INTERNATIONAL
COUNCIL HUMAN POLICY
ON RIGHTS

Catching the Wind –
Human Rights

An anniversary reflection

ABOUT THE COUNCIL

The International Council on Human Rights Policy was established in 1998 following an international consultation that started after the 1993 World Conference on Human Rights in Vienna. It conducts practical research into problems and dilemmas that confront organisations working in the field of human rights.

The Council starts from the principle that successful policy approaches will accommodate the diversity of human experience. It co-operates with all that share its human rights objectives, including voluntary and private bodies, national governments and international agencies.

The Council's research agenda is set by the Executive Board. Members of the International Council meet annually to advise on that agenda. Members help to make sure that the Council's programme reflects the diversity of disciplines, regional perspectives, country expertise and specialisations that are essential to maintain the quality of its research.

To implement the programme, the Council employs a small Secretariat of ten staff. Based in Geneva, its task is to ensure that projects are well designed and well managed and that research findings are brought to the attention of relevant authorities and those who have a direct interest in the policy areas concerned.

The Council is independent, international in its membership, and participatory in its approach. It is registered as a non-profit foundation under Swiss law.

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ACKNOWLEDGEMENTS

This report was prepared between October 2006 and October 2007, at the request of the Council's Executive Board, to mark the tenth anniversary of the International Council on Human Rights Policy. A pre-publication version was produced for the tenth annual meeting of Council members, held in Bangkok in May 2007. That document, titled *These Years – Human Rights* included the introduction by Thomas Hammarberg that is included here, an earlier version of the chapter 'Looking Back' prepared by Robert Archer and staff of the Secretariat, and a postscript by Juan Méndez, President of the International Center for Transitional Justice. We would particularly like to thank Thomas Hammarberg and Juan Méndez for their contributions.

The Council meeting in Bangkok focused on the future and on major trends that will impact on human rights work. Participants included past and present members of the International Council, and guests from Thailand, neighbouring countries and other regions. Drawing on the discussions in Bangkok, the Board subsequently requested the Secretariat to prepare an additional section that is included here in the chapter 'Looking Forward'. We would like to thank all those who participated in the Bangkok meeting for their contributions to the discussions there.

The report was written and edited by staff of the Secretariat.

INTRODUCTION

The International Council on Human Rights Policy was created ten years ago to deliver relevant and useful ideas in the field of human rights policy. To reflect its first ten years of activity, the Council has produced this document, which surveys recent trends in human rights and, more speculatively, looks forward at some of the large issues that lie ahead.

Unusual because it is not a product of the Council's normal processes of research and consultation, the report should be read as a reflection, a 'taking stock' designed to stimulate further reflection. It is certainly not definitive, let alone a programme of action. Because the aim is to start a debate, not draw conclusions, we make no apology for raising large issues in broad and preliminary terms.

The document begins with a personal introduction by Thomas Hammarberg, the Council's founding Chair. Two chapters then follow. One looks back at trends in the recent past, the other looks forward to the future – at new contexts, changing ideas of state, society and economy, and key issues of global public policy that are likely to impact human rights work and thinking in coming years.

We hope it will stimulate curiosity in those who read it and encourage an exploration of human rights policy in new directions.

Hina Jilani
Chair, Executive Board

HOW THE COUNCIL STARTED...

by Thomas Hammarberg

It was early 1993 and the World Conference on Human Rights was being prepared. It did not look promising. The post-1989 optimism had already began to fade and it was obvious that there was little enthusiasm among a great number of governments for any advance of the international monitoring of human rights.

The rhetoric about 'Asian values' was still promoted by Singapore, Malaysia, China, Pakistan and others. The United States government preferred to talk about 'democracy' rather than human rights and the European voice was badly coordinated as usual.

There was a need of some initiative in order to secure that the World Conference would be something more than an empty talk. Amnesty International seized the moment and proposed that an office of a High Commissioner for Human Rights should be established.

Some of us in the 'human rights community' felt uneasy. The proposal was not well researched and it was not clear that this was the right moment to reactivate that old idea. Was there a risk that the office would be set up with such a restricted mandate that it would be dysfunctional and even undermine what was done by the existing United Nations (UN) Centre for Human Rights?

What worried us even more was that this Amnesty International proposal was the only 'new' idea around. There appeared to be no strategic approach to international human rights work anywhere. Why was there no constructive thinking within government circles? Among the non-governmental organisations (NGOs)? Among scholars? Why was there no link between the intense fight for human rights on local level and the international discourse?

