

1. "This is the reason history provides not one but numerous examples of the evolution of authoritarian regimes into democracies ... but no example of the democratic transformation of totalitarian regimes." (Jeanne Kirkpatrick, in "Human Rights and American Foreign Policy: A Symposium," Commentary, Vol. 72, no. 5, November 1981, pp. 25-63, at p. 44.)

II. THE DEVELOPMENT OF THE HUMAN RIGHTS MOVEMENT

The human rights movement as we know it today is a post-World War II movement; in fact, it is a movement that began to gather momentum only in the 1970's, although there are some international human rights organizations with long and distinguished histories which predate the United Nations and the League of Nations - for example, the London-based Anti-Slavery Society for Human Rights was founded in 1838; the International Committee of the Red Cross was created in 1863; the French League for Human Rights was established in 1898 at the time of the Dreyfus Affair at the end of the Franco-Prussian War - this first generation of human rights NGO's were the precursors of the present human rights movement.

However, by far the largest number of human rights NGO's, especially regional, national and local ones, but also international ones, emerged in the 1970's or later, and are thus between 15 and 20 years old.[2] When we talk of the human rights movement today, we are thus talking of a phenomenon of the last two decades. Indeed, from the mid-1970's on, we have had an explosion in this area so that today there are literally thousands of non-governmental organizations.[3]

In the 1950's and 1960's, we could still talk about the nation state as almost the sole actor in the international arena, even though it is now acknowledged that human rights were only inscribed into the UN Charter as a result of NGO pressure at San Francisco. Throughout this period, international relations were described almost exclusively in terms of "Realpolitik" - a contest between various national interests in which values and morals had no role and no play. In the 1980's, no one finds it unusual to talk about human values and rights in international politics. A number of factors account for that change.

Until the end of the 1960's, there was no human rights monitoring or fact-finding undertaken by the United Nations.

It was only in 1967/1968, in the context of the struggle for liberation in Southern Africa, that ECOSOC and the Human Rights Commission, under increasing pressure from African states and experts on the Sub-Commission, finally decided that UN should do more than passively sit, receive

2. See Wiseberg & Scoble, "Recent Trends in the Expanding Universe of Nongovernmental Organizations Dedicated to the Protection of Human Rights," Denver Journal of International Law and Policy, Vol. 8 (1979), pp. 627-658.

3. Human Rights Internet began publishing directories describing the work of human rights organizations in 1979. Volumes now exist on North America (1979, 1980, 1984), The Third World (1981), Western Europe (1982), Eastern Europe (1987), Africa (1989), and Latin America (1990) and volumes on Asia and the Middle East will be published in 1990.

confidential complaints, and consign them to limbo. ECOSOC Resolution 1235, adopted June 6, 1967, gave the Commission and its Sub-Commission authority to examine communications relevant to "gross violations of human rights and fundamental freedoms," to undertake thorough studies and investigations of situations that reveal "a consistent pattern" of human rights violations, and to report to ECOSOC with accompanying recommendations.

Ten years later, in 1976, the door to protection was opened wider when the two covenants on human rights, completed in 1967, entered into force. They created mechanisms whereby parties to the conventions were required to submit periodic reports on the extent of their compliance with standards set by the covenants, a procedure which also applies to several other human rights treaties. The arenas for NGO lobbying were thereby expanded yet further.

Other events were also to have major impact on the emergence of human rights NGO's. For example, the 1973 coup in Chile - in which the US CIA was heavily implicated - coming in the wake of the enormous disillusionment with US policy in Vietnam, led to intensive mobilization around the issue of justice in Latin America and a demand for a human rights dimension to US foreign policy.[4]

1975 was the year of the Helsinki Final Act which catalyzed the formation of Helsinki monitoring groups throughout Eastern Europe.[5]

In 1977, when Amnesty International received the Nobel Peace prize, that gave a sudden visibility and legitimacy to the work of human rights NGO's.

There was also, beginning in the 1960's and carrying over into the 1970's, a fairly dramatic shift in the position of the Church, both Catholic and Protestant: we had the Second Vatican Council's promulgation in 1965 which led to the formation of Justice and Peace Commissions in many countries, the development of liberation theology, and progressive Catholic forces arguing for a preferential option for the poor; in 1977, the World Council of Churches, after several consultations, appointed a Human Rights Advisory Group, and developed an active program based on the belief that the church must serve as witness to injustice.[6]

4. Scoble & Wiseberg, "The Human Rights Lobby in Washington," paper presented at the annual meeting of the American Political Science Association, New York, September 1978.

5. Wiseberg and Scoble, "Human Rights and Soviet-American Relations: The Role of NGO's," in Richard A. Melanson (ed.), Neither Cold War nor Detente? Soviet-American Relations in the 1980s. Charlottesville: University Press of Virginia, 1982, pp. 151-185.

6. Marc Reuver (ed.), Human Rights: A Challenge to Theology. Rome: Commission of the Churches on International Affairs of the World Council of Churches and IDOC International, 1983, 174 p., especially Part I, "Human Rights and the Churches," pp. 13-27.

A very major factor was the role played by President Carter and US foreign policy which, in 1977, inscribed human rights into the international agenda.

The issue of human rights proved to have enormous appeal. It was taken up not only by educated elites but by grassroots organizations everywhere, who were beginning to realize that injustice was not ordained, that they had a right to rebel and to stand up and say "I deserve human dignity."

As a result of this manifestation of concern, the human rights landscape was dramatically transformed. First, was the emergence of an enormous number of new organizations specifically created to further human rights, often in response to situations of repression. Second, many existing organizations, which did not talk in the language of international human rights standards, suddenly began to adopt this new vocabulary. For example, the anti-apartheid movement, which in the 1960's and early 1970's talked in terms of anti-colonialism, had by the end of the 1970's, clearly and centrally defined itself as part of the human rights struggle. Third, a large number of existing organizations - churches, trade unions, professional organizations, women's organizations, even political parties - began to devote organizational resources to further human rights aims. They began appearing at international and regional human rights arenas, appealing to international human rights standards, networking with each other, and developing strategies and tactics to monitor and denounce violations.

Moreover, the environment in which NGO's currently function is radically different from the environment of even the early 1970's. Simultaneous with the explosion of human rights NGO's has been an explosion of human rights arenas and the proliferation of international human rights standards. For human rights activists, it is now a far more complex environment, offering greater opportunities, requiring greater professionalism, and posing greater challenges.

III. THE NATURE OF THE HUMAN RIGHTS MOVEMENT: TOWARDS A TYPOLOGY

In the Second Interim Report of the Committee on the Enforcement of Human Rights Law of the International Law Association, the rapporteur writes: "A fairly simple model - the NGO as a unified and nearly uniform entity - has tended to dominate existing descriptive writings about NGO's. ... The current literature on NGO's presents them as if they were akin to checker pieces moving across a single board. However, the dynamics are not that simple. ... NGO's display a variety of styles of movement, and are more akin to chess pieces with their different capabilities for action."[7]

7. Reference: see note 2.

The reality is even more complex than that portrayed in the ILA report which focuses almost exclusively on international and Western-based NGO's which comprise a vital, but only one category, of NGO human rights actors. To adequately describe the universe, one needs to distinguish NGO's on a series of dimensions.

1. Local, National, Regional, International

One must begin by distinguishing NGO's as local, national, regional or international, first, in terms of their objectives or mandates and, second, in terms of their membership and control. These two are not synonymous. For example, the International Committee of the Red Cross, clearly international in its mandate and the scope of its activities, is an entirely Swiss organization, although its participation in the international Red Cross movement obfuscates this fact. By contrast, Amnesty is international on both dimensions, with a mass-based worldwide membership and a universal scope.

There is also a small number of human rights organizations international in "membership" largely because of their "affiliates" in different parts of the world - the New York-based International League of Human Rights, the Paris-based International Federation of Human Rights, and the Rome-based International League for the Rights and Liberations of Peoples. Their affiliates are not, however, national sections in the way that Amnesty International sections are. They are independent organizations with their own objectives and their own agendas.

There is a third dimension to the international non-international dimension that bears mention: whether an organization has been recognized as an international NGO by gaining Consultative Status with the Economic and Social Council of the United Nations (ECOSOC), by one of the UN Specialized Agencies, or by an inter-governmental regional organization. By and large, international NGO's, whether defined in terms of mandate or control, are Western-based, headquartered in either North America or Western Europe, and, by and large, these are the organizations which have sought and acquired Consultative Status.[8]

There are a number of exceptions. In recent years, Aliran (Malaysia) and the Arab Organization for Human Rights (Egypt) have gained Consultative Status with ECOSOC. This notwithstanding, with the exception of indigenous peoples' organizations vis-à-vis the Working Group on Indigenous Populations (a special case), national and even regional non-Western-based

8. According to the UN NGO Liaison Office, in 1989, approximately 900 NGOs had Consultative Status with ECOSOC. There are over 6,000 that are accredited within the UN system.

organizations have had to address UN human rights bodies through Western-based, internationally-anointed NGO's.

2. Human Rights Specific and Other Interest-Groups

When examining NGO's active on the human rights issues, a second distinction of importance is between those NGO's which focus exclusively on - whose raison d'etre is - human rights, as against those for whom human rights may be an important, but not the seminal concern. In the Philippines, for example, a distinction is drawn between specific human rights organizations and more general "cause-oriented" organizations, or between human rights NGO's and peoples', grassroots or sectoral organizations.

In the non-exclusive category we have an enormous diversity of actors - churches; trade unions; political parties; professional associations; educational bodies; women's organizations; organizations of, or focused on, indigenous peoples or ethnic communities; agencies dealing with children, refugees, the homeless, the disabled; and solidarity groups. As the International Bill of Human Rights has expanded to incorporate the right to development, the right to a clean environment, the right to peace, and other solidarity rights, the constituency concerned with human rights has correspondingly expanded and now intersects with a multiplicity of other social movements. While many of the non-human right-specific NGO's are peripheral actors, who enter the human rights debate only on selected issues, some - most notably churches - have been central players in both national and international arenas.

There is, however, a reason for distinguishing human rights organizations from other interest groups for which human rights is just one concern. The latter are likely to have a much greater mass base - particularly at the national or local level - yet their monitoring, their reporting, their agendas and their strategies are likely to be determined by more than internationally-defined human rights standards. In many instances, it is the interaction - the dynamics - between the human rights NGO's and the broader-based organizations that is so critical in the process of change.

Exclusive human rights organizations are themselves, of course, not homogenous. The former may be further sub-divided into groups with broad mandates, working in theory at least on all the rights embodied in the International Bill of Human Rights - though, in fact, limited resources make this impossible - from groups with specific narrow mandates; focused on such issues as torture (SOS Torture), the detained-disappeared (FEDEFAM) or the rights of the disabled (Disable Peoples' International).

3. Differing Professional Perspectives

From another angle, there are groups which approach human rights from a particular, often a professional, perspective. The lawyers and legally-oriented NGO's were among the first, and remain the most visible of these specialized groups, concerned especially with upholding the rule of law. Among them, the International Commission of Jurists stands out as the doyen, but there are dozens of national, regional and international lawyers organizations specifically focused on human rights - from the Free Legal Assistance Group (FLAG, the Philippines) to the International Association of Democratic Lawyers (Belgium).

Another professional perspective is that of the journalist, the writer, the artist which has given rise to such groups as the Index on Censorship, Committee to Protect Journalists, International PEN's Committee on Writers in Prison, and Article 19.

The involvement of scientists and medical practitioners is particularly interesting. They were initially drawn into the arena out of a concern for the lives or freedom of professional colleagues in other countries - especially in the Soviet Union, in Eastern Europe, and in Chile. It was a very personal involvement, arising out of friendships or working relationships that had developed at international professional meetings. This concern led to the mobilization of physicists, mathematicians, computer-specialists and engineers. Physicians, and especially psychiatrists, were also drawn in on the issue of the misuse of psychiatry, leading to the formation of such groups as the Working Group on the Internment of Dissenters in Mental Hospitals. Somewhat later, health professionals and scientists began to apply their special perspectives and skills to a more generalized concern with human right protection.

A number of broader medically-oriented human rights groups have also been established, like Physicians for Human Rights in the US.

Forensic scientists - seemingly unlikely candidates for human rights work - have become deeply involved in certain issues. Some, working together with lawyers, have contributed to the drawing up standards for conducting autopsies for suspicious deaths, particularly those of a political nature, that would identify torture and other irregularities as the cause of death. Other forensic scientists became involved in assisting in the exhumation of mass graves in Argentina - to recover and identify the bodies of the disappeared and to provide legal evidence against those responsible; and they have trained young forensic anthropologists to carry on this work.[9]

9. Clyde C. Snow, et al. "The Investigation of the Human Remains of the 'Disappeared' in Argentina," pp. 297-299.

Geneticists too have become involved. In Argentina, they have worked with the Grandmothers of the Plaza de Mayo to assist in the establishment of a genetic bank for genetic matching of children and grandparents, so that abducted children, or those born to disappeared mothers and subsequently "appropriated" for adoption, could be identified and reunited with their original families.[10]

4. Mass-based and Elite Organizations

In looking at the universe of human rights NGO's, yet another distinction of importance is between mass-based and elite organizations. Despite 15-20 years of development and the enormous explosion of human rights NGO's, with a few exceptions - notably Amnesty International, a worldwide movement which (at the beginning of 1989) has more than 700,000 members and subscribers in over 150 countries, organized into nearly 4,000 local AI groups in 62 countries - the overwhelming number of international, and many national human rights NGO's are still largely of the elite-type. The human rights groups believe they are articulating the concerns of the masses and serving the masses, but they are not of the masses.

In certain respects, this limits their capacity to effect change. They must rely on tactics and strategies which preclude mass mobilization: appeals to the courts, the media, international arenas.[11] Or, they must catalyze mass-based organizations, or act in conjunction with them. From another perspective, their lack of a membership basis gives them freedom to take up unpopular causes - and so many human rights causes are unpopular - which they would be unable to do if they merely reflected, rather than led, public sentiment.

