NOTES ON THE HUMAN RIGHTS MOVEMENT AND THE ISSUE OF TERRORISM

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THE CURRENT DEBATE

1. The issue of terrorism by non-state actors poses a real dilemma for many in the human rights movement today. This is in part a reflection of the intense debate generated since September 11th. According to some, terrorism defines our times; there is even talk of an "age of terror". Whether this is right or wrong, fear of terrorism has been increasingly seared into the public consciousness since September 11th.

2. Further violent attacks around the world, government scare tactics, and a relentless furore in the media have led people in many countries, and particularly in the US, to feel that they are at imminent risk of lethal attack. Some believe that the human rights movement is ignoring their concerns, for others it does not even rise to that degree of relevance. And indeed, when we have reacted to specific incidents – usually when there have been large numbers of civilian victims – the conceptual, legal and campaigning tools available are neither adequate nor effective to deal with instances of extreme violence against civilians by non-state parties. This is particularly true when such violence takes place outside the context of armed conflict.

3. Discussing human rights and terrorism with interlocutors from outside the movement thus has a debilitating impact. Human rights organisations lack a coherent strategy for dealing with what is perceived by much of the public as a direct and current threat to their own human rights. The emphasis that human rights organisations have placed on their "traditional" human rights work (denouncing violations by states in the context of counter-terrorism activities) does leave them exposed to charges of double standards. While we should not relent in warning the public about the dangers of sweeping derogations to fundamental rights, these concerns are frequently challenged by those who say that we are using a simplistic and one-sided analysis for an extremely complex phenomenon. And sometimes one cannot help thinking, that independently of their true motives, these critics may have a point.

4. Criticism also comes from quarters traditionally sympathetic to human rights organisations, including some states, donors, academics and commentators. The debate frequently puts the movement on the defensive, which comes as a surprise to a community used to working with the comfort of moral certainty and the persuasion that it acts on behalf of "everyone". In this debate however, the high moral ground is, to say the least, hotly disputed.

5. The internal debate is not easier. Ethical, legal and operational dilemmas recur.

6. From an ethical point of view, a major dilemma is posed if we do not develop a meaningful analysis and means of mobilising around this issue. There is a risk of sending the message that human rights organisations do not regard terrorism as a profound affront to the rights to life and dignity, and that the suffering of the victims of terrorism, while deserving our compassion, does not constitute a natural field of action for human rights protection. This is inconsistent with one of the principles that has driven our efforts to shape public morality for decades, that is, a vision of human rights that puts the individual who has suffered the abuse at the centre: the "victim's rights" approach. The impact that the perceived abandonment of this approach could have on the movement's credibility should give us pause.

7. Basic legal assumptions are challenged by the assertion that acts of terrorism by non-state actors constitute "human rights violations". The use of this stigmatising language, usually reserved for governmental atrocities, suggests a shift in the object of human rights law as we know it today. This shift carries with it the real risk that abusive governments will try to distort the international human rights agenda by using terrorism as an excuse for their own abuses, or to justify repressive measures in the name of protecting human rights from terrorism. The idea that acts of terrorism by non-state actors are human rights violations is being flagged by authoritative voices in the human rights movement and in UN bodies. This is not the place to offer a detailed description of these pronouncements but it suffices to say that the UN Security Council and the Commission on Human Rights, as well as the Sub-commission, have done it. One can offer a legal explanation of why this is not technically correct. But that explanation rings hollow to most non-lawyers, and is at odds with the plain and fundamental meaning of the words "terror violates human rights".

8. The movement is reasonably comfortable today using an IHL analysis to address non-state actors in contexts of armed conflict. Many organisations have overcome the fact that humanitarian law "accepts" war as a fact of life, together with the destruction of rights that it entails. But the acts of terrorism at the centre of today's debate often take place away from conflict zones, where IHL does not apply. When that happens, there is no handy piece of international law that the human rights movement uses to criticise terrorist conduct. Significant gaps also remain in terms of research, reporting and advocacy in this area.

9. The political and policy challenges are even thornier than the technical difficulties. Terrorism is not a new phenomenon and many of the societies we operate in have been confronting it for decades. Because of this we could ask ourselves if we really need to alter significantly our approach to the phenomenon, and wonder whether the human rights impact of the so-called "war on terror" does not confirm the need to do more of what we usually do, and do it better.

10. This may be true. But some things *have* changed since September 11th, both in reality and in perception. Much of the terrorism making headlines today is "non traditional", and the resolve to use catastrophic means to kill civilians has increased dramatically, as has, arguably, the ability to use those means. The global character of the major terrorist networks is also new. And so, while terrorism has been with us for a very long time, the kind of threat it poses and the public consciousness of that threat have certainly changed. Governments do provoke the kind of media

exaggeration that frequently blows the perception of the threat out of proportion, but we have to recognise that both the threat and the perception are real.

11. The fact that some are prepared to apply the laws of war to acts of terrorism that take place outside the context of armed conflict is also a new phenomenon. This is altering the paradigm in which we have been operating so far, and while we rightly resist the formulation of a "war on terror", we have not offered much in the way of human rights ingredients to any alternative.