An informal dialogue started among international activists. Margo Picken, then at the Ford Foundation, and I had a long walk in the Jura mountains and tried to develop a preliminary concept for a 'centre' or an 'institute' for impartial, applied research on key human rights policy issues. Philip Alston responded positively when the idea was discussed in the corridors of the European preparatory meeting for the World Conference in Strasbourg.

A small steering committee was set up with Philip, Hina Jilani, Virgina Leary and myself. Ford Foundation gave some seed money and a first consultation meeting was organised in Arden Homestead in up-state New York with a number of activists, including some with UN background. One of the most active participants was Professor Abdullahi An'Naim.

The conclusion was that there was indeed a need of some structure to fill the gap – to service a more competent discussion on how human rights could be promoted. How could we move in that direction? The next step was to consult more widely, including with the established human rights organisations and with the academic institutions – and meet again.

The steering committee asked Helena Cook and Christopher Bemrose to undertake a study in preparation of the next meeting which was organised by Philip Alston in Cambridge in July 1994.

The study showed that applied policy research on international human rights did not have a high profile or status and its potential was under-estimated and under-utilised. No single internationally-renowned institution was carrying out a full-time program of such research. Policy research on human rights was the work of a few individuals on an ad hoc basis. Policy research institutions working in other fields tended to ignore the human rights aspects. Neither intergovernmental nor non-governmental organisations had the resources or structure to undertake this type of research.

The following needs were identified in the study report:

- The need for systematic high-quality research to make a real impact on policy-makers and raise the profile of the study of human rights.
- A forward-looking research agenda; research on a wider range of issues.
- New methodology and perspectives.
- More linkages and communication between different sectors to build consensus on complex issues.
- Greater visibility and impact on policy-makers.
- Cross-fertilisation, information exchange and communication among researchers.
- Research to be more accessible to the wider human rights community.

I regard this meeting in Cambridge as the founding meeting of what was to become the International Council on Human Rights Policy. Therefore it could be of interest to list those who took part: Gudmundur Alfredsson, Philip Alston, Abdullahi An-Na'im, Chaloka Beyani, Ligia Bolivar, Andrew Clapham, Helena Cook, James Crawford, Michael Czerny, Diego Garcia-Sayan, Yash Ghai, Stefanie Grant, Thomas Hammarberg, Kamal Hossain, Patricia Hyndman, Hina Jilani, Dzidek Kedzia, Virginia Leary, Ian Martin, Joe Oloka-Onyango, Margo Picken, Roger Plant, Emma Playfair, Michael Posner, D. J. Ravindran, Allan Rosas, Mohamed Sayyed Al-Sa'id, Neelan Tiruchelvam, Danilo Türk, Francesc Vendrell.

The steering committee continued its work and was broadened into a board: Stan Cohen and Ligia Bolivar joined. Lynn Welchmann served as the first coordinator and the 'office' was housed in the Interrights' and then in Anti-Slavery Society's premises in London.

The time had come to establish the institute/centre for real. What should be its name? Where should it have its office? How should it be organised? What should be its true mandate? How should it be funded? How should it relate to the 'human rights community'? To academic research? What issues should it take up and through what process? What should be its output?

One after another, these issues came up in the provisional board. The term 'Council' in the name was preferred to 'Institute'. A long discussion about location ended in the decision to choose Versoix, Geneva, after promises from the Swiss authorities about contributions and subsidized premises. The argument against Geneva was that the Council should avoid to be drawn too deeply into the intergovernmental world.

It was proposed that the Council would relate to a university and thereby benefit from an intellectual, academic environment. The other approach in this fairly intense discussion was that the Council should relate closely to human rights groups all over the world and therefore should not be tied too closely to a specific university. In the end, the decision was that the Council would be separate from any 'host body' and stress its close relationship with human rights groups.

During preparation of the first Council Meeting in Cairo in 1997, Margo Picken proposed that one of the major aspects of the programme should be to define an 'agenda' on current key human rights problems. The regular (annual) meetings should discuss this agenda and develop it.

The provisional board took this on and proposed that the purpose of these regular meetings would be to get an input from human rights activists from all parts of the world and on the basis of the 'agenda' emerging from these reports determine which issues ought to be looked into by the Council through its research projects.