5. Political Independence

A few other distinctions must be made before leaving the subject of typology. One concerns the ideological orientation and political independence of NGO's. One of the most important characteristics that distinguishes human rights NGO's from other actors is that human rights NGO's do not themselves seek political power.

There are great variations with respect to the degree of political independence that NGO's exhibit, although all hold up independence as the ideal. Many NGO's - both national and international - believe complete and total

10. Ana Maria Di Lonardo, et al., "Human Genetics and Human Rights: Identifying the Families of Kidnapped Children," Ibid., pp. 339-347.

11. Smitu Kothari and Harsh Sethi (eds.), Rethinking Human Rights: Challenges for Theory and Action. New York: New Horizons Press for Lokayan (India), 1989.

independence is a prerequisite for credible human rights work: they refuse all offers of government funding; they bar government officials from organizational membership - or certainly from decision-making roles; and they eschew cooperation for fear that it would represent cooptation. Amnesty International perhaps best embodies this approach. Yet, in many other cases, such a posture is regarded as unnecessarily extreme, especially where human rights NGO's perceive their governments to be committed to human rights values. In such cases, NGO's see no threat in accepting government funding, in inviting the participation of influential political patrons, or in cooperating with government on areas of common concern. Rather, they see this as a way of enhancing their influence and their effectiveness.

While the problem of political control is far more complex than whether or not an organization accepts government funding, organizations can clearly be distinguished in terms of their funding bases. If a mass membership base also means autonomous funding, the leadership may have far greater options for action than a leadership dependent on private foundation or wealthy donor support.

IV. THE FUNCTIONS OF NGO's

For some 15 to 20 years, human rights NGO's have been performing a variety of important functions in both the protection and promotion of human rights: (1) information and/or monitoring; (2) legislation; (3) stopping abuses, securing redress and/or humanitarian assistance to victims - in effect, implementation; (4) education/conscientization; (5) solidarity; (6) delivery of services, especially - but not exclusively - in the area of economic and social rights; and (7) keeping open the political system.

The first, and one of the most important functions they play, is that of monitoring the behavior of the state and of other power elites - of exposing and denouncing human rights violations. This is a vital function because, unless their behavior is monitored, governments will not be held accountable. The importance of information emerges in part from the paradox that is central to the human rights struggle: that the main protector of human rights - the authority one must in the end rely on to enforce human rights standards - is also the main violator. Not only do NGO's provide information to their own constituencies, their governments and the mass media, they also provide information to intergovernmental organizations charged with human rights responsibilities. Without this information inter-governmental bodies would be largely impotent, for few IGO's have real fact-finding capability.[12]

12. See contributions of Van Boven and Kooijmans in this volume.

The second function that NGO's have is legislation, both at the international and the national levels. Increasingly, in the international arena, NGO's have initiated and played vital roles in the drafting of international standards and in helping to interpret those standards. As an aspect of this, NGO's have also played an important role in articulating or defining new issues and areas requiring legislation.[13] At the national level, human rights NGO's are often engaged in drafting legislative proposals, preparing position papers on pending legislation, testifying before parliamentary committees, and lobbying for the repeal of unjust legislation.

The third function that human rights NGO's play is that of stopping abuses, securing redress, and humanitarian assistance to victims and their relatives. This may involve a combination of methods and tactics from denunciation, to legal assistance (writs of habeas corpus, litigation, counsel to victims and their families), to trying to trace disappeared persons, to visiting detainees and attempting to secure humane treatment and conditions while they are imprisoned, to material and moral assistance to their families, etc. It may also involve lobbying not only one's own government, but governments in other countries and international organizations.

A fourth function human rights NGO's play is education and conscientization. This tends to be at the non-formal level, rather than in formal school setting, and can involve consultations, workshops, seminars, training courses for women, trade unionists or peasants, leaders of indigenous organizations, or churchpeople.[14] Here, NGO's tend to function in a service capacity to other peoples' organizations or try to raise consciousness in the population at large through the publication of special newsletters, bulletins, audio-visuals, etc. While this role is important while repression is taking place, it tends to be given even greater emphasis in societies returning to democracy after a period of military dictatorship. At the present time, for example, there is very great emphasis on education in Argentina, Uruguay and the Philippines.

The fifth function of NGO's is expressing solidarity. NGO's and peoples' organizations on the front line in human rights struggles are often both highly vulnerable and highly isolated. Even though human rights struggles are, fought and won largely in national arenas - by organizing and mobilizing in the slums and the barrios, by conscientizing people about their rights and how to fight for them - the role of international support cannot be underestimated. Thus, solidarity and support, at both the regional and the international levels can have an impact and it can, and often does, by

13. See contribution MacDermot in this volume.

14. Many of these programs, and the organizations organizing them, are regularly described in the sections on human rights education in the Human Rights Internet Reporter.

giving visibility to the struggles of national and local NGO's, provide some small measure of protection for those on the front lines.

The sixth function, the delivery of services, is rather different from the others in that is involves less protection than helping to realize economic, social and cultural rights, and sometimes civil and political ones. It derives from the fact that, in the last two decades, some third world governments have come to realize that NGO's are better able to deliver services than government authorities. This may pertain to such things as reaching victims in disaster relief, assistance to refugee populations, providing skills training for underprivileged groups, offering courses in human rights education to military and police, offering legal aid to those who can not afford it. In these cases, governments have tried to coopt NGO's into becoming instruments for delivering services they should be providing, but are unable to provide.

This dilemma is particularly sharp in periods when countries are moving from repression towards democracy and will be further discussed in Chapter V.

The seventh and final function is the function that human rights NGO's play in keeping open the political process for other actors, a function that is qualitatively different from the others. It is for this reason that killing human rights monitors, preventing human rights groups from operating, is particularly devastating because, by those acts, one directly undermines all other independent societal forces.

V. THE HUMAN RIGHTS MOVEMENT: CRISIS AND CHALLENGE

Today, many believe that the human rights movement is in a state of crisis, while others believe that unprecedented opportunities for change now exist.[15] Indeed it is exceedingly difficult to know whether to be optimistic or pessimistic.

There is no doubt that there has been enormous progress in expanding the corpus of international human rights law, in developing new international arenas and new protection mechanisms, and in legitimating international human rights standards. There is no doubt that the emergence of human rights NGO's on every continent, in almost every country is one of the most positive developments of the past two decades. It is no longer acceptable - and people are no longer prepared to accept the proposition - that states can violate the rights of their citizens behind the protective shield of national sovereignty.

15. In June 1989, Human Rights Internet and the Human Rights Program of Harvard Law School co-sponsored a retreat in Crete for human rights advocates from all areas of the world. A report on that meeting will be published later this year.

Yet, state lawlessness continues, non-governmental entities (guerrilla movements, vigilantes, multinational corporations) continue to violate international standards, the gap between the rich and poor increases, and environmental degradation continues.

In the last part of this presentation, I will look in more detail at a number of very specific and interrelated challenges currently facing the human rights movement. The challenges are essentially of two types: challenges emerging from the changing political context or the environment; and challenges from within the movement associated with growth and development.

1. Challenges from the Changing Political Context

a. How to Confront the Challenge of "Democratization"

In the present political context, human rights NGO's are for the first time confronting the question of how to deal with human rights in the process of democratization. Clearly, the tactics and strategies appropriate for dealing with regimes hostile to human rights may no longer be effective - and may even be counterproductive. Moreover, there are two distinct types of democratizations that are simultaneously confronting human rights NGO's: that occurring in Eastern Europe, and that occurring in countries where authoritarian or military regimes have fallen to civilian governments.

There are some common elements to both processes. In both East and South, governments which formerly appeared monolithic now exhibit plurality, and the question is how most to strengthen and support the pro-human rights forces that have come to the fore. In each case, the new regimes are fragile, with hardliners or the military still exerting influence (and sometimes control) backstage. And in almost all cases, the new regimes are confronting enormous economic problems - staggering foreign debts, stagnant economies - that are not the sorts of issues that human rights groups have traditionally addressed.

There are also certain problems unique to the different processes of democratization. In countries of the Southern Cone and for some Central American states, one issue that has been of overwhelming importance is that of accounting for the disappeared and bringing the violators to justice.[16] The amnesty and impunity laws that have been passed - shielding the security forces from prosecution - have been unacceptable to most human rights organizations and especially to organizations of the families of victims.

16. In Eastern Europe, while there has been some demand to bring to justice those who committed abuses under the old order (notably in East Germany and, most recently, in Romania), East Europeans have not stressed the need to bring violators in the same way or to the same degree as Latin Americans have.

There have already been a number of meetings on this issue and, by and large, international NGO's have opposed such impunity laws.[17] While no clear strategy has emerged on how to deal with past egregious human rights violations and violators, a range of strategies is being explored. National NGO's have devoted considerable resources to documenting the violations (as with the publications of "Nunca Mas" (Never Again!) volumes in Brazil, Argentina and Uruguay,[18] and energies are being devoted to education and conscientization about these dark periods. As mentioned earlier with reference to forensic anthropology, techniques are being developed to preserve the evidence. Some NGO's are also involved in compiling lists of torturers. Others - particularly in the United States - have been concerned with passing legislation that would permit the prosecution of egregious violators if they ever came to the US.[19] Still others have been active in seeking international legislation (i.e., a new international convention) that would define "involuntary disappearance" and make it a crime against humanity.[20] It is an issue that will be a major preoccupation for the human rights community during the coming decade.

A second crucial issue facing NGO's where civilian governments have taken over is the fact that "civilianization" and the trappings of democracy do not necessarily mean the end of human rights violations. This is well illustrated by El Salvador, Guatemala and the Philippines, where abuses continue unabated.[21] One of the dilemmas that NGO's face here is that the civilian governments have adopted human rights rhetoric, and have used public relations tactics to obfuscate the issues. Such governments set up human rights offices, issue human rights reports, accept the UN's advisory services on human rights so as not to be blacklisted, and try to blame all abuses on "vigilantes," "paramilitary" or "extremists" over whom they have no control. Moreover, such governments attract allies who are quite happy to support this new status quo, and who promote the notion

17. For example, in November 1988, the Aspen Institute for Humanistic Studies held a conference on "State Crimes: Punishment or Pardon". A report is forthcoming.

18. There are now three such volumes: Nunca Mas: The Report of the Argentine National Commission on the Disappeared. New York: Farrar, Straus, Giroux, 1986 (originally published in Spanish in Argentina); Brasil: Nunca Mais. Petropolis, Brazil: Editora Vozes, 3rd ed. 1985); and Servicio Paz y Justicia Uruguay, Uruguay, Nunca Mas: Informe sobre la Violacion los Derechos Humanos (1972-1985). Montivideo, 1989.

19. For example, a Torture Victims Protection Act has been introduced in the US Congress.

20. The Latin American Federation of Associations of Families of the Detained-Disappeared (FEDEFAM) in Venezuela, and the Coalition of NGO's Concerned with Impunity for Violators of Human Rights (New York) have been actively engaged on this front.

21. Within the UN context, this has been illustrated in the rush to remove states from the scrutiny, see: Radda Barnen and the International Commission of Jurists, Swedish Section. UN Assistance for Human Rights: An Analysis of Present Programs and Proposals for Future Development of the UN Advisory Services, Technical Assistance and Information Activities in the Field of Human Rights. Stockholm, 1988.

that "elections" is the synonym for "human rights." Moreover, in the euphoria of a change of government saying all the right things - a Corry Aquino for example - there is a tendency to give the government the benefit of the doubt. It many respects, it is much easier for NGO's to confront a "bad" government than a purportedly "good" one.

This brings to light another dilemma that the human rights movement must address: namely, given the limited resources of international human rights NGO's, there is a tendency to focus always on the newest crisis. The Philippines is now a democracy. One can, therefore, move on to a new area; and the national human rights groups who were on the frontlines of the struggle suddenly find themselves isolated and alone. The media no longer cares. Their country is no longer on the agenda of the UN Commission of Human Rights. International NGO's have more urgent tasks to deal with.

The whole question of the relationship between democracy and respect for human rights is one that will come into sharp focus as events continue to unfold in Eastern Europe. At present, it is not yet clear what different independent organizations in Eastern Europe mean by freedom, and what the response of the international human rights community should be? Demands are being made across an enormously broad spectrum, ranging from freedom to leave one's country and to return, to a multi-party system of government, to a free market economy, to self-determination for nationalities or ethnic communities, to freedom of religion, to the due process of law. For the international human rights movement, this poses both opportunities and dangers. For the first time in the post-war period, it is possible to incorporate human rights NGO's from Eastern Europe into the international human rights movement. Yet it is not clear what the effect of that will be, and how it will impact on priorities, resources, or values.

b. Vision, Values, Mandates, or Priorities

A second problem posed by the changing political landscape concerns the problem that can variously be described as one of vision, values, mandates or priorities. The mushrooming of NGO's in all areas of the world, with Eastern European groups now entering the arena, raises the question of whether there is really one vision, one set of values, that all are working towards, or many visions and values.

While Western-based international human rights NGO's, who have dominated, and still largely dominate, the international landscape, have accepted by and large the unity of civil and political, and economic, social and cultural rights, a careful analysis of the mandates and activities of these NGO's points to an overwhelming emphasis, firstly on rights pertaining to the security of the person and, secondly, on civil and political rights. Amnesty International, which occupies such a central role in the field, has

a very narrow mandate: focusing on prisoners-of-conscience, torture, disappearances, due process of law, and the death penalty. While there have been pressures on Amnesty to expand its mandate, and while some broadening has occurred - this year, for example, AI decided to include as take up cases of persons seeking asylum who are placed in detention - one cannot expect any dramatic shift in focus.