12. The human right movement also discusses whether it could really be effective in tackling "the new terrorism". There does not appear to be an obvious array of techniques that could influence the behaviour of those who are equally prepared to kill and die for their cause. It does not help that we do not understand very clearly what this cause is.

BACKGROUND

13. As background, I would say that without attempting to define terrorism, I am referring here to deliberate forms of violence against civilians, with the intention to instil fear, and in the aim of generating political impact. Such tactics may serve different purposes and causes, and are used in both peace and war. Acts of terrorism can be carried out by governments or by non-governmental entities. These notes are concerned with terrorism by non-state actors. State terrorism is something the human rights movement has confronted for decades, and knows well how to deal with.

14. Terrorism in the sense described precedes the emergence of the human rights movement as we know it today. But during the last 50 years, and in almost all regions of the world, the movement has co-existed with political terrorism, without feeling compelled to develop a comprehensive agenda on how to deal with it. Historically, actions against civilians by the Algerian FLN or by Zionists in the aftermath of the Second World War, or during national liberation struggles in Sub-Saharan Africa, do not appear to have generated a reaction from the then fledging human rights movement, nor did it respond in the 70s to the actions of the PLO, separatist groups in Spain and Northern Ireland, or others in Germany, Italy or Japan.

15. During the 70s and 80s, human rights organisations were developing their techniques for confronting the use of terror by governments of all denominations. In fact, human rights NGOs focused on the state role as a human rights violator and defined a limited role for themselves in relation to terrorism by non-state actors: pronouncements on acts of non-state terrorism were at best sporadic and reactive. The movement promoted the development and use of an international legal framework that found the relationship between the state and the individual at its centre.

16. This was a sensible course of action; after all if we look back at the 20th century, large-scale terror by governments against their civilian populations was by far the most important threat to human rights. It is too easily forgotten, especially when thinking about current priorities, that this continues to be the case today.

THE REACTION OF THE INTERNATIONAL INSTITUTIONS

17. Turning to the reaction of international institutions, it is fair to say that the international community at large dealt with terrorism, at least until September 11th, largely as a political and international criminal law matter. The issue was, to a large extent, to be addressed through law enforcement.

18. On a number of occasions the UN Security Council adopted resolutions in which it criticised states for lending support to terrorism. For example UN SC Resolution 687 of 1991 deplored *"threats made by Iraq during the recent conflict to make use of terrorism against targets outside Iraq"* and required the Government of Iraq *"to inform the Security Council that it will not commit or support any act of international terrorism…"*.

19. In other cases the Security Council applied sanctions in an attempt to repress international terrorism. Resolution 748 of 1992 on Libya condemned its refusal to cooperate with investigations into the 1988 destruction of PanAm flight 103 over Lockerbie, and of the similar attack on UTA flight 772, which was blown up over the Sahara desert in 1989. The Security Council determined that *"the failure by the Libyan Government to demonstrate… its renunciation of terrorism … constitute a threat to international peace and security"*. In 1996, Sudan was placed under sanctions for supporting terrorist activities and refusing to extradite suspects in the assassination of Hosni Mubarak; in 1999 the Security Council froze the assets of the Taliban regime and imposed an air embargo for its refusal to extradite Osama Bin Laden to the United States.

20. The General Assembly had dealt with the issue as early as 1970, and since 1979 it has been pronouncing its opposition to terrorism in its annual resolutions. The GA also adopted the 1994 Declaration on Measures to Eliminate International Terrorism, and a 1996 Declaration to supplement the 1994 Declaration.

21. Legal standard setting has generated intense international activity over the last 35 years. Since the Tokyo Convention on offences committed on aircraft entered into force in 1969, many similar treaties aimed at combating terrorism have been elaborated. Some came about in reaction to specific terrorist acts, or to procedural difficulties presented by the international dimension of specific terrorist acts. For example the October 1985 seizure of the *Achille Lauro* by the Palestine Liberation Front is considered to be the catalyst for the 1988 Convention for the Suppression of Acts against the Safety of Maritime Navigation. The themes covered by these conventions include the criminalisation of specific acts against certain categories of persons and against civil aviation and maritime navigation. The conventions also prohibit the use of bombs and other explosive or nuclear materials, and the financing of terrorism.

22. Regional IGOs have adopted a number of binding instruments in relation to terrorism. The Organization of American States, probably the first, adopted a 1971 treaty to prevent and punish acts of terrorism against persons *"to whom the state has the duty according to international law to give special protection"* (generally diplomats and public officials). This was followed in 1977 by the Council of Europe with the European Convention on the Suppression of Terrorism. SAARC, the League of Arab States, the Organization of Islamic Conference, the Commonwealth of Independent States and the Organization of African Unity all followed suit.

23. As a result, the international community today has an imperfect but fairly global system of treaties against specific terrorist activities. To the extent that these treaties complement and overlap with each other they may amount to an international criminal code on terrorism, and go some way to fill the gap generated by the absence of a comprehensive convention. As we know, the UN (though not necessarily the regional organisations) has not been able to agree on a global definition of terrorism and its field of application.