This approach gave rise to the organisational structure. A self-appointed board would recruit members of the wider Council through consultation. Members would be invited for the annual meetings but also be in close contact with individual projects as advisors, depending on their personal expertise. Board members would be recruited from the broader Council. A time limit was set; no Board member could stay more than six years.

Theo van Boven served as convener of the first nomination committee and secured a broad representation. Yash Ghai raised repeatedly the need for the Council to relate to activists and academics in the South.

Robert Archer was recruited as Director in September 1997 and was able to take part in the Cairo meeting. He introduced an extensive consultation procedure which became one of the key characteristics of the Council. Advisory groups were established for each of the major projects and draft reports sent for comments to a great number of experts and activists. The response rate has sometimes been surprisingly high. Some reports were based on case studies on country level – again, people were consulted.

Has the Council developed as the originators hoped? My view is that it has played an important role so far. Some of the other founders ceased to participate actively; a couple did so because they were disappointed that their ideas were not supported (the tension between 'academic' and 'NGO-orientation' was one such issue). Others joined and added their views and experience. One of them was Ayesha Imam who pushed the Council towards deeper awareness of the gender perspective.

One person symbolises continuity: Hina Jilani, who fell under the six-year rule but now is back. She is now in the Chair which bodes well for the future. She is aware that the Council cannot rest on past achievements. It has to prove itself again and again.

> *Thomas Hammarberg is the Commissioner for Human Rights at the Council of Europe. He was the International Council's Founding Chair and led the organisation through the crucial period of its formation (1993-1997) and development between 1997 and 2004.*

LOOKING BACK

INTRODUCTION

What has been the main trend in human rights in the last fifteen years? It is probably the widening and deepening of human rights activity in both range and influence.

It is now difficult to recall the extent to which human rights were at the political margin, for example when Amnesty International took form in the 1960s. By the early 1990s much had already changed. In 2005 the United Nations (UN) Secretary General described human rights as the third pillar of the UN's architecture alongside development and security. International law has also extended its range enormously since the 1960s. Not only are the core treaties much more widely recognised; many new standards have been created, and international human rights law has reached out beyond states to encompass private actors. Far more governments and many other organisations – from non-governmental organisations (NGOs) to businesses and trades unions – have integrated human rights explicitly in their policies (or at least their rhetoric), and a host of non-governmental and civil society organisations now refer to human rights in their work. Human rights have also become academically respectable: numerous universities have created human rights centres and offer courses.

This judgement obviously needs to be tempered. As their standing and influence have increased, human rights have also been more actively contested, by more powerful actors. Where formerly they were tolerated because considered marginal, the influence of the Helsinki Accords (1975) on the transformation of the Soviet Union, the frequent references made to human rights in the context of North-South relations, and most recently the force of human rights legal criticisms of the conduct of the 'war on terror' have caused many governments to want to restrict or reverse the application of human rights. Criticism of human rights has become more widespread and explicit, especially in wealthier countries. Moreover, as human rights language has spread it has become more diffuse, or diluted, blunting some of its transformative promise. Opposition and influence have risen together, creating a degree of disorientation.

At the same time, human rights violations of every kind continue to occur. Though human rights law and human rights values are recognised and invoked by many more people to protect themselves from abuse, this does not necessarily imply that levels of abuse will decline. Impunity continues to exist in many government ministries, barracks and police stations. In many countries, people are still attacked, intimidated or imprisoned because they express their opinions or take action to obtain or recover basic political and civil rights. Women continue to suffer from violence, harassment and economic exploitation because of their gender. Minorities continue to face discrimination. And those who are poor and without influence continue in vast numbers to be excluded

from social and economic progress and development, and to live in conditions that deny their rights and dignity as human beings. Some things have changed. The incidence of capital punishment has fallen steeply. Some forms of impunity have been challenged. More cases are being taken to court, and won, on human rights grounds. More governments have integrated anti-discrimination and other human rights standards in their domestic law and created institutions to monitor their effect. But, while the enormous advance in understanding of human rights that has taken place is a precondition for long-term change, it has not straightforwardly resulted in a positive effect on the occurrence of human cruelty or the misuse of power – and cannot be expected to do so.

The International Council has been a privileged observer of some of these changes. It is not a front line organisation; its staff do not confront the risks that many human rights defenders face, though they work with those who do. It does not litigate or run campaigns, though it collaborates with people who do and analyses dilemmas the latter have no time to research. Nevertheless, because it is institutionally independent and in the course of its research engages with government and international officials, with national and international civil society organisations, and with professionals and scholars from many disciplines, the Council sees and hears many points of view about human rights, while its work takes it out to new audiences and new subjects.