There is no prominent international human rights NGO exclusively devoted to monitoring and exposing violations of economic and social rights.[22] Most Western-based human rights NGO's have not taken up such issues as Third World foreign debt, toxic waste dumping in the Third World, industrial pollution and "accidents" (e.g. Bhopal) by multinational corporations, the austerity programs imposed by international financial institutions, or land rights and the right to housing, as human rights causes. There are not even many international NGO's that have made the realization of economic, social and cultural rights a major concern. That still remains largely the domain of the "humanitarian," charitable or development organizations. Thus, we have annual reports on political imprisonment (Amnesty International), on freedom of expression (ARTICLE 19), on attacks on journalists (Committee to Protect Journalists), on press freedom (International Press Institute), on attacks on human rights defenders (the Watch Committees), on civil and political rights (Freedom House), on repression against trade unionists (International Confederation of Workers),[23] but nothing similar on the denial of the right to land, education, housing, health services, work. To many NGO's in the Third World, this is no longer acceptable. They question, in fact, whether we are all struggling for the same ends, and who defines them.

c. The Structural Causes of Violations

This leads to a third dilemma which human rights NGO's must confront. Until recently, much of the monitoring of human rights violations by the international human rights community has consisted of monitoring violations by governments. With a few exceptions, human rights NGO's have refrained from analyzing the structural causes of violations or structural violence.[24] Yet for many human rights activists, especially in third world

22. ATD Fourth World, based in France and the UK, might be so considered, but is not a particularly well-known NGO.

23. For a more comprehensive listing of annual reports, see: Wiseberg, "Experiences in Setting up a Human Rights Documentation Center & A Core Bibliography," forthcoming as part of a Report of the UNESCO-UNU International Training Seminar on the Handling of Documentation and Information on Human Rights, 22-24 November 1988, Tokyo.

24. Recently, a Dutch effort - the Interdisciplinary Research Project on Root Causes of Human Rights Violations (PIOOM) - has been initiated by the Centre for the Study of Social Conflicts.

countries, the grossest and most flagrant violations seem to be rooted in economic and social structures: the dominance of an ethnic group, the monopolization of land by an tiny elite, the subservience imposed on women by prevailing religious or cultural norms, and a development model borrowed from the West that sacrifices all values on the altar of maximizing GNP.[25]

Those in the human rights movement who have come to this conclusion have begun to raise a host of disturbing questions. For example, can the tactics and strategies of the human rights movement - lobbying governments, drafting legislation, taking cases to court, appealing to international arenas, really have any effect? Can law be used to effect structural changes? What is being called for is revolutionary change. But the methods of the human rights movement - legal, non-violent, appealing to conscience and public opinion - are the tactics of evolution.

Eastern Europe may, of course, belie that conclusion. However, in the third world, there is mounting frustration over the lack of fundamental change, despite the enormous expenditure of effort.[26] The frustration is exacerbated in countries - Malaysia, Sri Lanka, the Occupied Territories, Kenya - in which there appears to be a narrowing of political space for effective traditional human rights strategies.

This relates back to the earlier point - that human rights NGO's are, by and large, not mass-based and they do not seek political power for themselves. Yet, if human rights activists feel increasing inefficacious, increasingly marginalized, they may decide that the constraints imposed by our conception of a human rights group are constraints they are no longer willing to accept. The strategies of political mobilization and/or armed struggle may come to be perceived as the only answer to change. For international NGO's, the question then becomes - as with El Salvador, South Africa, the Philippines - what posture do they assume vis-à-vis insurgencies in the name of justice and human rights?

d. The Attitude of Human Rights NGO's to Violence

This, in fact, is the fourth challenge emanating from the environment - what should be the attitude of human rights NGO's towards revolution and violence. On this question, the human rights community has not been com-

25. This was a view very strongly expressed at the Crete meeting, see note 15 supra.

26. For example, Swami Agnivesh of the Bonded Labour Liberation Front has expressed enormous frustration at the failure of conventional strategies to eradicate the dehumanizing phenomenon of bonded labor. Although he has taken the issue to the UN Working Group on Slavery for several years, though the practice is outlawed under Indian law, and though BLLF has won favorable rulings from the Supreme Court on specific cases, millions continue in debt bondage in India.

pletely united. Some, like Amnesty International, have adopted stringent standards concerning advocating or engaging in acts of violence. Amnesty will not adopt as a prisoner-of-conscience anyone who has advocated or used violence, though AI is opposed to torture and the death penalty, regardless of the views or actions of the individual concerned.[27] Others have felt they had no option but to support what they consider to be struggles for national liberation.[28]

What is becoming increasingly problematic for human rights groups is the argument that they must monitor the actions of both insurgents and incumbents in civil war situations, and must judge both in accordance with the humanitarian laws of war as well as international human rights law. Traditionally, human rights NGO's have monitored only the actions of governments, not those of non-governmental entities. While human rights advocates recognized that other societal bodies or forces - criminal gangs, terrorist organizations, corporations, ethnic or religious communities, movement of armed opposition - could also be repressive and badly abuse human rights, the prevailing assumption was that such wrongdoings would, or should be, monitored and regulated by governments. Furthermore, since it was governments which signed and undertook obligations to respect international human rights law, it was government accountability that was the focus of concern.

That issue was first called into question in the early 1980's when the US government challenged NGO reporting on El Salvador as not "balanced" because it failed to monitor violations of the guerrilla forces. Later, in the face of Contra violations in Nicaragua, the issue became hotly debated within the US human rights community.[29] Currently, there is little consensus on either the desirability or the necessity of such "even-handiness." Some NGO's have adopted the practice of trying to monitor serious violations by all parties in a civil war; others feel it necessary to monitor at least the violations of quasi-governmental entities - armed oppositions which control significant territory and populations; still others feel that it would stretch already overtaxed resources beyond limits if they attempted such monitoring. Most NGO's, however, accept the premise that situations of armed conflict tend to produce some of the most egregious violations and are increasingly sensitive to the need to define their posture with respect to violence.

27. For this reason, Amnesty International never adopted Nelson Mandela though it did adopt Winnie Mandela as a prisoner-of-conscience.

28. The World Council of Churches, for example, has provided humanitarian assistance to liberation movements in Southern Africa, a policy that caused considerable dissention from conservative churches.

29. For a more expanded treatment of this, see Wiseberg, "Human Rights Reporting," Human Rights Internet Reporter, Vol. 11, no. 4 (November 1986), pp. 3-6.

This has led to yet another dilemma for human rights advocates: should they attempt to play a mediating role in society, to prevent violence and human rights violations before they occur? At the international level, there has been some discussion about early-warning systems, especially as regards the potential for genocidal conflict, and to prevent the flow of refugees,[30] though little progress has as yet been made in this area. At the national level, not infrequently, churches or even human rights groups are called upon to mediate.[31] But mediation is not a traditional role for human rights NGO's and it may conflict with their fact-finding role.[32] Nonetheless, human rights advocates have been questioning whether it is meaningful always be reactive, and therefore reporting on the latest violations, rather than being of proactive and attempting to prevent them.

2. Challenges from within the Movement

The challenges from within the movement are, in many respects, as profound as those posed by the changing political environment. The following are among them.

a. Cooperation and Coordination

With the vast proliferation of human rights NGO's, human rights arenas, and human rights documentation, one of the most pressing is the need for greater cooperation and coordination between organizations. To date, cooperation and coordination has been largely ad hoc and haphazard. This means that, despite the limited resources in the human rights movement, there is considerable duplication of effort and a great deal of reinventing the wheel. This results, for example, in five or six fact-finding missions going off to a country in crisis, with little consultation between missions. It results in a half-dozen NGO's submitting petitions to the United Nations about violations in one particular country, while little or no information is submitted about other comparable violators.[33] It results in careful NGO monitoring of, and participation in, the work of only a limited number inter-governmental human rights bodies to the neglect of many others. Apart from a handful of international human rights NGO's, others hardly have a

30. International Alert was created on this premise.

31. This has been the case in countries as diverse as Zimbabwe, El Salvador, and the Philippines.

32. For a discussion of the conflict between fact-finding and mediation in the context of UN rapporteurs, see Picken, op. cit. in note 21 supra, at p. 34.

33. The International Service for Human Rights was created in an attempt to assist NGO's to find their way around the UN system and to bring some measure of coordination into NGO UN work. The Service, however, operates with very limited resources: it is only a beginning and only a partial solution.

grasp of the overall system, how it operates, how to access it or impact on it.

At a more general level, we find that not all issues of all regions of the world are systematically covered. Moreover, NGO's, with limited resources, do little long-range planning. Most are reactive to the latest crisis. Thus some NGO's in repressive but largely "invisible situations" remain very isolated, while others - for the crisis period at least - have so much attention showered on them it may be counter-productive.

b. A Metropolitan-Periphery Relationship?

A second problem which has emerged from the development of the human rights movement was alluded to earlier: that a few international NGO's, by virtue of their competence, their professionalism, their prestige, have become "queens" on the chessboard. That is, they carry enormous weight in determining which issues will be taken up and how they will be framed, which countries and which violations will get maximum exposure, what strategies will prevail, etc.

That this has happened is inevitable and understandable. These are the NGO's which are at the center of the human rights movement, with perhaps the best overall understanding of the dynamics of the human rights game. It means, however, that despite the proliferation of NGO's throughout the world, a metropolitan relationship still exists within the human rights movement (perhaps not unlike the colonial pattern) where almost all lines of communication run from north or west to south or east. Earlier, we noted that most national and many regional human rights organizations, because they do not themselves have Consultative Status, must approach the UN through Western-based international NGO's. We also drew attention to three international human rights NGO's which were considered international not only because of their scope but by virtue of their worldwide affiliates; the question posed was whether, and to what extent, the affiliates shape policy.

While international human rights NGO's would resent allegations that they are paternalistic in their relationship with human rights NGO's from the periphery, human rights advocates from Africa, Asia and Latin America increasingly want the established international human rights NGO's to let them into the decision-making circle, not merely to speak on their behalf.

c. Credibility of NGO's and Reliability of Information

The problem of the relationship between international and national NGO's emerges in a somewhat similar form when it comes to the question of fact-finding and information. International human rights NGO's, because their

credibility depends so much on the reliability of their information, are generally reluctant to depend solely on information gathered and provided by national human rights organizations. This is particularly the case where local NGO's lack the professionalism and experience of the international ones. Thus, international NGO's often feel the need to send their own fact-finding missions, to check and double-check the facts for themselves. While in many cases, the relation between national and international NGO's in fact-finding is one of partnership, there are other instances when it has aspects of the paternalism mentioned above. The problem is likely to become more acute as NGO's in repressive societies become more closely allied with peoples' struggles and mass mobilizations, for international NGO's will invariable fear that the information coming from peoples' organizations is more "politicized," more "ideological," and therefore less "objective."

d. New Technologies for the Management of Information

In the whole area of information gathering and dissemination, human rights NGO's are confronting the need to take advantage of new technologies - ranging from fax machines, to computer networks, database programs, electronic mail, desk-top publishing, video-cameras, or microfiche. A few human rights organizations have done some pioneering work in this area, HURIDOCS, Human Rights Internet, and IDOC International among them.[34] Yet, until very recently, the whole area of information management is one that has been undervalued and underfunded in the human rights community. As a consequence, there has been an enormous amount of lost information - information which does not reach those who can act on it - and an enormous duplication of effort. If human rights NGO's are to maximize their scarce resources, they will need to invest in this area, not so much in the equipment itself as in training personnel capable to taking advantage of the new technologies.

In the area of information management, there is a related problem that human rights NGO's must confront: an unwillingness to share information with others for a whole variety of reasons. These can range from an NGO wanting to protect its access to information (which might be jeopardized if it were used by another group), to needing to be the first to publish a report to prove its value to funders.

34. HURIDOCS, in Oslo, has made a major contribution in developing standardized formats for the exchange of bibliographic information; Internet's databases, the Human Rights Reporter, and its directories remain unique information resources for disseminating human rights information worldwide; and IDOC International has done important work in training NGO's in the use of electronic communications.

e. The Need for Funding

The issue of funding is, of course, another challenge. While it cannot be adequately dealt with within the confines of this presentation, a major challenge faced by NGO's is the need to expand and diversify the sources of funding for human rights work. At the present time, very few human rights organizations have an independent funding base which derives from a mass-membership. Almost all are heavily dependent on a very small number of foundations, development agencies, or churches.[35] Indeed, the role of some funders is so central to the human rights movement that, inadvertently or consciously, they have an enormous influence on what monitoring, what reporting, what conscientization and education work is done.

The problem of funding is particularly acute for Third World organizations and it is not, therefore, surprising that governments have tried to control these NGO's by trying to regulate the foreign funds they can receive. However, funding is a problem even for human rights organizations based in the West, especially if they are not engaged in work "glamorous" enough to attract support.

f. Attracting the Support of other Social Movements

The final issue I wish to touch on concerns the challenge and the opportunity which exists for human rights organizations to broaden support by mobilizing other social movements - the environmental movement, the peace movement, the women's movement, the consumer movement - to human rights causes. The efficacy of this strategy has been most dramatically demonstrated in the revolutions in Eastern Europe, but it has also been manifest in other areas of the world.

VI. CONCLUSION:

To end this presentation, I have one recommendation: that the international human rights NGO's which, by virtue of their special prestige, expertise and legitimacy are the kings, queens, knights and bishops of the chessboard, have an obligation to assume certain responsibilities which, to date, they have not fully assumed.

(1) They have a role in seeing that the human rights mandate - the issues and concerns that need to be addressed by the human rights

35. For example, the role of the Ford Foundation has been so central to human rights funding that a decision of Ford to pull out of the area, or substantially reduce its contribution, would be catastrophic.

community - is a mandate that covers all the rights embodied in the International Bill of Human Rights. I do not mean to imply that they should change their own mandates, although they may wish to expand them in some cases. They should, however, be prepared to point out the lacunae and support the creation or work of other organizations on issues and regions that they themselves cannot cover.