24. The structure of these treaties is not uniform but they all have some common features. For example, all of the conventions require an international element in order to trigger their mechanisms, so that the perpetrator, or the victim, of the crime must be of different nationalities, or the jurisdiction must belong to a different state. The field of concern is thus restricted to "international" terrorism only.

25. Most acts described also require the existence of a specific intent, for example to "intimidate a population" or "to compel a government or an international organisation to do or to abstain from doing" something. The vast majority of the treaties aim at the protection of civilians or civilian property. All the treaties establish the obligation to criminalise the actions defined and operate on the basis of the principle of universal jurisdiction and the obligation *aut dedere aut judicare*. All of the treaties contain some references to fundamental human rights guarantees to those deprived of liberty as a result of the convention. Some of the conventions, but not all, include clauses that allow for *non refoulement* where extradition has been requested for discriminatory reasons. At the same time a number of conventions restrict or eliminate the exception of political offence.

26. The late 1980s saw activities emerge at a different UN level. In the Commission on Human Rights, governments led by Colombia and Peru started pushing for a resolution on the threat to human rights posed by the activities of armed opposition groups. In 1990 the Commission adopted a resolution entitled "Consequences of acts of violence committed by armed groups that spread terror among the population and by drug traffickers on the enjoyment of human rights". The text expresses deep concern at the *"adverse effect, on the enjoyment of human rights, of persistent acts of violence committed in many countries by armed groups, regardless of their origin, that spread terror among the population…"*. The Commission mechanisms were asked to pay attention to those acts of violence in their reports and non-governmental organisations were encouraged *"to bear in mind the adverse effect, on the enjoyment of human rights, of the acts of violence committed ... by armed groups ... "*. NGOs and some Western states opposed this trend because they feared it could redirect the attention of the international bodies monitoring human rights violations. The Commission continued to pass this resolution for a number of years, but in it fell short of qualifying acts of terror themselves as human rights violations.

27. Between 1995 and 2004, however, a different type of resolution on "Human Rights and Terrorism" was passed each year. In its preambular paragraphs the resolution expressed deep concern for the *"gross violations of human rights perpetrated by terrorist groups"*. In its operative paragraphs the resolution went on to condemn *"all acts, methods and practices of terrorism, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, as acts aimed at the destruction of human rights, fundamental freedoms and democracy…"* Starting in 1999 the Commission also condemned *"violations of the right to live free from fear and of the right to life, liberty and security"*. In 2005 the Commission discontinued this type of resolution.

28. The Sub-commission, for its part, appointed a special rapporteur to conduct a study on human rights and terrorism that was finalised in 2004. There have also been intense activities by other UN agencies, such as UNODC.

HUMAN RIGHTS ORGANIZATIONS AND THEIR WORK IN CONFLICT SITUATIONS

29. In terms of the reaction of the international human rights movement, we should perhaps reflect on why it chose not to get involved in the standard setting activities (except to oppose some aspects of them) around terrorism that had been taking place in the UN before September 11th. Only in October 2001 did international human rights NGOs become interested in the General Assembly's discussions on the draft "comprehensive" convention on terrorism. That interest however, focused almost exclusively on the possible negative impact that anti-terrorist measures could have on human rights. The effects that acts of terrorism themselves could have on the human rights of the victims were not explored. For standard setting purposes, this was not part of the brief, even at times when major international organisations were ready to condemn and report on actions by armed opposition groups. It is not clear why the human rights movement

did not, for example, sought the expansion of the protection offered by the international legal regime for the benefit of victims of acts of terrorism that are purely "internal".

30. However, even during all those years in which the human rights movement had remained relatively aloof from international legal and political developments on terrorism, it did not stay indifferent to attacks against civilians.

31. In the early 1980s, Americas Watch (one of the committees that later formed Human Rights Watch) was the first to look at abuses committed by armed opposition groups in the context of the armed conflicts in El Salvador and Nicaragua. International humanitarian law, mostly Protocol II additional to the Geneva Conventions, and Common Art 3 to the Geneva Conventions, became the terms of reference for their analysis. They combined this IHL analysis with reporting and advocacy, both classical tools of human rights work.

32. There were a number of reasons for doing this just when Central America had become a Cold War battlefield. On the one hand, there was a need to rebut public criticism from the Reagan administration and its cronies, who accused Americas Watch of being partial and one-sided by working on abuses carried out solely by Governments. Americas Watch, however, also felt that a key motivation for the initiative was that it allowed them to work on behalf of a category of victims that had not been given much attention by human rights organisations: civilians affected by war.

33. In 1985, Americas Watch conducted its first mission to Nicaragua and published a report looking specifically into IHL abuses by both sides. The report generated strong reactions, not least from within the human rights movement. Some felt that it could be risky for an international group to criticise abuses by both parties to a conflict, as it could leave local NGOs working only on violations by government agents more exposed to charges of bias and partiality. While some human rights defenders continued to assert the need to focus on violations by the government side, other local groups eventually did start looking at abuses by both state and non-state actors in the conflict. Both approaches are legitimate, and necessary, but at the local level the issue may remain a matter of contention even today.