On the basis of that experience, this chapter attempts to capture, in no particular order, some of the significant trends and developments in the human rights arena over the past decade and a half. It does not claim to present a comprehensive view of human rights experience in the period. It intentionally looks for positives as well as cases of regression and failure, and should be read in combination with the second section which looks ahead.

EXTREME VIOLATIONS OF POLITICAL AND CIVIL RIGHTS

War and conflict

Human rights are violated most often and in the worst ways during wars and civil conflicts. The years since 1990 are no exception. The genocide in Rwanda (1994) shocked by the scale of killing, and more so because the world's institutions failed to stop it. Despite vows that such an event should never happen again, the international response to Darfur (2003-), though over a longer period and in a different political context, has been scarcely more effective. In the Great Lakes Region and the Democratic Republic of Congo, since the Rwanda genocide, more than three million people are believed to have perished from violence and hunger or disease associated with it. Other conflicts – in Afghanistan, Chechnya/Russia, Colombia, India, Iraq, Israel/Palestine, Pakistan, Sierra Leone, Sri Lanka, the former Yugoslavia and elsewhere – have each been responsible for numerous deaths and injuries, displacement, cruelty, destruction of property, sexual violence and intimidation.

Standing back, distinct human rights issues arose in relation to two kinds of response to conflict during the period: *violent civil* or *sub-regional conflicts* (Rwanda, Bosnia, Colombia, Sudan, Ivory Coast, Liberia, Sierra Leone, Sri Lanka, Nepal, India, Pakistan) generated demands for new policies and capacity; while *international military interventions* (notably in Afghanistan, Iraq and the former Yugoslavia) generated a profound controversy about principles. In parallel, international peacekeeping operations were mounted in a significantly larger number of conflicts (including Afghanistan, Burundi, Darfur, Democratic Republic of the Congo, East Timor, Ivory Coast and Sierra Leone). These raised some of the same issues, but also signalled a shift of ambition in the scale of international efforts to protect human rights during armed conflicts.

International military interventions, and demands for them, generated a deeply felt, unfinished argument about when military intervention on humanitarian or human rights grounds is justified. Human rights actors do not agree on this question. To be more precise, they share a common legal and political analysis and can list many of the criteria that should be applied but tend in practice to draw different conclusions when they apply these criteria. Many oppose war altogether; others would set such high tests that intervention would rarely be justified; others again, haunted by Rwanda and similar disasters, want international institutions such as the UN and the African Union (and perhaps military institutions like the North Atlantic Treaty Organization (NATO)) to act more often and more effectively to protect human rights by halting and policing more national conflicts around the world.

The war in Iraq (2003) poisoned the course of this slow and complex discussion. The latter cannot be set aside, nonetheless. In recent years a clearer and stronger argument has been made that forceful multilateral intervention is justified and sometimes *required* in order to protect human rights and deal with certain conflicts. Initially advanced by the International Commission on Intervention and State Sovereignty (ICISS, 2001) and subsequently recognised by the UN General Assembly (2005), the argument asserts that, where states are unable or unwilling to protect the people they govern from serious humanitarian threats or grave human rights violations, the international community is under a 'responsibility to protect' those people which may override government claims to national sovereignty. It is usually assumed that such interventions require the approval of the UN Security Council.

The 'responsibility to protect' now lies across the frontier between national and international conflicts. If it becomes accepted, how it is applied will decide whether such interventions come to have beneficial effects in terms of saving life or procuring peace (as perhaps in East Timor or Sierra Leone) or damage the authority of international law and cooperation. If, as seems likely, the principle is extended to cover non-military crises that are developmental and environmental or due to natural disasters, its influence may be even more widely felt.

Protection of civilians

Violent civil or sub-regional conflicts inspired many positive new humanitarian and human rights initiatives designed to control the often extreme violence that can be inflicted by lightly-armed forces engaged in such wars. United Nations agencies introduced formal arrangements for coordinating their operations and international peacekeeping missions multiplied; today United Nations and other multilateral peacekeeping forces are present in more countries than at any time in the UN's history. This in turn has generated controversies about funding, professionalism and, most important, accountability.