(2) These NGO's have a special responsibility in coordination and co-operation - and/or encouraging others in that work - so that maximum advantage is taken of specialization and duplication of effort is avoided.

(3) They have an obligation to help train NGO's, especially in repressive societies, in such areas as fact-finding, information handling, and international procedures, so that relationships of partnership replace relationships of paternalism.

(4) They have an obligation to share the information they gather, to the extent possible, and to take advance of technological advances for this purpose, so that the information can be most effectively employed to prevent or ameliorate violations.

(5) They have an obligation to consider the funding needs of other NGO's so that essential work can be done, even if they are not the ones doing it.

(6) And they have a very special obligation to put all possible efforts into the question of how to protect human right monitors on the front line.

I do not know if there is one - or several - visions that animates the human rights community at this time. I do, however, believe that it is only through critical self-analysis - by examining their effectiveness, the scope and relevance of their mandates in the light of changing circumstances - and by working through hard issues, that the human rights NGO's can move forward to confront the challenges of the 1990's and beyond.

THE ROLE OF NGO's IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Niall MacDermot
Secretary-General of the International Commission of Jurists

I have been asked to address you on the role of NGO's in the promotion and protection of human rights.

Let me begin with protection, which I construe as meaning what NGO's do to protect individuals and groups from persecution and to come to the assistance of those suffering from gross violations of human rights.

The starting point is reliable information about violations. There is now a very large and informal world wide network of human rights NGO's, who exchange information about individuals cases and patterns of violations. The two most developed organisations in this field are Amnesty International and the 'Americas Watch' organisations. However, there are many other organisations including national organisations which make their own contribution.

In circulating urgent cases, the recipient organisations are usually asked to telex or fax the governments concerned, requesting them to investigate the cases and bring the offenders to justice. The fact that widespread international concern is often expressed within a matter of days does, we believe, lead to more action by the governments to suppress the violations. It is a matter for choice to whom to address the intervention. Most organisations address them to the head of state, with copies to the departments particularly concerned. For our part, we frequently address them to the Foreign Ministry, as it is this ministry that is most concerned about preserving the country's image and reputation.

In addition to this direct case work, there are other means of action. If there is a consistent pattern of these abuses, they can be reported to the UN Commission on Human Rights and its Sub-Commission, or to regional intergovernmental organisations. Articles can be written in our publications describing the violations, and special reports can be published on particular situations, accompanied by world wide press releases.

In appropriate cases missions can be sent to the countries concerned to investigate the pattern of violations. If there is an important trial, international observers can be sent to report on the conduct of the trial. Lawyers frequently tell us that the presence of observers helps them to have a fairer trial.

Within the United Nations there are a number of special rapporteurs, or working groups on particular countries, or on particular subjects such as

torture, extrajudicial killings, disappearances, and the rights of indigenous peoples, to which NGO's can and do send reports. There are also special committees of experts set up under international conventions to monitor the performance of State Parties to the convention, such as the Human Rights Committee monitoring the Covenant on Civil and Political Rights, the Committee on Economic, Social and Cultural Rights and the Committees on Racial Discrimination and on the Status of Women. NGO's do not have an official status in these committees, but the members eagerly await NGO documents which give them information on which they can question the representatives of the governments concerned.

I once had a clear indication of the value of such work. During the Greek dictatorship we received information that six lawyers had been arrested and were being tortured. We sent a mission to Athens composed of three internationally renowned human rights lawyers from the United States and Canada. The government refused to receive them, but the press was remarkably free at that time. The members of the mission held a press conference, which resulted in widespread publicity in the Greek press. When they got back to New York they held another press conference, which was front page news in the New York Times and other papers. A few weeks later the six lawyers were released. I met one of them afterwards in Geneva who confirmed that they had been severely tortured.

Some months later I was in the State Department in Washington and I asked if they thought our mission had contributed to the lawyers' release. "Contributed?", they said. "As a result of your mission we were able to say to the Greek government 'We don't want to interfere in your internal affairs, but when people of this renown denounce such cases, it becomes an internal matter for us, and affects our relations with you'". I feel certain that it was the US government's intervention which secured their release, but we as an NGO were able to create a situation which enabled the State Department to act.

The same thing can occur when intergovernmental human rights organisations intervene with offending governments. An example was the torture practices in Argentina. Many leading NGO's had sent missions to Argentina reporting in detail on the terrible tortures which caused the death of thousands of people. The government just dismissed these as propaganda by communists or their dupes. Eventually the Inter-American Commission on Human Rights sent a mission to Argentina. They received the same information from the same courageous Argentine organisations, and produced a magnificent report denouncing them. The government could not say that this was communist propaganda. The Junta met and decided that the torture practices had to stop. In the following year instead of hundreds of cases, there were only 16 reported and the year after that the practice had virtually ceased. Once again, it was NGO action which had led to effective intergovernmental action.

The work of NGO's which attracts most attention by the media is this casework, coming to the assistance of persons whose rights are being violated.

There is, however, another field of work which is less dramatic, but which in the long run can give protection to many people. This is the field known as 'standard setting'; that is the drafting of international conventions, declarations and other international instruments, which create new rights, or new means for their enforcement.

I hope it will not be thought immodest if I describe to you four ways in which our organisation has been engaged in this work of standard setting, namely

- the entry into force of the African Charter of Human and Peoples' Rights;
- the European Convention on Torture;
- the reform of the Japanese Mental Health Law; and
- the first international instrument on the Independence of the Judiciary.

First the African Charter. In 1961 the ICJ convened the first ever Conference of African Jurists. That Conference, held in Lagos, for the first time called upon the newly forming independent African States to establish an African Commission on Human Rights. This was followed up by two ICJ seminars in Dakar, Senegal. The second of these seminars in 1978 appointed a working group of leading African jurists under the chairmanship of Judge Kéba Mbaye, our then President. It was asked to visit francophone African Heads of State and urge them to support a recommendation for an African Human Rights Convention establishing an African Human Rights Commission. The ICJ raised the necessary funds and organised these visits to 11 countries. President Senghor asked the delegation that met with him to draft a resolution he could put to the next Heads of State meeting. This resulted in a unanimous resolution of the Heads of State to appoint a Committee to draft such a Convention, with Kéba Mbaye as the Rapporteur. At a subsequent meeting in 1981 their draft was approved by the Heads of State and opened for ratification. The Convention required ratification by 50% of the States of the Organisation of African Unity to bring it into force. Such a large number was unparalleled. After three years 15 of the 52 States had ratified, but there then followed a long pause without any further ratifications.

The ICJ then decided to organise in December 1985 a Conference on the Implementation of the African Charter. Participants were invited from among influential African jurists, governmental and non-governmental, from countries which seemed to be most likely to respond to an appeal for ratification. The proposal was strongly supported and committees were formed in each region of Africa to lobby their governments. Within six months, the necessary further 11 ratifications had been made enabling the Charter to come into force, and by the time it did a further three ratifications had been deposited.

The next crucial step was drawing up of the Rules of Procedure of the African Commission on Human and Peoples Rights, a task given to the Commission itself in the Charter. The ICJ organised a seminar in Dakar in June 1987 some months before the Commission was elected, to which were invited leading African jurists to discuss the appropriate procedures. Experts from the Council of Europe and in particular from the Inter-American Commission, made valuable contributions based on their experience. When the African Commission was elected, it was found that half the members had been participants at this seminar.

When the Commission was formed, the Chairman invited us to comment on the draft rules. We submitted a long document with over 40 additions and amendments. All but two were adopted by the Commission.

Some time later Judge Kéba Mbaye, in addressing the African diplomats club in Geneva on the African Charter, began by asserting that without the ICJ there would be no African Charter, and he then spoke at length spelling out in detail the ICJ's contribution which I have briefly summarised.

The second successful promotion, the European Convention on Torture, is one we shared with the Swiss Committee against Torture. Its President, the late Jean-Jacques Gautier, had conceived the idea that the only way to prevent torture was to have a confidential procedure which would not embarrass governments. His proposal was modelled on the confidential prison visits carried out by the International Committee of the Red Cross. A committee of persons serving in their individual capacity would be able to arrange visits by delegates to any place of detention they chose in member States, and to interview in private the persons detained. The difference from the ICRC procedure would be that State Parties would be bound to allow the visits to continue under all circumstances, especially under a state of emergency, and the visits could be made to all places of detention, including interrogation centres and mental hospitals.

Any practices of torture or cruel or inhuman treatment or punishment would be reported by the Committee to the government concerned. Providing action was taken to stop the practices, the whole matter would remain confidential and reported to no-one else. Only if the government refused to co-operate would the Committee be entitled, as a last resort, to publish their findings.

We were attracted by the realism of this proposal and together with the Swiss Committee we prepared a draft convention and circulated it to over 100 Member States of the United Nations. Favourable comments were received from some countries. One of them, Costa Rica, formally proposed to the UN Commission on Human Rights that, when the drafting of the UN Convention against Torture was completed, it should consider drafting an Optional Protocol on the lines of our draft convention.

The drafting of the UN Convention took an inordinately long time, with the result that the Legal Committee of the Council of Europe invited us to submit to them a draft European Convention embodying our pro-

posal. This we did and, to cut a long story short, this led to the adoption of the European Convention against Torture which came into force on 1 February 1989. Again together with the Swiss Committee, we organised and held in Strasbourg in November 1988 a promising seminar of experts from the Member States of the Council of Europe to discuss the implementation of this Convention.

The third example relates to mental health reforms in Japan. Before the second world war, it was the responsibility of families in Japan to look after their mentally ill relations. There was then, and still is, a widespread but mistaken belief that mental illness is hereditary. Consequently, it became the practice for families to hide away their mentally ill, even to the point of chaining them up in basements. They feared that if it became known that one of the family was mentally ill, their sons and daughters would be unable to marry.

After the war a Mental health Act was passed encouraging the development of mental hospitals, with substantial state support both for their construction and their operation. There were, and still are, no professional qualifications for psychiatrists in Japan. Under the Act any two medical doctors could establish a mental hospital, and patients could be admitted with the consent of their family for an indefinite period. The patient had no right of appeal, no-one to represent his interests, and there was no system of medical inspection. Mental hospitals then became a profitable growth industry. In 1988 there were over 330,000 involuntary patients admitted to hospitals where they were detained for an average of 8 years. With modern medical skills the average mental patient can be released from mental hospitals within a few months, providing the doctors are skilled psychiatrists and there are adequate mental health facilities in his community. Such facilities were, however, lacking in Japan.

A group of Japanese psychiatrists and lawyers sought to have the Mental Health Act amended in order to provide proper treatment and protection for mental patients. They succeeded in persuading the parliamentary opposition, but the vested interests in the system were too powerful and the government party could not be persuaded to alter the law. This group then decided to raise the matter at the international level, and approached us as well as some other NGO's. We gave publicity in our Review to some of the abuses that had developed under the system. We then decided to send to Japan a mission composed of two internationally renowned psychiatrists from the United States and Britain and an American judge with 20 years experience in presiding over a special tribunal for mental cases. They produced a powerful report describing the defects in the system and making detailed recommendations for their reform. Their report was translated into Japanese and widely distributed with extensive press publicity.

The government still could not be persuaded. We then approached the Ministry of External Affairs and pointed out that Japan was in violation of its obligation under Article 9 of the International Covenant on Civil and Political Rights, which Japan had recently ratified. This article says that any person deprived of his liberty shall have a right of appeal to a court.

This proved to be the turning point, and the Minister of Foreign Affairs was able to persuade his colleagues that the Mental Health Act had to be amended.

From then on the whole atmosphere changed.

The new law was approved by the Parliament and came into force on 1 July 1988. The ICJ was asked to send again its team of experts to visit hospitals and other facilities both public and private in a number of prefectures, and to discuss with them and with the prefectural authorities their plans for implementing the new law. The new law did not, of course, meet all the recommendations made in our report, but it was an important first stage. A shorter report was made by the mission with a number of recommendations, stressing in particular the need for adequate communal services. This also was translated into Japanese and widely distributed. During our visit, two seminars with the members of the mission were organised. One was with representatives of the central government and prefectural officials responsible for implementing the new law. The other was with representatives of the hospitals and all other medical, nursing and auxiliary services as well as representatives of the bar associations and of the association of mental patients. The attitude of all the participants at these seminars was very positive.

The government has indicated that it will review the working of the new Act at the end of five years. The ICJ has already been invited to send a third mission to Japan after the Act has been in force for three years.

I have described this remarkable development at some length to illustrate the scope and potentiality of international human rights, and to show the use that can be made of international instruments in the enforcement of human rights.

The fourth subject is the United Nations Basic Principles on the Independence of the Judiciary.

As is well known, every country claims to have an independent judiciary, but in many if not most cases there are serious limitations to this independence. It seemed to us that the only way to overcome these limitations would be to study the ways in which the independence of judges is undermined, and the procedures needed to safeguard their independence.

Shortly afterwards we persuaded Dr L.M. Singhvi, the Indian member of the UN Sub-Commission on Human Rights and a distinguished advocate, to raise the issue of the independence of the judiciary in the Sub-Commission. This he did with such good effect that he was appointed in 1979 Special Rapporteur for a study on the Independence of the Judiciary, Jurors and Assessors and the Independence of Lawyers.

We then arranged two seminars in Sicily, one in 1981 on the independence of judges and one in 1982 on the independence of lawyers. Each of these seminars brought together distinguished judges and lawyers from all regions of the world. Dr Singhvi who was the Special Rapporteur of the UN Sub-Commission on this subject attended both seminars, Meeting in private, the participants spoke frankly about the abuses and pressures to

which judges and lawyers were subjected, and proceeded to formulate principles for protecting the independence of the two branches of the legal profession.

The conclusions of these two seminars were submitted to the UN Sub-Commission and figured prominently in Dr Singhvi's report which was approved last year by the Sub-Commission and accepted this year by the Commission on Human Rights.