34. A debate ensued among international human rights organisations. Some argued that the principle that governments have the primary responsibility to uphold human rights risked dilution if attempts were made to hold non-state actors to the same standards. Others raised concerns about what they felt to be the "vagueness" of IHL standards, or voiced more pragmatic fears that the difficulties inherent in conducting research in a war zone would pose insurmountable methodological problems; others still argued that human rights organisations simply did not have the required expertise.

35. There were also ideological arguments about framing the work from an IHL perspective. Some felt it was unfair to hold the underdogs in an asymmetrical conflict to the same standards demanded of governments, and worried about how this information would be used politically by the U.S. At the same time, the right wing in the U.S. accused Americas Watch of being partial, and of devising this new approach to be able to denounce the Nicaraguan Contras. Crucially, however, it was the fact that Americas Watch had used IHL to denounce abuses by both the Nicaraguan Contras and the Salvadoran FMLN, that enabled them to maintain an approach widely perceived as impartial, without being drowned in the politics of the regional conflicts.

36. The impact of the work with the rebel groups themselves was mixed. The Nicaraguan Contras, confident of their US support, dismissed criticism outright, challenged the accuracy of the findings, and the purpose of the exercise. They also rejected offers of dialogue. The FMLN, as a

group that was pursuing political and international legitimacy, allowed for at least some dialogue to take place, and were willing to discuss recommendations.

37. Americas Watch's visionary (and controversial) move had a lasting impact on the international human rights movement. Today the legitimacy of an international human rights organisation relying on an IHL analysis is hardly questioned; on the contrary the technique has been truly popularised and applied across regions. The benefits that traditional human rights techniques of public reporting and advocacy have brought to the victims of armed conflict are undeniable, while the focus on governments as the primary holders of responsibility in relation to human rights has not been weakened. In the latter sense Americas Watch took care not to establish false equilibriums between governments and rebels in their work, and avoided pressure, for example, to devote equal numbers of pages in their publications to abuses committed by each side. (In recent years, HRW and other human rights groups have not shied away from issuing reports covering only abuses by non-state actors.)

38. There are many lessons from this experience that can be applied to our discussions on human rights and terrorism; in fact – subject to some definitional issues such as the specific intention attached to the criminal acts – IHL offers a good tool with which to criticise acts of terror against civilians in times of armed conflict.

39. The development of Amnesty International's research on armed groups followed a slightly different trajectory. Since the early 1960s, Amnesty International's pioneering work had focused on human rights violations committed by governments. During its first decades the organisation scrupulously avoided devoting any of its energies to abuses committed by non-state groups. There were concerns that work of this kind could be used by governments to weaken the human rights agenda that the organisation was painstakingly helping to build.

40. There were also reasons of principle. AI saw its fundamental role as the main international institution working on behalf of individuals whose rights had been violated by governments; that is, by those entities who had or should have had as their main *raison d'être* the protection of the very rights they so frequently trampled. AI frequently resorted to, and found inspiration in, international human rights law. This body of law focuses on abuses by governments. So, it was both a matter of pragmatism and a principled choice.

41. But the organisation was not indifferent to the suffering caused by non-state actors. From early on AI "condemned" the killing of captives or the torture of individuals held both by governments and what were called "non-governmental entities", or "NGEs", in AI's internal parlance. In "condemning" these abuses the organisation meant to convey its strong moral rejection of the acts. But while killings and torture by NGEs were condemned, AI still reserved its major energies for human rights violations carried out by governments; these were not only "condemned" but also "opposed" by the organisation. The distinction drawn may not appear relevant to the outsider. But it had an enormous bearing on whether AI was able to mobilise its most formidable assets in reaction to specific violations; its high quality research and the actions of its international mass membership were reserved for "opposition". Similarly, throughout the 1980s, AI would not address all NGEs directly. Only those vested with some governmental attributes (called, confusingly, "QGE's") such as territorial and population control would be addressed. The techniques of dialogue, persuasion and mass membership action were largely reserved for governments.

42. This policy changed in 1991. After an intense and lengthy internal consultation, AI's International Council decided not only to "condemn" but also to "oppose" torture, hostage taking, killings of prisoners and other deliberate and arbitrary killings carried out for

discriminatory reasons. This related to any type of NGE whether they had the attributes of a government or not.

43. In the relevant ICM decision, AI recognised "the seriousness of the human suffering caused by acts against individuals, in contravention of fundamental standards of humane behaviour, that are perpetrated by political non-governmental entities". The centrality of the victim's rights approach is apparent in the wording. But the same decision stated that AI "should continue to regard human rights as the individual's rights in relation to governmental authority". Thus the orthodoxy of human rights work remained unscathed by the move. The concern to distinguish the yardsticks by which governmental and non-state behaviour would be measured gave raise to a further distinction in the language used to qualify acts against human rights: governments would be said to "violate" – suggesting the existence of a legal norm that is being breached – while NGEs would commit "abuses" against human rights. The distinction proved to be useful (and durable) and went a long way towards allaying concerns about the misuse of the human rights terminology. The terms also became widely used – albeit sometimes confusingly – throughout the human rights movement.