In some areas, progress has been made towards regulating or barring the use of weapons that cause indiscriminate harm, especially to civilians. Though technical obsolescence is also a factor in such decisions, the landmines treaty (Ottawa Treaty, 1997) was a remarkable example of international cooperation and involved an unusually wide coalition of interests, including the International Committee of the Red Cross (ICRC), military officials, governments, and civil society coalitions. An international campaign to regulate the spread and use of small arms has gradually also become influential. If governments have stopped short of agreeing formally to a treaty, a large number of states – not least in Africa – became persuaded during the period that it is necessary to curtail their use and sale. Less progress has been made in restricting the use of other weapons, such as cluster bombs, while the appearance of new weapons' technologies continues to create human rights and humanitarian concerns. The development of biological technologies, use of depleted uranium, adoption of drones as platforms to launch rocket attacks, and long-distance guided weapons more generally, all raise concerns that have not been met.

Confronted by the humanitarian challenges that civil and sub-regional wars pose, new models of humanitarian peacekeeping and protection also emerged. Humanitarian agencies undertook to evaluate their work more rigorously, agreed minimum performance standards (the Sphere Project, 1997), and made themselves more accountable to those who use their services. Following a lead set by Peace Brigades International, groups pioneered new forms of accompaniment and monitoring designed to protect civilians and human rights defenders at risk.

Important work was also done to tackle sexual abuse and exploitation suffered by women and children during wartime. In the early 1990s, rape and sexual violence were formally recognised as war crimes. Work that continued through the period to prohibit the recruitment of child soldiers, and make prohibition effective on the ground, had some positive (if uneven) effects.

Forced displacement, especially internal displacement, became a new area of advocacy and programming. Though displacement of civilians has universally been a consequence of war, the predicament of those displaced within the borders of their own country was not recognised as a human rights

concern until the early 1990s (and even now not in an international treaty). The development of programmes to address their suffering more effectively – before, during and after the end of conflicts – is one of the positive trends of recent human rights and humanitarian work, even though, in Darfur, Colombia and elsewhere, protection is evidently still fragile or absent. The widespread adoption of the Guiding Principles on Internal Displacement (1998) is perhaps the best example of the successful development of 'soft law' human rights norms – another emerging trend in human rights work.

Transition to peace

Peace negotiation and mediation also evolved rapidly during the period. The negotiation of peace settlements has old diplomatic roots. Since the 1990s, however, peace negotiations have more consistently included an international dimension (for example in the former Yugoslavia, East Timor, El Salvador, Guatemala, Cambodia, the Philippines), creating virtually a new profession of 'international mediator'. In a new way, too, many agreements made extensive or significant reference to human rights. Peacemaking is another domain where human rights now enjoy a contested presence, in ways they did not before.

Negotiating peace agreements is one thing; implementing them another. Much experience has recently been gathered in this area, partly because new models of internationally supervised transition have exposed international organisations to the risks and difficulties involved: the European Union (EU) in the Balkans, the United Nations in East Timor, the Economic Community of West African States (ECOWAS) in West Africa. While the record is certainly mixed, important lessons have been learned in a range of environments. One is that the reform of public institutions requires consistent political and financial investment over a very long period – far longer than political or electoral cycles. This is particularly true in the crucial area of policing, where the inherent difficulties of reform are exacerbated by the need to, first, provide appropriate forms of law enforcement in societies that are semi-demilitarised and, second, manage high rates of criminality which are often associated with post-conflict reconstruction. Reform of the judiciary, the prison system, parliamentary systems, the military and the administration of government each bring challenges that are scarcely less demanding, however.

COMBATING IMPUNITY

The above work on conflict, humanitarian protection and peacemaking focuses attention on impunity. The achievements here are undeniable, even if impunity of all kinds remains widespread. The progress made in challenging impunity for grave crimes such as torture, war crimes, rape and forced disappearances is important because the worst abuses and violations of human rights commonly occur where power is least subject to law, and particularly during conflicts, when lawlessness is likely to be most explicit.