Meanwhile, on the initiative of Mr Justice Jules Deschênes, the then Chief Justice of Quebec, an important conference was held in Montreal in 1983 with participants from all regions to formulate draft Principles of Justice to be submitted to the United Nations. The Siracusa and Noto Principles proved to be the basic working papers for the conference and nearly all these principles were embodied in the final text of the Montreal conference.

Judge Deschênes submitted the report of this conference to the UN Committee on Crime Prevention and Control in Vienna which was then preparing draft 'Basic Principles on the Independence of the Judiciary' for consideration at the Seventh UN Congress on the Prevention of Crime and Treatment of Offenders meeting in Milan in 1985. The then Director of our Centre for the Independence of Judges and Lawyers attended the Milan Congress and, together with the Canadian representative, worked intensively lobbying the delegates and negotiating a refined text which was acceptable to them all. For the document to be acceptable to experts from many different legal systems, it was inevitable that it should be of a more general nature than some of the documents I have referred to. However, all the most essential principles were maintained. The resulting document was submitted to the UN General Assembly which unanimously approved the Basic Principles and called upon all governments to respect them and take them into account in their national legislation and practice.

This was a very important development. The Basic Principles set forth general guidelines on the independence of the judiciary and the freedom of expression and freedom of association of judges, as well as principles regarding their qualification, selection, training, conditions of service, tenure, immunity, discipline, suspension and removal.

Consequently, those, who like our CIJL, are striving to improve the independence of the judiciary now have a most useful tool to enable discussions to take place with governments as to the extent to which they are applying the principles to which they have already given their assent in the General Assembly resolution.

So on these four matters, one at the universal level, two at the regional level in Africa and Europe, and one at the national level in Japan, we have seen brought to fruition work in which we had been engaged for many years.

Other subjects on which we have been engaged in standard-setting debates within the United Nations are the obligations of States parties to the Inter-

national Covenant on Economic, Social and Cultural Rights, the limitation and derogation provisions in the International Covenant on Civil and Political Rights, the rights of indigenous populations; principles for the protection of persons under any form of detention or imprisonment; enforced or involuntary disappearances; administrative detention; the elimination of racial discrimination; the right to development; and discrimination against AIDS victims.

All these activities are directed to helping to define and develop human rights, to promoting respect for them, to preventing violations, and to coming to the assistance of victims, but the contribution of non-governmental organisations in this field is not widely known.

THE ROLE OF NGO's IN INTERNATIONAL HUMAN RIGHTS STANDARD-SETTING; NON-GOVERNMENTAL PARTICIPATION A PREREQUISITE OF DEMOCRACY?

Theo van Boven

INTRODUCTION

1. It is a welcome opportunity to discuss at this symposium which is organized in the honour of the International Commission of Jurists, the role of Non-Governmental Organizations (NGO's) in the promotion and protection of human rights. The International Commission of Jurists quite rightly earned a reputation as an organization that largely contributed to the cause of human rights. The prestigious Erasmus Prize conferred yesterday upon the International Commission of Jurists is again a recognition of the great merits of the ICJ and the excellent work performed by the Secretary-General and his staff.

2. It is now common knowledge that many NGO's play an important role in the collection and dissemination of facts concerning alleged violations of human rights. Relevant reports are frequently quoted in the press and many institutions and organizations, such as the United Nations, rely heavily on information concerning violations of human rights provided by non-governmental organizations and groups. It is less well known that a good number of NGO's are performing many more functions for the sake of human rights and fundamental freedoms. The fact that NGO's also make contributions - and not rarely very significant ones - to the development of human rights norms is an aspect of NGO activities which is generally overlooked. Most articles and commentaries written on the role of NGO's in the promotion and protection of human rights tend to ignore standard-setting activities. In view of the very substantial and prominent contributions made by the International Commission of Jurists in the area of human rights standard-setting, it is most appropriate that this aspect of NGO work is the focus of this afternoon's attention.

3. International relations and very much the treaty-making process are traditionally the privileged domain of Governments as representatives of Nation States. Governments are the main actors. The term Non-Governmental Organizations implies that they are only marginal or at best auxiliary bodies. Marc Nerfin, the president of the International Foundation for Development Alternatives, thought that the concept of NGO's was "politically unacceptable because it implies that governments are the centre of

society and people its periphery."[1] Similar criticism was voiced by Johan Galtung when he said "... there are the international "non-governmental" organizations, so called by governments - a term we should not necessarily accept. International people's organizations may be more accurate, not by that necessarily implying that governments are non-people organizations."[2] This discussion of terminology is not just a play of words. It raises issues of the representative character and the legitimacy of international actors and of the democratic quality of international relations, including treaty-making and other standard-setting processes. We will revert to these issues at a later stage in this presentation.

4. The United Nations Charter, in providing for consultative arrangements with non-governmental organizations, exclusively reserved this facility to matters falling within the competence of the Economic and Social Council.[3] Human rights fall within this category, but non-governmental involvement in such hard-nosed political matters as peace and security or disarmament was not accepted in the original philosophy of the UN Charter. Political issues were apparently considered the monopoly of inter-governmental co-operation, while economic, social and human rights issues warranted some degree of non-governmental involvement by means of consultative relationships. This dichotomy between political matters on the one hand and economic, social and human rights matters on the other and its implications as to the role of non-governmental organizations are no more valid, both at national and at international levels. In his latest annual report on the work of the Organization, the Secretary-General of the United Nations explicitly recognized the constructive role of NGO's in the broad area of peace. After having paid tribute to the efforts of NGO's when he reviewed UN activities in the field of human rights,[4] the Secretary-General quite rightly highlighted the activities of NGO's in support of peace. He stated: "For the size and strength of the constituency of peace, a great deal of credit is due to non-governmental organizations around the world. Their tireless work in many vital areas has complemented and supported the efforts of the United Nations."[5] Along similar lines the Soviet legal scholar Rein Mullerson, expert member of the Human Rights Committee, recently expressed his appreciation for the active involvement of NGO's in the broad political arena. He wrote: ".... I want to stress the growing importance of non-governmental organizations in

1. Marc Nerfin, The Future of the United Nations System; Some Questions on the occasion of an Anniversary, in Development Dialogue 1985: 1, pp. 1-25 (on p. 25).
2. Johan Galtung, The United Nations Today: Problems and Some Proposals, Lecture delivered on the Occasion of His Appointment as Visiting Professor to the Röling Chair in International Peace and Conflict Research, Faculty of Law, University of Groningen, 24 October 1988, 21 pages (on p. 18).
3. Article 71 of the UN Charter.
4. Report of the Secretary-General on the Work of the Organization, September 1989, UN doc. A/44/1, section VII.
5. Ibidem, section XV.

the law making process of the international arena, that is, the role of world public opinion. These organizations often express values and interests common to mankind as a whole. Although states remain the main law making authorities, they have to take into account the will of various democratic, antiwar and antinuclear movements."[6]

5. The impression might have been created that I equate NGO's with peoples organizations or popular organizations. While it is true that some NGO's could qualify as such, the majority of NGO's serve more limited purposes. The variety among the numerous NGO's is nearly endless. For the purposes of this presentation I have primarily in mind those NGO's which play a role in international human rights standard-setting. In this respect it is useful to look into the resolution of the UN Economic and Social Council which spells out the arrangements for consultation with non-governmental organizations, including principles to be applied in the establishment of consultative relations and principles governing the nature of the consultative arrangements.[7] Two functions are explicitly mentioned which NGO's are expected to carry out. First, to give expert information or advice on matters in which they have special competence. Second, to express views in representing important elements of public opinion in a large number of countries.[8] In other words the contributions of NGO's rest on two premises: their expertise and their representative character.

SOME HISTORICAL NOTIONS

6. The involvement of NGO's in the process of human rights standard-setting is generally speaking a recent phenomenon. Nevertheless, there are classical examples of NGO's which have been active since a long time in international campaigns against slavery and against the traffic in women and children and thereby creating a climate favourable to the conclusion of international conventions in these areas. The Anti-Slavery Society which celebrates this year its 150th anniversary should be mentioned with honour. Another prestigious NGO, the International Committee of the Red Cross, has been instrumental in developing standards of international humanitarian law from the 1864 Geneva Convention for Protection of War Victims onwards to the 1977 Protocols additional to the Geneva Conventions of 1949.[9]

6. R.A. Mullerson, New Thinking by Soviet Scholars; Sources of International Law: New Tendencies in Soviet Thinking, American Journal of International Law, July 1989, vol. 83, No. 3, pp. 494-512 (on p. 512).

7. Resolution 1296 (XLIV) of the Economic and Social Council, dated 23 May 1968.

8. Ibidem, para. 14.

9. Abderrahman Youssoufi, Le rôle des organisations non gouvernementales dans la lutte contre les violations des droits de l'homme, l'apartheid et le racisme, in Violations des droits de l'homme: quel recours, quelle résistance? UNESCO, 1983, pp. 109-125 (on p. 114).

And the International Association for Labour Legislation initiated the conclusion of international labour conventions in Berne in 1905, 1906 and 1913 which were the forerunners of the many conventions adopted in later years by the International Labour Organization.[10]

7. Of historic importance was the role played by the representatives of NGO's who were invited to serve in a consultative capacity on the United States delegation to the San Francisco Conference which accomplished in 1945 the drafting of the United Nations Charter. When it became apparent in a crucial stage of the conference that the draft charter was very weak on human rights, a delegation of non-governmental representatives carried out an urgent démarche with the US Secretary of State, Mr Stettinius, emphasizing the imperative need for expeditious and effective action by the United Sates in order that the UN Charter be strengthened with respect to the future role of the world organization in the area of human rights. It was stated by the delegation that the proposals submitted by them were not the programme of one or two organizations in the United Sates, but reflected fundamental desires of the vast majority of people.[11] The démarche had the desired effect. The United States succeeded in persuading the other major powers and as a result the emphasis on human rights in the UN Charter became much stronger than the reference to human rights in the earlier Dumbarton Oaks proposals. The non-governmental input was officially acknowledged in a passage of Secretary of State Stettinius' report to President Truman. The relevant part of the report reads:

> "In no part of the deliberations of the Conference was greater interest displayed than by the group of American consultants representing forty-two leading American organisations and groups concerned with the enjoyment of human rights and basic freedoms to all peoples. They warmly endorsed the additions to the statement of objectives. Beyond this they urged that the Charter itself should provide for adequate machinery to further these objectives. A direct outgrowth of discussions between the United States delegation and the Consultants was the proposal of the United States delegation in which it was joined by other sponsoring powers that the Charter (Article 68) be amended to provide for a Commission on Human Rights of which more will be said later."[12]

8. A major operation in UN human rights standard-setting was of course the process that led to the adoption in 1948 of the Universal Declaration of Human Rights and in 1966 of the International Covenants on

10. Egon Schwelb, Human Rights and the International Community, Chicago 1964, p. 18.

11. O. Frederick Nolde, Free and Equal, Human Rights in Ecumenical Perspective; with reflections on the origin of the Universal Declaration of Human Rights by Charles Habib Malik, Geneva 1968, pp. 21-24.

12. Ibidem, p. 25.

Human Rights, including the Optional Protocol to the International Covenant on Civil and Political Rights. These instruments constitute together the International Bill of Human Rights, the drafting of which was considered at the San Francisco Conference a priority task for the United Nations. It is a matter of record that some NGO's played a considerable role in the drafting of certain articles of the Universal Declaration of Human Rights and of the corresponding provisions in the International Covenants. As Charles Malik, in the early years the Lebanese member of the Commission on Human Rights and Chairman of the Third Committee of the UN General Assembly which adopted the Universal Declaration, recalled in 1968, article 16 of the Universal Declaration on the rights of the family owes much of its inspiration to Catholic sources and the wording of article 18 on freedom of religion or belief can largely be attributed to Dr Nolde, the then Director of the Commission of the Churches on International Affairs of the World Council of Churches.[13] A study of the "travaux préparatoires" of the International Bill of Human Rights reveals that NGO's did participate in the debates on the drafting of texts, at least on the level of the Commission on Human Rights and its drafting group, but that they were not entitled to formally move proposals in their own name. In order to get their proposals examined on the floor the NGO's needed the sponsorship of governmental representatives. In this respect Charles Malik noted: "The non-governmental organizations, therefore, served as batteries of unofficial advisers to the various delegations, supplying them with streams of ideas and suggestions." And he described the shaping of the Universal Declaration in the following terms: "The genesis of each article, and each part of each article, was a dynamic process in which many minds, interests, backgrounds, legal systems and ideological persuasions played their respective determining roles."[14]

9. The "travaux préparatoires" of the International Bill of Human Rights present a picture of predominantly Western oriented NGO's that took an active interest in this process of international legislation.[15] Among these NGO's representatives of jewish and christian organizations took a keen interest in matters of immediate concern to them. They acted in close co-operation with governmental representatives who were sympathetic to these NGO concerns. But at the end of the day the governmental representatives were the decisive actors; they had the power of decision-making. When we will be discussing some more recent developments of the NGO role in international human rights standard-setting, we will note important changes progressively taking place in the spectrum and outlook of NGO's, in their methods of work and in their relationships with governments. But one fundamental aspect has not changed: in the final

13. Ibidem, p. 11.

14. Ibidem, pp. 11-12.

15. Marc J. Bossuyt, Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights, 1987. See in particular p. 823.

analysis governments are the decision-makers as regards the contents and the adoption of conventions and other international human rights instruments.