44. While the moral persuasion of the movement and the search for consistency and impartiality played a fundamental role in AI's decision to expand its mandate, the initiatives described above at the Commission level also influenced the organisation. There was also a strong feeling that the move was necessary to preserve AI's own credibility.

45. In practice, while a strong ethical component remains in AI's public work in relation to NGEs, the organisation has also relied on an IHL analysis. As with HRW the policy shift yielded mixed results. But this is just as it happens with governments. It was also controversial among some AI groups at the local level.

46. By contrast, the experiences of local NGOs have been extremely varied. The realities on the ground, political pressures, the origins of different groups, their own persuasions and, of course, reasons of security all help to determine how and if local human rights groups decide to respond to abuses by armed groups, including acts of terror.

47. Like international human rights NGOs, local groups did not establish separate working programs to deal exclusively with violence by armed groups. When they reacted to this phenomenon and its impact on the rights of civilians, they frequently relied on an IHL analysis. Presenting a coherent picture of how this developed globally requires research that exceeds the scope of these notes. But some approximate elements of various experiences follow.

48. Some of the earliest cases of local NGOs looking at abuses by armed opposition groups date back to the mid 1980s. In El Salvador, for example, the initiative was taken by local church authorities, shortly after Americas Watch started its own investigations into abuses by both sides of the conflict. In Peru some of the first pronouncements date back to 1985. Elsewhere, most of the local initiatives on this issue got underway in the 1990s.

49. Reporting on abuses by non-state actors is still, by no means, a universal practice. In some countries there has been almost no public activity even during the height of armed conflicts. This was the case in Sri Lanka, for example, where with one exception, no meaningful monitoring of abuses by both parties to the conflict appears to have taken place. In this case, however, there were overwhelming security considerations.

50. In some situations, work on non-state actors developed under intense deliberation among human rights NGO, where the possible conflation of *ad bellum* and *in bello* approaches was hotly debated. The trigger was sometimes the public pressure generated by specific episodes or the

consolidation of national trends. In Colombia, for example, the 1998 Machuca massacre by the ELN (in which more than 80 peasants were killed in an attack on a pipeline in Antioquia) was one such turning point. It effectively removed much of the reluctance to carry out an IHL analysis of the conflict, and forced a hard look at abuses by both sides. The testimonies of Colombian IDPs, frequently displaced as a result of guerrilla activity, likewise highlighted the validity of monitoring abuses by all parties to the conflict. In the case of Turkey, where a similar debate took place in the early 1990s, it had been the killing of teachers, village guards and their families by the PKK that became the defining factor.

51. In other countries, monitoring of armed groups developed with less soul-searching, alongside denunciations of government violations. In many places, monitoring translated into reports and press statements, but in Peru the early 1990s also saw street demonstrations against the worst atrocities of the Shining Path.

52. In Colombia and Peru local groups that dealt with this issue did it from a strict IHL perspective. In Colombia, the fact that national anti-terrorism legislation was used to repress political dissenters, labour unionists, church leaders and many others who had nothing to do with the insurgency, resulted in outright rejection by the human rights movement of both the antiterrorist language and the legal framework attached to it. In Turkey the main human rights groups also tended to comment and react to abuses by armed groups using IHL as a main term of reference.

53. In Nepal, on the other hand, where human rights groups have dealt with both parties to the conflict from early on, condemnation of attacks by the Maoists started in the form of strong moral judgement, without reference (or need) of any specific legal frame. In fact, the discourse of the Nepalese groups focused on violence in general, often bringing them close to a pacifist approach. Algeria has also seen some human rights groups condemning atrocities by Islamist insurgents without specific references to IHL.

54. Taking decisions about whether and how to deal with armed groups has been divisive for many local human rights movements. In Peru, the differences were discussed as an internal matter and ironed out inside the national co-ordinating structure. In Algeria, however, the issue of human rights and terrorist violence has exacerbated the divide between human rights groups. Indeed groups have in practice "specialised" in either denouncing abuses of the state, or of terrorist violence by non-state actors. In Nepal, groups appear to have reached a common understanding about their role on this issue without major consequences. In both Colombia and Turkey, this was a highly controversial issue for the human rights community, and decisions were reached only after lengthy and often acrimonious debate.

55. The impact on their traditional casework has likewise been varied. In Peru, local human rights NGOs dealt largely with human rights violations by the state. Abuses by non-state actors amounted to a smaller proportion of their cases, that some estimates put at about 10%. It is an interesting statistic, given that the Peruvian truth commission concluded that some 58% of the arbitrary executions should be attributed to the insurgency, mostly to Shining Path. In Colombia, action on non-state abuses did not result in a decrease in the monitoring of state abuses. In Nepal, it is estimated that local groups -- including those that provide medical assistance to victims of the conflict -- may devote up to 25% of their attention to abuses by non-state actors.

56. In Colombia, the willingness of NGOs to engage with abuses by armed groups improved the image of the human rights movement, and gave it greater credibility and acceptance in the international community. In Turkey, action by the human rights groups did appear to have had a significant impact. While it is difficult to establish any direct causality, abuses by the PKK and other groups started to decline soon after human rights groups began denouncing them. This

was noticeable by 1996. It is important to note that the Turkish NGOs never adopted the government's rhetoric in their criticism of the insurgents. In particular, they never referred to them as "terrorists".