During the period, the profile of the principle of universal jurisdiction grew considerably. Several individual prosecutions were launched and, though most failed, a few were completed successfully. Even where prosecution was not completed, efforts to secure indictment had a powerful public impact such as the effect of the prosecutions mounted against Augusto Pinochet, former President of Chile, and Slobodan Milosevic, former President of Yugoslavia. In Africa, the trial and conviction (in absentia) of Mengistu Haile Mariam, former President of Ethiopia, efforts to prosecute Hissène Habre, former President of Chad, and the detention in 2003 of Charles Taylor, former President of Liberia, signalled in a similar way that abuse of power can be punished. In Asia, notably Indonesia, the record was less positive: no Indonesian leader was indicted or convicted for human rights violations committed during the long rule of President Suharto, and trials of several officers associated with Indonesian military repression in East Timor were inconclusive. Serbia's failure to arrest its principal war criminals represents a similar failure.

International jurisprudence also advanced with the formation of new institutions to try very serious violations of rights. After a long process of intergovernmental discussion that suddenly accelerated in the 1990s, several international courts were established to sanction war crimes and crimes against humanity. The first were the International Criminal Tribunals for the Former Yugoslavia (1993) and Rwanda (1994). The Rome Treaty (adopted in 1998) then led to the creation of the International Criminal Court (ICC) in 2002. Courts were also established to sanction crimes committed in East Timor (1999), Kosovo (1999) and Sierra Leone (2002).

This regime is new and will take time to settle. Courts will need to establish a sound balance between securing respect for judicial procedural rights and international law (when a national state is unable or unwilling to punish grave violations on its territory) on one hand, and promoting national jurisdiction wherever possible on the other. This uncomfortable and complex issue has already presented itself, variously, in Cambodia and Iraq, in Indonesia (with respect to East Timor) and in the former Yugoslavia and Uganda. The ICC faces a slightly different challenge: its caseload is determined by its mandate but it too will need to take account of local perceptions of its legitimacy.

Other approaches designed to reduce impunity and achieve 'transitional justice' emerged during the period. Remarkable efforts were made in South Africa, Guatemala, Peru, Mexico, Morocco and several other countries to put past abuses on public record, enable victims to tell their stories and allow perpetrators to acknowledge crimes they committed. Innovative trial procedures, some of them contested, have been explored (for example the *gacaca* system in Rwanda) to deal with caseloads that would overwhelm the court system. All these approaches create new spaces for protecting and promoting human rights, but at the same time new risks and problems that need continued attention.

Impunity has recently been challenged in another area. New work has been done to make representatives of international organisations accountable for crimes they commit. Under intergovernmental and UN agreements, soldiers and officials on international duty typically have immunity from domestic prosecution in the countries in which they serve. This has become a highly sensitive matter whenever soldiers in international forces have been accused of committing abuses or torture – as Canadian and Italian troops were in Somalia in 1993 and American and British troops were in Iraq from 2004.

In Nepal, Sierra Leone, Bosnia, Kenya, staff of international agencies were found to be implicated in abuses of women and children living in refugee camps that were administered by international organisations. These inquiries opened new fronts for advocacy on impunity, and women's and children's rights, that are still in development. Rape and sexual assault were penalised in 1998 by the International Criminal Tribunal on Rwanda, and the Rome Statute of the ICC considers them to be war crimes.

TERRORISM AND SECURITY

The suicide attacks in the United States in September 2001 and the subsequent declaration of an international 'war on terror' had major effects on the political environment and on human rights work. They created conditions for an international military intervention that had a deeply destructive effect on the authority of international law and international institutions, and they shifted the focus of international policy away from 'soft power' in favour of security-based or straightforwardly military approaches. From 2001 the UN Security Council required states to introduce more stringent anti-terrorism policies and since 2001 many governments have passed new laws that restrict civil liberties and deny human rights.

Torture became a critical issue. The prohibition of torture under all circumstances by the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was a significant achievement. However, it became clear in 2002-03 that the United States administration was reinterpreting United States domestic law, and the Convention, to permit what had clearly been understood as torture and ill-treatment. Argument continues, though the response of lawyers (including military lawyers) and judicial officials in the United States, and legal criticism from abroad (including the Committee against Torture) led to a review of the position.

United States policies after September 2001 raised other concerns. The declaration of a 'war on terror' which had no obvious end, precise enemy or territorial boundary was one; the redefinition of detainees as 'unlawful combatants' who were not eligible for any protection under the Geneva Conventions was another. The administration's willingness to reposition legal categories – prisoner, combatant, civilian – threatened to undermine the coherent application of

international humanitarian law, which governs the conduct of those involved in conflict; worse, this was apparently its intended effect.