SOME AREAS OF SPECIAL NGO INTEREST

10. While I am aware of substantial non-governmental input in human rights standard-setting activities of a whole range of international organizations, notably the International Labour Organization with its tripartite structure, the Council of Europe and the Organization of American States, I will mainly focus on the impact of NGO activities on standard-setting carried out in the framework of the United Nations, which is after all the most comprehensive and central agency for the development and codification of international human rights norms. As pointed out in connection with the drafting of the International Bill of Human Rights, jewish and christian NGO's traditionally took an active interest in establishing international norms on freedom of religion or belief. They have continued to push for the elaboration of more detailed standards in this area which finally resulted in the adoption in 1981 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Whether the declaration should be followed by a convention on the subject is a matter of protracted discussion.[16] Also the related issue of conscientious objection to military service has a long-standing interest on the part of peace movements, such as the International Peace Bureau, War Resisters International and the Friends World Committee for Consultation. It is partly due to their unrelenting efforts over a period of some fifteen years, through publications, written and oral submissions and a good lobbying strategy with interested government representatives, that the UN Commission on Human Rights recognized in recent years that the right to conscientious objection to military service is a legitimate exercise of the right to freedom of thought, conscience and religion.[17]

11. Without trying to be complete I will briefly review three other areas of special interest to NGO's where these organizations played and are still playing an instrumental role in human rights standard-setting activities. The first is the abolition of torture and related issues, including the rights of detainees and prisoners. The second area is that of the rights of the child. The third area concerns the rights of indigenous peoples. The impact of NGO efforts on UN standard-setting in order to protect persons sub-

16. See on this issue the Working Paper prepared by Theo van Boven and submitted to the forty-first session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities under the item: Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, UN doc. E/CN.4/Sub.2/1989/32, 31 pages.

17. Commission on Human Rights resolutions 1987/46 of 10 March 1987 and 1989/59 of 8 March 1989.

jected to detention or imprisonment is a matter of public record and a good deal of literature is available. I refer in particular to Nigel Rodley's book on "The Treatment of Prisoners under International Law", to the handbook written by Herman Burgers and Hans Danelius on "The United Nations Convention against Torture" and many articles.[18] It was not by coincidence that the process leading to a series of international instruments on the protection of persons subjected to detention or imprisonment started in the UN General Assembly in 1973. Two events were in this respect of major significance. First, the one-year campaign for the Abolition of Torture launched by Amnesty International in December 1972 with the support of a broad range of NGO's, which included the publication of a "Report on Torture" and the holding of a major international conference. This campaign had an important impact on the media, public opinion and the sensitivity of governments. The other event was the military coup d'état in Chile on 11 September 1973 and the many acts of brutality and cruelty committed against the life and the integrity of the human person, which profoundly shocked international public opinion. These events, together with other factors such as victories for democracy in Greece and Portugal, mobilized forces in governmental and non-governmental circles and created a climate conducive to developing a comprehensive programme for the protection of the human person against torture and other cruel, inhuman or degrading treatment of punishment. An important part of that programme aimed at strengthening the normative basis by way of standard-setting activities. Thus, the General Assembly inspired by non-governmental ideas set out the following normative lines: (a) rules against torture and ill treatment, (b) safeguards against arbitrary arrest and detention, (c) professional ethics for police and other law enforcement officers, (d) professional ethics for medical personnel.[19] Now, some fifteen years later we note that the following UN international instruments resulted from this programme and are on the books:

1. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975),
2. Code of Conduct of Law Enforcement Officials (1979),

18. Nigel Rodley, The Treatment of Prisoners under International Law, Oxford 1987, in particular pp. 17-43; J. Herman Burgers and Hans Danelius, The United Nations Convention against Torture; A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dordrecht/Boston, London 1988; see also Virginea Leary, A New Role for Non-Governmental Organizations in Human Rights; A Case Study of Non-Governmental Participation in the Development of International Norms on Torture, in UN Law/Fundamental Rights; Two Topics in International Law, edited by Antonio Cassese, 1979, pp. 197-210; David Weissbrodt, The Contribution of International Non-governmental Organizations to the Protection of Human Rights, in Human Rights in International Law, Legal and Policy Issues, edited by Theodor Meron, 1984, pp. 403-438 (on pp. 429-430).

19. See in particular Rodley (note 18), pp. 26 ff.

3. 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 (1982),
4. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984),
5. Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988).

Most of these instruments are the product of consistent and skillful efforts of governmental and non-governmental experts. On the governmental side the contributions of countries like the Netherlands and Sweden were very substantial, on the non-governmental side much credit should go to Amnesty International and the International Commission of Jurists for their political lobbying and their skillful drafting work, with the constant aim in mind to enhance the level of protection. It would go beyond the scope of the present paper to review in detail the non-governmental inputs, sometimes consisting of proposals for entire documents and in many other instances by presenting draft articles or amendments. A text which was nearly in its entirety the product of non-governmental efforts and which received formal endorsement by the UN General Assembly, were the 1982 Principles of Medical Ethics. These principles were prepared by the Council for International Organizations of Medical Sciences (CIOMS), a non-governmental organization established with the joint sponsorship of the WHO and UNESCO, and submitted to the UN through the WHO at the invitation of the General Assembly.[20]

12. The lengthy drafting process of a Convention on the Rights of the Child, which was initiated by Poland when it submitted in 1978 a draft to the Commission on Human Rights based on the 1959 Declaration of the Rights of the Child, mobilized numerous NGO's. Over the years when the drafting process took its course in a special working group of the Commission on Human Rights, some 35 organizations established in Geneva an informal NGO Ad Hoc Group in order to consult each other and to arrive at common approaches and common strategies. A leadership role was played by Defence for Children International (DCI). There were, however, also some NGO's which preferred to act separately. Many articles of the draft convention, which is now before the UN General Assembly, were proposed or influenced by NGO's and the NGO Ad Hoc Group recently noted that the NGO impact became greater as of the establishment of the NGO Ad Hoc Group.[21] The Ad Hoc Group also recognized that on a number of issues their efforts had remained without success. Furthermore the same group noted that it was very much a European/North American body and

20. Rodley (note 18), pp. 291-301.

21. Summary of Proceedings of Informal NGO Ad Hoc Group held in Geneva on 17-19 May 1989, p. 9.

it regretted that there had not been more NGO representatives from other parts of the world.[22] In this respect it is interesting to note that the present author, when on a mission to Argentina in July 1988 in connection with a UN mandate on disappeared children, was approached by a large coalition of Argentine NGO's in order to discuss the draft convention. It is not too bold an assumption that the drafting process of the children's convention created a momentum that rallied interested and dedicated NGO's in many parts of the world. That NGO's largely contributed to the draft convention on the rights of the child was also officially acknowledged by Mr Lopatka, the Polish Chairman-Rapporteur of the Working Group on the Question of a Convention on the Rights of the Child, when he presented the draft convention to the Commission on Human Rights on 8 March 1989.[23]

13. A third area of human rights standard-setting of special interest to NGO's, concerns the rights of indigenous peoples. When the International Bill of Human Rights and subsequent international instruments were drafted, virtually nobody involved in the drafting process had in mind the specific rights and interests of indigenous peoples stemming from their collective and distinct characteristics. Their plight became only a matter of UN concern in a comprehensive Study of the Problem of Discrimination against Indigenous Populations, carried out by Mr Jose Martínez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.[24] Among its many recommendations the study put forward the idea that the Sub-Commission and its subsidiary organs prepare a declaration of the rights and freedoms of indigenous populations as a possible basis for a convention and it recommended also that authentic representatives of the world's principal indigenous organizations participate directly in the preparatory work.[25] And in fact the evolution of standards of the rights of indigenous peoples became one of the priority tasks of the Sub-Commission's Working Group on Indigenous Populations, which was created in the early eighties. The Working Group is presently seized with a revised text of a draft Universal Declaration on the Rights of Indigenous Peoples.[26] According to the report of the 1989 session of the Working Group some 135 non-governmental organizations were represented in the Working Group (approximately 10 indigenous peoples' organizations having consultative status, 25 other NGO's with consultative status, 70 indigenous peoples' organizations without consultative status but represented with the consent of the Working Group, 30

22. Ibidem, p. 13.

23. UN doc. E/CN.4/1989/SR.54, paras. 4 and 9.

24. UN doc. E/CN.4/Sub.2/1986/7 and Addenda, UN Sales No. E.86.XIV.3.

25. Ibidem, volume V, Conclusions, Proposals and Recommendations, paras. 627-628.

26. See Report of the Working Group on Indigenous Populations on its seventh session, UN doc. E/CN.4/Sub.2/1989/36, in particular Annex II containing the first revised text of the draft Universal Declaration on the Rights of Indigenous Peoples, as presented by the Chairman/Rapporteur, Ms Erica-Irene Daes.

other organizations and groups without consultative status and also represented with the consent of the Working Group)[27] They are all entitled to participate and to provide information to the Working Group. In view of the considerable financial burdens which travel to and stay in Geneva constitute for indigenous organizations and groups coming from other continents, the United Nations had the care and the wisdom to establish a trust fund in order to meet the expenses of a number of indigenous representatives. It should be noted that in UN documents the term "indigenous peoples' organizations" is now common use which implies something more and different than the term "non-governmental organizations."[28] This terminological question has some relevance in the discussion of issues of indigenous rights as peoples' rights and the international personality of indigenous peoples. I should also mention that the recent revision of the ILO Convention on Indigenous and Tribal Populations (No 107) of 1957, resulting into the new Indigenous and Tribal Peoples Convention (No 169) of 1989, drew a great deal of interest on the part of indigenous organizations and groups. While it is generally welcomed that the assimilationist thrust of the earlier ILO Convention of 1957 is now replaced by the recognition that indigenous peoples have the right to exist as distinct communities on the foundation of indigenous rights, the process leading to the adoption of the new convention as well as some aspects of that international instrument gave rise to some controversies and misgivings.[29] In view of the special interest of this question I will revert a little later to the issue of the indigenous participation in this ILO exercise.

MODALITIES OF NGO CO-OPERATION, CONTRIBUTION, PARTICIPATION

14. There are many ways in which NGO's may contribute to the development, adoption and acceptance of international human rights standards. The Campaign for the Abolition of Torture by Amnesty International created together with other factors, as we have seen, a climate which prompted governmental and non-governmental actors to embark upon an elaborate programme of standard-setting aimed at the abolition and the prevention of torture and related practices. This is a matter of mobilizing public opinion, of trying to exercise public pressure, sometimes involving parliaments, political parties, churches and other religious bodies, trade unions, professional groups and other organs of national and international society. NGO's also use public means as well as discrete methods with a

27. Ibidem, paras. 6-7.

28. Russel Lawrence Barsh, United Nations Seminar on Indigenous Peoples and States, American Journal of International Law, July 1989, vol. 83, No. 3, pp. 599-604 (on p. 602, note 20).

29. Report of the Working Group on Indigenous Populations (note 26), paras. 29-31 and 60.

view to influencing governments and parliaments in order to obtain the acceptance of international human rights treaties through ratification or accession. All these activities are important as a counterweight to immobility and lethargy which are characteristic for quite a few national and international bureaucracies.

15. As regards the actual drafting of international standards, NGO's choose to follow different practices and different procedures, depending on the rules applied by international fora (such as working groups, the Sub-Commission and the Commission on Human Rights in the UN), the receptivity of these fora to NGO input, the type of relationships and the affinity of NGO's with international secretariats and with governmental delegates. We noted that at the time of the drafting of the International Bill of Human Rights, NGO's were not entitled to move proposals and amendments in their own name. They counted on their good relationships with governmental delegates and co-operated in certain instances closely with them. In more recent practice, although no formal rules of procedure provide for this, NGO's are entitled to put forward drafting proposals in their own name and on the same footing as governmental representatives, at least at the level of working groups. The drafting history in the Commission's Working Groups on the UN Convention against Torture and on the Convention on the Rights of the Child furnishes ample evidence of this practice.[30] At that level of working groups - low in the hierarchy of the UN machinery but important in terms of legal expertise and technical skills - the NGO's often act as full participants and sometimes as principal actors. The same practice has also developed in working groups and drafting bodies of the UN Sub-Commission, most recently also with respect to draft principles on the right of the mentally ill and the draft declaration on the protection of all persons from enforced or involuntary disappearances.[31] Nevertheless, the NGO Ad Hoc Group on the Rights of the Child observed at a recent evaluation meeting that "NGO's increasingly realized the relative effectiveness of working with and through a wide range of government delegates instead of trying to push their proposals directly from the floor."[32]

16. There are also quite a few instances of NGO's drawing up complete texts of international instruments on issues which are of special interest to them. Thus, we came across the Principles of Medical Ethics, initially drawn up by the Council for International Organizations of Medical Sciences (CIOMS) and finally approved by the UN General Assembly. The

30. See also J. Herman Burgers, An Arduous Delivery: The United Nations Convention Against Torture (1984), in Effective Negotiations, Case Studies in Conference Diplomacy, edited by Johan Kaufmann, 1989, pp. 45-52 (on p. 46).

31. See the 1988 and 1989 Reports of the Working Group on Detention of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN doc. E/CN.4/Sub.2/1988/28 and E/CN.4/Sub.2/1989/29.