57. Some local groups working on abuses by non-state actors made it a policy not to advocate publicly for the rights of those accused of terrorist acts; in Peru, for instance, some organisations only took up the cases of those prisoners they determined to be "innocent". A number of local groups did not support AI's decision to call for fair trial for Abimael Guzman or other Shining Path prisoners, although security considerations may well have influenced such decisions.

58. Human rights NGOs who have spoken out against abuses by armed groups have frequently been accused by the insurgents of acting for the government. Such allegations have been common even in Colombia and Peru, where they were most unlikely to be true (and where the groups could simultaneously be fending off government claims that they supported the guerrillas). There are security risks inherent in denouncing armed groups; dozens of human rights defenders in Colombia have been killed, mostly by paramilitaries, many more have been threatened or harassed. In Nepal, however, human rights workers focusing on violence by insurgents have not been the object of retaliation, although a number of journalists have been attacked by the Maoists. The same was true in Turkey, where human rights groups that criticised the insurgents suffered no major retaliation.

SOME DIFFICULTIES IN DEALING WITH THE PROBLEM

59. I have outlined how some human rights organisations developed their work on abuses by non-state actors in contexts of armed conflict; there are some close parallels with issues the movement will have to confront if it is going to deal with the phenomenon of terrorism today. The experience of venturing into the field of international humanitarian law, as described above, is arguably the most relevant, although work on transnational corporations, or arms trafficking are also germane.

60. However, it is difficult to know how to deal with a phenomenon when we cannot even agree on what to call it. The term "terrorism" is so politicised and value laden that the semantic debate frequently distorts the substantive one. There is little chance to make the case about the human rights consequences of terrorism, when one almost inevitably becomes entangled in the wrong argument, and is left to bicker over whether a specific incident was truly a terrorist act or not; or if those formulating the critique have analysed properly what the other side is doing. Some have made it a policy not to use the word at all, or to use it only in quotations. But this ultimately does not appear very helpful either, since the concept is with us to stay and the public is pretty clear about what they mean by terrorism, even if they may not dwell much on the complexities of the legal definition.

61. A related issue is how to convey condemnation of terrorism to some of the audiences that have usually been sympathetic to human rights concerns. There is typically a significant degree of overlap between solidarity groups and the human rights movement, particularly in Europe. As we know, human rights activism entails the exclusive use of peaceful means. At the same time, the human rights movement does not usually oppose the use of violence to achieve political goals, just as it does not oppose (and frequently recognises as necessary) the legitimate use of force for the purposes of law enforcement. The affirmation in the Preamble of the Universal Declaration on Human Rights, that the existence of the rule of law is essential "if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression" resonates with force in some sectors of the human rights community. This is especially true when it comes to analysing the context in which many human rights abuses take place; some are

persuaded that while violent acts may be deeply reprehensible, they are the only available "weapons of the weak", and that the human rights movement, almost by definition, should not align itself against the underdogs. Even if such acts must be publicly condemned, the question arises of how to do it while avoiding adding moral authority to those who already have the upper hand in an asymmetrical conflict. There is an issue here, one that only a comprehensive human rights discourse can hope to address.

62. The confusion is compounded by the fact that many governments are relentlessly drawing attention to any behaviour they can classify as an act of terror (whether real, imagined or potential), not out of any genuine sense of concern for the abuses committed, but as part of wider diversion strategies to forestall criticism of their own human rights records.

63. The fact that the most applicable body of international law is not "human rights oriented" is another problem. Moreover, current conventions and drafts are inconsistent with one another in the elements used to define an act of terrorism. One case in point is the degree of specific intent required under different definitions, another is whether the concept is limited to acts of violence against individuals or if it can also be applied to acts against property. The latter point is much favoured by states, who are increasingly tending towards expanding the concept of terrorism, and human rights groups are rightly worried about this expanded concept becoming established into law.

64. Another key issue for the human rights movement is that while many states are attempting to broaden the concept of terrorism, they are simultaneously aiming to narrow the categories of possible perpetrators, so as to include only non-state actors, and exclude the possibility that terrorist acts could be committed by governments. There is a risk that this rollback will create a new and serious gap in legal protection available to victims of state terror.