32. Summary of Proceedings of Informal Ad Hoc Working Group (note 21), p. 14.

International Association of Penal Law (IAPL) proposed early 1978 to the Commission on Human Rights a draft convention for the Prevention and Suppression of Torture but the Commission decided to take a Swedish draft as the basis for further work.[33] Among other drafts, elaborated and presented by NGO's to the UN for further action, may be mentioned a Declaration on the Right to Leave and to Return to one's Country, sponsored by the International Institute of Human Rights and the Jacob Blaustein Institute for the Advancement of Human Rights,[34] and the draft for a Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance prepared by the International Commission of Jurists on the basis of informal consultations carried out by ICJ with governmental and non-governmental organizations in Latin America, and also with the Inter-American Commission on Human Rights and the UN Working Group on Enforced or Involuntary Disappearances.[35] Other NGO's also elaborated complete texts for normative documents in the field of human rights. They had no immediate effect on UN standard-setting but were drawn up in the hope that they may have international impact. In this category falls the Algiers Declaration of the Rights of Peoples, elaborated in 1976 under the sponsorship of the International Foundation for the Rights and Liberation of Peoples.[36] Also the International Law Association (ILA) produced normative documents which deserve attention, such as the Paris Minimum Standards of Human Rights Norms in a State of Emergency (1984)[37] and the Declaration of Principles of International Law on Mass Expulsion (Seoel, 1986).[38]

17. In the foregoing the role of NGO's was discussed in relation to preparing the ground and creating the climate for international standard-setting, with regard to their involvement in the actual drafting of international instruments and as regards their role in promoting the wider acceptance of human rights standards. Another role NGO's have assumed is that of elaborating further interpretative rules in connection with already existing international instruments. Thus, in 1984 the International Commission of Jurists jointly with the International Association of Penal Law and the Urban Morgan Institute of Human Rights drew up in Siracusa,

33. J. Herman Burgers and Hans Danelius, The United Nations Convention against Torture (note 18), pp. 26 and 38.

34. Hurst Hannum, The Rights to Leave and Return in International Law and Practice, 1987, see in particular Appendix F (pp. 154-158).

35. 1989 Report of the Working Group on Detention (note 31), paras. 12 ff.

36. François Rigaux, The Algiers Declaration on the Rights of Peoples, in UN Law/Fundamental Rights, Two Topics in International Law, Editor Antonio Cassese, 1979, pp. 211-223.

37. International Law Association, Report of the Sixty-First Conference, Paris 1984, pp. 1 and 56 ff.

38. International Law Association, Report of the Sixty-Second Conference, Seoel 1986, pp. 12-18.

Sicily, definitions and commentaries upon the meaning and scope of the derogation and limitation provisions in the International Covenant on Civil and Political Rights. The document that emerged carries the name of "Siracusa Principles".[39] Two years later, in 1986, the International Commission of Jurists together with the University of Limburg and the Urban Morgan Institute elaborated in Maastricht, Netherlands, a set of principles on the nature and scope of the obligations of the International Covenant on Economic, Social and Cultural Rights and on the implementation of the Covenant. The result of these efforts is called the "Limburg Principles."[40] Both the Siracusa Principles and the Limburg Principles were the product of in-depth research and studies by scholars and intense deliberations by human rights experts and practitioners. The Siracusa and the Limburg Principles were not only circulated in UN documents and cited in UN and other studies, they are also occasionally referred to as an authoritative source in the committees that carry out supervisory tasks with respect to the implementation of the two international covenants.

EFFECTIVENESS OF NGO ACTIVITIES

18. NGO's have increasingly become active and effective in their standard-setting work. In the context of the UN and other international organizations certain skills and qualities are highly important if not indispensable for making an impact. Expertise is a key quality, but also diplomatic skills, good relationships and contacts and a clear vision about objectives matter a great deal. Without implying that the NGO Ad Hoc Group on the Rights of the Child was necessarily the most effective model of NGO co-operation and input, it is certainly instructive to read the factors which the Group identified in its evaluation report as contributing to what is considered the success of the Group. Among those factors are: motivation of its membership, tenacity with which it advocated, wide range of professional experience it embodied, professionalism it displayed, the Groups's secretariat as a focal point of information and co-ordination, the presence of UNICEF as a partner, informal social contacts with government delegates, the credibility obtained with chairman of the UN Working Group, the constant consultation among NGO's, the appointment of one NGO spokesperson on specific issues etc. The NGO Ad Hoc Group also observed that as a group the NGO's had considerable specific expertise to offer that was lacking within the UN.[41] We noted earlier (para. 5 above) that the contributions

39. The Siracusa Principles are reproduced in the Review of the International Commission of Jurists, No 36, June 1986, pp. 47-56 and circulated in UN doc. E/CN.4/1985/4 at the request of the Netherlands.

40. The Limburg Principles are reproduced in the Review of the International Commission of Jurists, No 37, December 1986, pp. 43-55. They were also circulated as a UN document by the Netherlands government.

41. Summary of Proceedings of Informal Ad Hoc Working Group (note 21), pp. 12-14.

of NGO's rest, according to rules and regulations for consultative status, on two premises: the expertise and the representative character of NGO's. In the foregoing the element of expertise was highlighted. The question of the representative character also deserves some further attention.

REPRESENTATIVE CHARACTER

19. The United Nations Charter was proclaimed in the name of "We the Peoples". The principal decision-makers in the Organization are Governments of Member States. However, in many instances governments cannot be considered as the genuine representatives of the people over whom they exercise authority. The notion of "We the Peoples" often appears more a fiction than a fact. In a sympathetic but not very realistic effort to correct this state of affairs and to make the United Nations a more truly representative organization the idea was put forward to create a three-chamber UN General Assembly: a Prince Chamber representing the governments, a Merchant Chamber representing the economic powers and a Citizen Chamber which would speak for the people and their associations.[42] For the time being this interesting utopian idea may be commended to those who work for world federalism. However, when the UN made arrangements for consultation with NGO's it was at least assumed that these NGO's be of "representative character and of recognized international standing, representing a substantial proportion and expressing the views of major sections of the population or of organized persons within the particular field of its competence, covering, where possible, a substantial number of countries in different regions of the world."[43] The United Nations and other inter-governmental organizations based themselves on a neat and balanced division of work between governments on the one hand and NGO's on the other, each having their own representative and distinct roles.

20. With the appearance of indigenous peoples' organizations on the international scene, it became clear that existing international structures and arrangements do not fit the perceptions and aspirations of these indigenous organizations. They openly challenge the representative character of governments and they claim to be the genuine representatives of indigenous communities. At the level of the Sub-Commission's Working Group on Indigenous Populations a practical solution has been found. In the Working Group also indigenous organizations that function at the community or national level and are most directly representative of and knowledgeable about conditions and aspirations of their peoples are allowed to participate in the work, in spite of the fact that they do not qualify for consultative status according to present rules and regulations. It remains to

42. Marc Nerfin, The Future of the United Nations (note 1), p. 24.

43. ECOSOC resolution 1296 (XLIV), para. 4.

be seen whether this practical solution will also be followed when the draft universal declaration on the rights of indigenous peoples will be discussed at higher levels of the UN hierarchy. In the meantime the problems relating to indigenous participation in the revision of the ILO Convention on Indigenous and Tribal Populations (No 107) of 1957 were already the subject of intense discussion in two recent issues of "The Review of the International Commission of Jurists"[44] Under ILO rules only *international* NGO's are allowed to speak in formal sessions but not organizations which represent indigenous peoples at the community or national levels. The Director of the International Work Group on Indigenous Affairs expressed the misgivings of the indigenous organizations in the following terms: ".... they were relegated to the rim of the conference hall, looking on aghast as their fundamental rights were discussed, debated, horse-traded and, more often than not, thrown out."[45] A senior official of the ILO commented that the participation by NGO's in the ILO's revision process was greater than at any time in the history of the United Nations system for the adoption of any human rights instrument. He saw the issue in the light of "a certain amount of conflict among different NGO's over who is truly representative".[46] It seems to me that there is a deeper conflict than suggested by the ILO official. It is a conflict between the presumed representative character of the existing governmental structures and international organizations and institutions on the one hand and the aspirations of the indigenous peoples on the other hand, inasmuch as the latter wish to exercise the right to self-determination and acquire national and international recognition.

INTERNATIONAL STANDARD-SETTING AND DEMOCRACY

21. In modern times international legislation has an increasing impact on domestic legal orders. With the development of the concept and structures of international co-operation, the volume of international legislation is rapidly increasing. Also supra-national structures, such as the European Communities, have extensive law making powers and issue regulations and directives which are directly applicable within national legal orders and take precedence over national law. With the internationalization of human rights since World War II, the standard-setting activities in that area have been a continuing exercise and numerous conventions, declarations, codes and sets of principles concerning human rights or human rights related

44. Howard R. Berman, The ILO and Indigenous Peoples: Revision of ILO Convention No. 107 at the 75th Session of the International Labour Conference, 1988, in The Review of the International Commission of Jurists, No 41, December 1988, pp. 48-57; Klaus Samson and Lee Swepston, Response to Review 41 article on ILO Convention 107, in The Review of the International Commission of Jurists, no 42, June 1989, pp. 43-46.

45. Quoted by Berman (note 44), ICJ Review No 41, p. 52.

46. Swepston (note 44), ICJ Review No 42, p. 46.

matters are on the books or still in the process of elaboration. It is, however, a matter of concern that a great deal of international legislation, which directly or indirectly affects the rights and well being of individuals, groups and entire populations, is the product of national or international bureaucracies without proper democratic control or input. Parliamentary involvement is limited or totally excluded and parliaments are often faced with texts already completed and adopted; in other words what is submitted to them are "faits accomplis". A striking example of this kind of phenomenon was recently discussed in the Netherlands Lawyers Journal.[47] In 1985 France, the Federal Republic of Germany, the Netherlands, Belgium and Luxemburg concluded at Schengen (Luxemburg) an agreement on the gradual abolition of control on their common borders and in this Schengen agreement the five countries undertook to prepare the harmonization of certain aspects of the law pertaining to aliens. As a follow-up, officials of the five countries are now in the process of preparing in a climate of secrecy a supplementary agreement which *inter alia* risks to jeopardize some fundamental principles of refugee law as laid down in the UN Convention on the Status of Refugees of 1951. No involvement on the part of parliaments, public opinion and the UN High Commissioner for Refugees was hitherto allowed in this legislative process and what finally may emerge is a "fait accompli" accomplished by bureaucrats who tend to have the "raison d'état" in their minds.

22. The so called "Schengen" exercise is only an illustration of the old style treaty-making process which predominantly serves state and interstate interests. We have now, however, entered a new phase in international relations - at least in theory - a phase of international co-operation which is supposed to serve common goals and common interests that are vital for the survival of humankind. After two destructive world wars the UN Charter introduced the idea of the internationalization of human rights and the concept of universality of human rights was enshrined in the International Bill of Human Rights. The international law of human rights is a peoples' oriented law and it is only natural that the shaping of this law should be a process in which representative sectors of society participate. This is a logical requirement of democracy. While the orientation of contemporary international law and *a fortiori* of international human rights law is supposed to bend towards serving human and welfare interests, the international law making process follows by and large traditional patterns with a predominant role for states. This is an anomaly and reveals a lack of democratic quality.

23. It is to the credit of UN working groups involved in human rights standard-setting that they provide ample room to NGO representatives to participate in the proceedings. In fact, NGO's themselves have progress-

47. H. Meyers, Vluchtelingen in West-Europa; "Schengen" raakt het gehele vluchtelingenrecht, Nederlands Juristenblad, 21 oktober 1989, pp. 1297-1302.

ively conquered this space and some, notably the International Commission of Jurists, have utilized this facility to the full. In a modest way this practice fills a democratic gap. It is sometimes suggested that the present practice should be formalized by devising new rules concerning the NGO role in international standard-setting. I think this matter should be approached with some degree of caution because the end result of such formalization may well have a restrictive effect on present practice. At another occasion I pleaded for a more coherent standard-setting agenda and for more consistent procedures with respect to the preparation of international instruments in the field of human rights.[48] Part and parcel of a more coherent, consistent and consolidated practice of international human rights standard-setting should be the securing of facilities of non-governmental participation and input. Transparency and public discussion are essential elements of democratic processes. These elements are also needed in international legislation and NGO's can play in this regard an instrumental role.

48. Theo van Boven, The Future Codification of Human Rights; Status of Deliberations - A Critical Analysis, in Human Rights Law Journal, vol. 10 (1989), pp. 1-11.

MORNING DISCUSSION

Chairman: Prof. P. van Dijk
Rapporteur: Mr. M. Zwamborn

Picking up on Ms. Wiseberg's thesis that also among human rights organizations 'noblesse oblige', *Peter Baehr*, member of Amnesty International's International Executive Council, pointed out that although Amnesty International will stick to its policy of working within its own mandate, it is looking at developing this mandate, taking up some of the issues mentioned by Ms. Wiseberg as challenges to the human rights movement. These issues include among others the relevance to the human rights movement of violence used by non-governmental entities (NGE's) and quasi governmental entities (QGE's) and the protection of those who are persecuted because of their sexual orientation.

Amnesty International is not only facing the challenges mentioned by Ms. Wiseberg by developing its mandate. It is also striving towards becoming a universal, multicultural movement, although Amnesty International is still an organization with its strongest membership-base in Western countries.

The importance of a broadly based and strongly organized membership for the credibility of an organization was emphasized by *Christian Tomuscat* of the ICJ. According to *Tomuscat* this credibility is crucial when an organization embarks upon criticizing governments for their human rights performance.

Mr. Alex Koekoek asked whether Ms. Wiseberg's remark on human rights NGO's being elitist and the need for human rights NGO's to form coalitions with mass grassroots organizations, should be interpreted as a recommendation to all human rights NGO's. Would it not be better that some organizations would form coalitions as meant by Ms. Wiseberg and others some stay independent? In response *Ms. Wiseberg* pointed out that she had referred to the fact that often local NGO's had no other option than to join social movements. International NGO's should stimulate local NGO's to stay independent and help them to continue to play a monitoring role.

Mr. Pieter van Veenen of the Humanist Platform on Human Rights in the Netherlands elaborated on the need Ms. Wiseberg pointed out for solidarity between human rights NGO's, by suggesting that Western NGO's should lobby their governments on issues and concerns submitted to them by local human rights NGO's. He further pointed out that listening to the priorities set by local NGO's in the Third World, will widen the scope of

more traditional, Western NGO's who only concern themselves with civil and political rights and may help them to develop a comprehensive approach to human rights, including social, economic and cultural rights.

In relation to the question of credibility of information *Mr. John Vervaele* of the University of Utrecht proposed that a code of conduct for the United Nations, governments and NGO observers should be developed. Such a code of conduct would help to improve the quality and credibility of the information collected in observer missions.

Both *professor Kooijmans* and *Ms. Wiseberg* were critical with regard to the idea. *Professor Kooijmans* questioned the need for a code of conduct because the United Nations do not have that many fact-finding missions, and if there are, the missions usually are on very specific issues, so a general code of conduct would be of little use. A first improvement, more useful in the UN context would be widening the scope of UN Missions, for example by including social, economic and cultural rights. *Ms. Wiseberg* stated that she thought that proper training of those who conduct fact-finding missions is more useful than developing a code of conduct, since until now training is hardly ever given.

NGO's use the UN monitoring machinery to submit information on their concerns and exert pressure on governments, as set out by professor Kooijmans in his introduction. Yet, the UN mandatories lack of resources necessary to fulfill their task in the area of human rights is tragic and should be improved, as was underscored by various speakers. The lack of resources for the UN mandatories limits their possibilities to co-ordinate their approach to one (group of) case(s). According to *professor Kooijmans*, one UN professional who could serve all monitoring mechanisms would be ideal, but that is close to asking for a UN Commissioner on Human Rights, an idea which still has not met much support among governments.

With regard to the use NGO's can make of the UN machinery, *professor Cees Flinterman* picked up on the distinction between the Charter and Treaty based UN human rights systems and asked whether in professor Kooijmans view the role of NGO's was different in the two systems. According to *professor Kooijmans*, once the Treaty based systems have been established, NGO's cannot intervene with information of their own accord. They have to wait until the formal procedure takes place. In the Charter based systems, they can take the initiative and provide information continuously.

AFTERNOON DISCUSSION

Chairman: Prof. P. van Dijk
Rapporteur: Mr. F.A. Steketee

1. THE ROLE OF NGO'S AT A NATIONAL LEVEL

a) Human rights education

Mr. Van de Cappeyne van de Capello, Secretary-General of FILDIR, Fédération International Libre de Déportes et Internes de la Résistance

In reference to recent contacts with Unesco and a German NGO "die Mahnung" mr Cappeyne van de Capello stressed the need for human rights education and especially the education of young people such as to prevent national socialism and fascism from ever rising again. NGO's have a role to play in the promotion of human rights education.

Ms. Cecilia Medina, SIM, Studie- en Informatiecentrum Mensenrechten

Ms. Medina expressed her concern about the role of NGO's in countries going from military rule to democratic rule. Had anything been done in these countries in turning towards education and creating awareness?

Lorie Wiseberg responded by saying that it is clear that education is one of the most critical weapons that we have in working in the struggle for re-democratization. This has been well recognized in countries such as Uruguay, Argentina and also in the Philippines where it has been written into the constitution that human rights education will be taught at all levels of education. In Uruguay much work is being done to develop curriculae for all levels of education, especially at the non-formal level. Throughout Latin-America, especially in Chili an organization called Sayal is doing a lot of work in education through organizing workshops, seminars, training sessions, forums for women, peasants and all levels of the population.

There have been two world congresses on human rights education, one in 1978 and one in 1987. *Lorie Wiseberg* felt that Unesco has not done nearly enough in this field and that what it has done it has done badly. For example a 5 year-plan to establish centers all over the world to disseminate materials for human rights education has not come to fruition. A mass-campaign from the UN center for human rights information has not

materialized yet; *Lorie Wiseberg* said she hoped it would not just be a PR-exercise. NGO's have a role to ensure that the resources at the disposal of intergovernmental organizations are well spent.

Theo van Boven agreed with Lorie Wiseberg that education at a national level is very important.

b) Standard setting and watchdog function

In reference to standard setting at a national level *Theo van Boven* recalled the example, mentioned by Niall MacDermot in his speech, of the introduction of legislation in Japan brought about by the ICJ with regard to mental patients.

Theo van Boven further pointed out that the role of NGO's at a national level may depend on the type of society in which they operate. For example the NJCM, Dutch section of the ICJ, primarily has a watchdog function to guard against breaches of existing human rights protection. In other countries NGO's will be pushing to have human rights guarantees introduced into legislation. He subscribed to the comment made by Lorie Wiseberg that this does not provide a full guarantee of human rights protection. This process may be assisted by international NGO's.

In respect to the latter *Niall MacDermot* gave the example of Pakistan where democratic rule has recently returned. The ICJ has produced a report on the problems which may arise following the transition. There is so much interest in this report that it will now be published commercially.

2. Standard setting at an international level

a) The influence of NGO-participation

Mr. Walkate, working at the Dutch Ministry of Foreign Affairs, drew attention to the important role played by NGO's at the UN in the process of standard setting. The Genocide Convention and the Principles on Detained Persons are two important examples of this as they would never have come about without the pressure from NGO's. Thirdly *Mr. Walkate* drew attention to the Declaration on the Rights of Individuals and Groups of Individuals and Organizations to Promote and Protect Human Rights. For this he had expected great interest from NGO's, but in fact there was very little attention from those quarters. *Mr. Walkate* urged NGO's to participate more closely in the work in Geneva.

In response *Niall MacDermot* underlined that drafting can be a desperately slow process.

Menno Kamminga responded by pointing out that many NGO's have grown weary and tired of the long drawn-out drafting process.

b) The character of NGO's and the contribution to democratic decision making

Menno Kamminga, in reference to the introduction by Theo van Boven in which he set out the role of NGO's in improving the democratic decision making at the UN level, asked whether NGO's are sufficiently equipped and competent for this task. For consultative status with the UN NGO's must be broadly representative of world public opinion, but are they actually democratic themselves? Many NGO's are empty shells with a membership of sometimes no more than 1 or 2 people. Furthermore NGO's that are really representative and have a large membership may not get consultative status because governments feel threatened by them.

How does Theo van Boven see these matters in relation to achieving the objective of more democratic input into decision making?

Theo van Boven responded by saying that it is difficult to give a direct solution to the problem, but that NGO's have a correctional influence on the standard setting process. At the time of resolution 1296/1968 (determining the position of NGO's) there were very few NGO's in the field of human rights, one being the ICJ. At the time the UN was thinking more of women, church and labour organizations. The influence of human rights NGO's is not so much due to their representativity but based on their diplomatic skills and expertise. Indeed, some NGO's consist of no more than one active person. The broad-based NGO's are far less active in the area of standard setting.

In relation to representativity *Theo van Boven* drew attention to the difficult position if indigenous peoples who do not feel represented by the governments and who do not qualify as NGO's. There appeared to be no immediate solutions to this problem, it certainly requires further thinking. It must be considered as progress that NGO's have managed to break the governmental monopoly of standard setting and can now operate under their own name. Some NGO's, however, still prefer to work through or at least in co-operation with one or more governments.

Theo van Boven finally expressed his concern about developments in the European Communities. The standard setting procedure in Brussels and the lobbying process is absolutely non-transparent. Although internationalization is in itself a good thing, there should be a strong guard against non-democratic developments.

c) Practical problems facing NGO's

Mr. Buyong Nasution (Foundation of Legal Aid and Human Rights, Indonesia) drew attention to some of the more practical problems of NGO work at the UN. NGO's have to lobby to get acquainted, to gain expertise. All this requires a lot of work, also because countermoves from governments have to be overcome. Could the co-operation between NGO's for these reasons be improved?

Niall MacDermot in response to Mr. Nasution said that NGO's based in Geneva realize the difficulties facing those coming from abroad. A special NGO has been set up to assist in these matters whilst further, prior to every Committee meeting, meetings are organized to inform NGO's on the practice of these meetings.

d) NGO's and the media

Mr. Shehardi (AL-HAC, ICJ affiliate in the occupied territories) subscribed to the necessity of documentation for effective human rights work, but wondered, however, whether there should not be more emphasis on the relation between NGO's and the media. For example the Intifadah in 1987 drew great media attention as a result of which many NGO's began to be concerned about the situation. After six months, however, less media attention was given and also NGO interest slackened, despite the fact that there was no improvement in the human rights situation. This demonstrates the importance of the media which, of course, have their own prejudices. Increasingly, media are being owned by large multinational conglomerates which have a conservative, right-wing outlook. Should they decide no longer to pick up on, for example, the ICJ Newsletter and the Amnesty International Annual Report human rights would get even less attention. NGO's should therefore be more concerned about these developments.

Niall MacDermot replied by saying that the press is generally not interested in anything that is not 'news'. What is needed is specialized journalists who concentrate on human rights such as Ian Guest. It is very difficult to get across to the general reporters the significance of many human rights matters. They will have to be activated more to get them interested.

Theo van Boven said that more generally the influence of the media is illustrated by the reaction to events in Bejing as a result of media attention, whilst massacres in Burundi went largely unnoticed. The question arises who selects these matters. International opinion is formed to a large extent by the media. This was also illustrated by the media-ban in South Africa.

3. Human rights as a separate issue?

Mr. Buyong Nasution, agreeing with Lorie Wiseberg that there is a need for broader co-operation, wondered whether it is right to distinguish completely between human rights and politics. As an example of developing co-operation he pointed to NGO's from the Netherlands and Indonesia who started co-operating five years ago in the International NGO Conference on Indonesia. One of the main themes is human rights but to put the theme in the context of Indonesian politics a broader scope of discussion was developed. This co-operation has proved quite effective. Unfortunately some Human Rights organizations do not feel it right to widen the discussion. Also at a governmental level there appears to be a reluctance to formally discuss human rights issues as a part of the general discussion.

Theo van Boven replied by saying that this question goes straight to the crucial issue of whether human rights should be dealt with separately or as an integrated part of financial, economic and political policies. There is a tendency to consider human rights matters as matters of particular concern to the non-governmental world. NGO's are the champions of human rights.

Discussions in the Dutch ACM (Advisory Commission on Human Rights to the Government) have also dealt with this question and had lead to a plea to integrate human rights.

At the UN level human rights are being put into a separate compartment. There is a center for human rights but this has practically no relations with UNDP or the disarmament program. All human rights issues are now being dealt with in Geneva whilst the political center of the UN is in New York. There are also advantages, mainly that the discussion is less politicized. This is also happening in other international organizations. Therefore one of the major issues presently is how to include human rights in the major policy areas. This is a very difficult exercise.

Concluding the day's proceedings the Chairman *Pieter van Dijk* thanked all speakers for their contributions and formally closed the colloquy.

De volgende uitgaven van de Stichting NJCM-Boekerij zijn nog verkrijgbaar:

2. Kernenergie en mensenrechten, een NJCM-Rapport over het energiebeleid, juni 1983, 106 pagina's, fl. 12,50/leden fl. 10,-;
4. Rechter en mensenrechtenbeleid, een bundel inleidingen, uitgesproken tijdens een NJCM-symposium over dit onderwerp, met een samenvattend verslag van de plenaire discussie, januari 1985, 74 pagina's, fl. 10,00/leden fl. 8,-;
5. Vrouw en recht, Juridisch instrumentarium ter verbetering van de rechtspositie van vrouwen in Nederland; inleidingen voor de PAO-cursus najaar 1984 aan de RU Leiden, december 1984, 102 pagina's, fl. 12,50/ leden fl. 10,-;
7. Mensenrechten en personen- en familierecht; bijdragen ter gelegenheid van de ALV van het NJCM 1986, september 1986, 67 pagina's, fl. 12,50/ leden fl. 10,-;
9. Th.L. Bellekom, 'Verfassungsfeinde' en openbare dienst, een onderzoek naar het probleem van de niet-toelating tot en het ontslag van radicale elementen uit de openbare dienst in de Duitse Bondsrepubliek 1972-1987, proefschrift, Leiden 1987, 469 pagina's, fl. 45,-/leden fl. 36,-;
10. Recente ontwikkelingen op het gebied van de mensenrechten; verschenen naar aanleiding van de Nalezing Rechtsgeleerdheid gehouden op 11 april 1987, Leiden 1988, 71 pagina's, fl. 15,-/leden fl. 12,-;
11. A.M. Gerritsen, Rechtspraak gelijke behandeling m/v 1975-1986, uitspraken van de Commissies Gelijke Behandeling gerubriceerd en geanalyseerd, Leiden 1987, 621 pagina's, fl. 40,00/leden fl. 32,-;
12. Erfelijkheidsonderzoek en mensenrechten, Inleidingen en discussie ter gelegenheid van de ALV van het NJCM 1989, Leiden 1989, 63 pagina's, fl. 12,50/leden fl. 10,-;
13. A.M. Gerritsen, Rechtspraak gelijke behandeling m/v II 1987-1989, Veertig nieuwe uitspraken van de Commissie gelijke behandeling van mannen en vrouwen bij de arbeid en rechterlijke uitspraken, plus analyse, Leiden 1989, 216 pagina's, fl. 25,-/leden fl. 20,-;
14. Conference of European National Sections - Aids and Human Rights/European Social Charter, gezamenlijke uitgave van het ICJ en het NJCM, Leiden 1990, 81 pagina's, fl. 15,-/leden 12,50;
15. Tjetske Gerbranda en Marianne Kroes, Grondrechten Evaluatieonderzoek, Documentatierapport, Leiden 1991, 6 delen, ca. 2100 pagina's, fl. 149,50;

Als bijzonder nummer van het NJCM-Bulletin verscheen eind 1990 "40 Jaar EVRM 1950-1990", waarvan binnenkort een tweede oplage verschijnt (fl. 40,-).

De uitgaven zijn te bestellen via het secretariaat van het NJCM, Hugo de Grootstraat 27, 2311 XK Leiden, telefoon 071 - 277748.

The 1989 Erasmus Prize for Human Rights was awarded to the International Commission for Jurists. The presentation was followed by a colloquy on the subject of "The role of non-governmental organizations in the promotion and protection of human rights", with contributions by P.H. Kooijmans, Laurie Wiseberg, Niall MacDermot and Theo van Boven. The laudation by H.R.H. Prince Bernhard of the Netherlands and the speech made by Niall MacDermot, Secretary General of the ICJ.