65. Finally, there is a lack of clarity in relation to the aims, goals and vulnerabilities of contemporary terrorism. Further reflection is needed on issues that may transcend questions of law, campaigning and politics. While the human rights movement has made huge strides in its internationalisation over the last 20 years, it remains predominantly Western in character; one cannot confidently say that it is universal. The regions of the world from which today's terrorism appears to be coming are those where the movement has been weaker. Although one can certainly understand some of the root causes of terrorism, do we really comprehend what leads individuals to sacrifice their lives to blow up an obscure checkpoint, or a group of civilians queuing for a job? The method seems to be a crucial part of the message, but this is a different moral universe from the one we knew. Plenty of insurgents have been ready to die for their cause, but usually not unless it was felt to be "necessary". There was no romanticism attached to the possibility of accidentally blowing oneself up in an attempt to kill civilians, as there certainly was for being killed while trying to inflict damage on the enemy or trying to save a fallen comrade. In most cases, the exterior motives of armed groups were intelligible to us – they wanted to create a political establishment. Not any longer. The troubling experience that once haunted Peruvians when they saw the rise of Shining Path in the Andes, deploying forms of extreme violence until then unknown in the region, appears to have gone deeper and global. The human rights movement had confronted the challenge to universality coming from governments; now it appears to come from non-state groups. When it came to "traditional terrorists", there was a sense of what they wanted, and most were ready to negotiate. Their aims were somehow "recognizable", if not always palatable. This is not necessarily true today.

66. How should the human rights movement respond? Thinking about possible "human rights actions" that may be relevant to terrorism is difficult. Finding actions that may be effective seems to have eluded us all.

67. The human rights movement has a proven arsenal of techniques; through its lobbying activities in IGOs or with second governments it applies political pressure and generates diplomatic negotiations against offender states; it suggests restrictions on arms sales, smart trade sanctions and travel bans or aid incentives; through its reports and media activities it promotes solidarity with the victims and stigmatises the perpetrators. The problem is that many of these approaches would appear at least *prima facie* to be ineffective with terrorism.

68. The public does not seem to regard terrorism and human rights as separate or unrelated issues. I think it is crucial for the international human rights movement to make a considered response to the issue of terrorist attacks, particularly in non-conflict situations. This would require going beyond the current "condemn" approach, and deploying a significant degree of creativity (such as emerged in the mid 1980s, when NGOs first began to work on abuses by non-state actors).

69. It may well happen that a human rights and terrorism agenda proves too difficult or dangerous to implement; it may not be possible to build the necessary skills, or achieve the desired impact. But it is worth a try. Proposing ways to build up a discourse on human rights and terrorism, define a possible scope of involvement and devising relevant campaigning techniques is beyond the purpose of these notes. However, some terms of reference for a discourse and action may be found in current practices.

70. While the first objective should be to contribute to the protection of victims of terrorist acts, it is also valid to act in order to preserve the movement's credibility. However, credibility cuts more than one way; if we want to be truly effective it should also be won among those audiences who better understand, or who may be ready to support, acts of terrorism.

71. Building a human rights agenda on the issue of terrorism requires the incorporation of some basic assumptions. For example, there is agreement that acts of terrorism are never acceptable; it would be important to assert that terrorism is never unavoidable either. Bill O'Neill has recently encapsulated the debate: *Some of the reluctance to define terrorism stems from situations where a weak organization faces overwhelming state power and responds to systematic oppression or occupation by using terrorism. Even in these situations terrorism is a choice; there are examples where insurgent groups or civilian populations facing intense repression, occupation or even acts of state terror did not respond in kind (East Timor under Indonesian occupation, Haiti under the Duvaliers and subsequent military dictatorships, Kurds in Iraq after poison gas attacks by Saddam Hussein). Meanwhile, some states suffering terrorist attacks refused to respond in kind and carefully calibrated their tactics to avoid unnecessary civilian suffering…). Terrorism is never inevitable.*

72. Affirming that the destruction of human rights by terrorist means can always be avoided would be helpful for positioning the movement in the debate and removing remaining ambiguities in the discourse. Exposing what is legally reprehensible, whether in war or peace, and condemning what is morally repugnant, should also be part of the package.

73. Is it essential to have a legal definition of terrorism in order to articulate a human rights discourse on the issue? Probably not. IHL provides a legal framework for similar situations but it does not offer a generic definition of terrorism. In order to have a general approach to terrorism it may be enough to say that we recognise it when we see it and to be able to describe its core components.

74. Moreover, discussion on a legal definition is likely to re-ignite debate on the relation between terrorism and human rights law. As we have seen, there are a number of pronouncements by international bodies, academics and human rights activists – as well as governments – who consider acts of terrorism to fall within the category of human rights violations. There is a line of thought that finds legal support in provisions in human rights instruments that establish human duties (art 29 of the Universal Declaration for example) or impose an obligation to refrain from activities that may lead to the destruction of rights (for example art 5 of the ICCPR). The political and legal impact of such calls, and the extent to which this approach should set in motion accountability mechanisms originally created to hold governments to account, is hotly debated. All this would necessarily be part of the debate. In principle, I would argue that it is not correct or even necessary to advocate the direct application of human rights law to non-state actors; there is no need to alter the fundamental tenets of international human rights law – that regulates relations between those who rule and those who are ruled – in order for the human rights movement to step up campaigning and advocacy against acts of terror.

75. If a distinctive rhetorical tool is required to qualify acts of terrorism in relation to human rights, the concept of "destruction" of human rights and fundamental freedoms may deserve a second look. There does not appear to be anything inherently wrong with it and it has some grounding in international law, even though the human rights record of some of the governments that originally proposed the term was highly questionable. The terminology of "abuses" against human rights (rather than "violations") may also be applicable here.

76. Is it necessary to have a deeper understanding of the root causes of terrorism in order to build a discourse on it? Shall we at least point out the link between human rights violations, the repression of civil and political rights and acts of terrorism? In principle it seems appropriate to explore all causes and not only those related to civil and political rights. We know that acts of terrorism frequently originate in political disenfranchisement and economic despair. However, a human rights approach to terrorism should reject simplistic or Manichean explanations of the phenomenon and make it clear that it does not mean an alignment against those who fight for freedom. Recognising that terrorism often stems from political and economic frustrations does not mean that it is a necessary consequence, and should not be an obstacle to stressing the absolute impermissibility of acts of terrorism in the service of any cause. This would not be an easy balance to achieve, and implies the same sustained commitment to policy debate and development that the human rights movement devotes to any of the issues it really cares about.

77. At the same time it seems fundamental to keep the *ad bellum* vs. *in bello* distinction. This helps us to use the argument that acts of terrorism have the effect of diminishing the legitimacy of any struggle in the eyes of some audiences that might otherwise be supportive. The experience of work on IHL is helpful in this sense and may be used to emphasise that human rights organisations have a right to remain neutral in relation to the justness of a particular cause and still oppose acts committed in its name.

78. As with governments, principled and legal arguments may be more effective if they are coupled with sensible policy analysis. So, apart from saying what is avoidable, illegal and morally unacceptable, it would be important to show what in terrorism is also counterproductive for the cause of those who practice it. Issues of reciprocity, for example, have proven to have weight when flagged in a context of armed conflict. However this requires caution; not every policy argument conveys the image of a wiser or savvier human rights movement. If, for example, we baldly assert that terrorism is "ineffective" in causing change we may just look naïve to those inclined to use it. They may well ask us what the "effective" alternative is. And policy analysis used in isolation may be weak or even backfire.

79. The paragraphs above cite a few of the elements that might be needed for a general discourse on terrorism and human rights. At the moment, and outside the IHL context, human rights organisations tend to limit their interventions to reactive ones, usually in the form of communiqués against the worst outrages. There is little systematic research, and no vigorous campaigning on the issue.

80. It is true that it may not be possible to adopt a human rights strategy with a group like Al Qaeda, which appears to have chosen terrorism as a goal rather than a tactic. We may have to accept that they may be the « North Korea » of armed groups, and that while it may be possible to document, record and publicise their abuses, naming and shaming will have little direct effect on the perpetrators. But this does not mean that documentation and reporting is useless or that we should not do it. We may simply need modest goals of our own. In any event it is still too early to attempt to establish different categories of groups for these purposes.

81. In principle, however, the traditional human rights techniques of naming and shaming may well have an impact on many other organisations engaged in terrorism. This would require collecting information, testimonies and reporting on them in the same way it is done with governments. As usual, when NGOs operate in a highly political context, particular sensitivities need to be deployed (for example in relation to the timing of the releases and the weight of some recommendations) so that a human rights response to terrorism does not become a propaganda tool in the hands of the respective governments. A degree of government manipulation may be unavoidable but well tested methods to preserve impartiality can be used and adapted to this work as well.

82. It is possible that such organisations feel they have an audience from where their "legitimacy" stems. If a discourse is built, it will need to be conveyed to these audiences in the countries where most of the acts of terrorism take place. Exile communities would also be important, given their role in providing political and material support to groups that carry out acts of terrorism. Human rights campaigners will need to address the solidarity networks that found a rationale in terrorist acts as a way to achieve their causes. A special effort will be required to engage in dialogue with individuals and sectors who are political associates of armed groups; these may be religious and political leaders, intellectuals, media professionals etc. Seminars or closed round tables may help to start dialogues.

83. It would be equally important to discuss the risks and benefits of such work thoroughly with the local human rights NGOs, and to assert and support their right not to do this kind of work if for any reason they consider it beyond their capacity.

84. A key factor in campaigning against acts of terrorism should be to link with urgently needed action against torture in a way that highlights the commonalities and causalities that exist between them. So far, in its feeble response to Abu Ghraib, the human rights movement has not done so. From a human rights and moral perspective there is little to choose between terrorism and torture; both result in the negation of the individual. As Professor Paul Wilkinson, from the University of St Andrews has noted: "Torture is the microcosm of terrorism. It's one individual terrorising another individual". This is a powerful rhetorical tool, one that has been underused so far.

85. In closing, while a legal definition may not be essential to step up the work on human rights and terrorism, human rights organisations should be prepared to engage in the definitional debate that is about to restart in the UN. They should pursue the possibility of bringing a human rights dimension into the language of the legal instruments proposed, but also need to contain the expansiveness that is creeping into the definitions being adopted at both the national and international level. Many of these are abusive and erode the principle of legality through lack of

clarity or specificity. If there is indeed a human rights component in the protection of people against terrorism, such protection should be about human life and integrity. The destruction of computers, disruption of transport systems and damage to government property alone, should not be in this category. Finally, the human rights movement has a role to play in recovering the concept of state terrorism, which seems to be disappearing from today's public debate. States and state agents can be and frequently are the perpetrators of terrorist acts; they should not be let off the hook.