As the wars in Afghanistan and then Iraq proceeded, further issues emerged. The ambiguous status of the United States base in Guantanamo Bay (Cuba) created for many months a legal limbo that removed legal status (and protection) from those in detention there, while the delegation of security and intelligence functions to private companies had the potential to reduce the accountability of the hiring government or its security forces for the treatment of detainees. The pertinence of this issue became clear when evidence of torture and ill-treatment emerged from Abu Ghraib prison in 2004. It equally became evident that some individuals had been moved secretly across frontiers to countries where they could be interrogated with less restraint or tortured. Further research revealed that the practice of 'extraordinary rendition' had been tolerated or assisted by several European states.

All these practices led other countries to introduce more repressive laws and measures, citing the 'war on terror' as a justification. More widely, anti-terrorism policies tended to erode civil liberties, in particular where there were significant Muslim populations, generating new claims of injustice and discrimination and hardening attitudes on all sides. In several European countries sectarian or racist attacks against Jewish people and communities rose sharply.

How should the impact on human rights of changes of policy since September 2001 be assessed? Many human rights advocates believe there has been a major roll back. The new security policies were particularly shocking for human rights organisations in several OECD (Organisation for Economic Co-operation and Development) countries, where most had not assumed that their governments too might retreat from human rights commitments they had made. If governments curtail civil liberties on the grounds that this is required to defeat terrorism, and those who are accused of terrorist sympathies are denied due process for the same reason, and public opinion accepts a narrowing of freedom in order to achieve security, might the framework of human rights law itself be marginalised?

This fear is probably exaggerated. In most respects, the challenges to civil and political rights since 2001 are essentially familiar: they are recognisable from many years of campaigning against repression and in favour of due process. It is also important to emphasise that most of the controversies that have arisen in OECD democracies in the context of the 'war on terror' have been discussed in the framework of the rule of law and human rights law; and that in many instances principles of law that underpin civil liberties have prevailed over executive demands for undefined 'war powers', greater powers of detention or surveillance or investigation, or suspension of legal principles. Albeit laboriously, at least in those democracies, courts and legislatures have tended to resist calls by the executive for unrestrained powers.

In many other parts of the world, this has not necessarily been the case. Many activists in these countries would argue that the importance of September 2001 has been exaggerated. In their experience, the 'war on terror' has not transformed the oppressive behaviour of states, but merely helped to legitimise it. Viewed from this perspective, official violations of human rights in large areas of the world preceded September 2001 and continued after it unchanged. Torture is mundane in police stations in numerous countries. Terrorism itself has a long legal and political history, and use of exceptional legislation and outright military force to repress political dissent evidently predates 2001. On this view 'September 11' never signalled or caused a fundamental change and the attention given to it reflects a bias of coverage due essentially to the fact that OECD democracies have been among the countries most affected.

Is this conclusion sound? In one respect, it underestimates the long-term impact of policy decisions made after September 2001. These caused governments to prioritise security, first nationally, but also through a range of new international arrangements. Advocates of the security approach (particularly among member states of the OECD) declared that 'terrorism' is both the central threat facing modern societies (not just governments) and that, because it has taken a new form (global in range, without specific goals, willing to use unrestrained violence against civilians), effective action implies the sacrifice of some civil liberties. The policies that resulted have affected a raft of activities, from banking and trade to immigration and citizenship. They have also generated new law and conditioned the administration of justice. While it is true that in many countries the 'war on terror' has merely provided a justification for repressive behaviour that governments were already practising, it has generated a momentum in favour of security-led approaches that has significantly altered the direction of international and (by extension) national policies.

Human rights organisations have found it difficult to respond to this wider shift in the political debate, because it challenges the foundations of historical human rights advocacy, which focused on state obligations under international human rights law. They have tended either to deny that an important change in context has occurred, or claimed that all restrictions of civil liberty are impermissible, or both. Yet these positions are difficult to sustain, because in many contexts terrorism *does* represent a threat. Human rights organisations, which have always focused on the duties of states to respect due process and human rights, are pressed to develop and communicate persuasive strategies for dealing with non-state violence as well.

Of course, many changes of state behaviour and policy with regard to human rights had nothing to do with terrorism. The trend to operationalise human rights has been no less influential, as these have evolved from being legal norms, framed rather abstractly at UN level, to principles and practices applied in domestic law and policy in many different countries around the world.

The state and other actors

Reform of the state

The responsibilities of states lie at the centre of human rights law and advocacy. In becoming parties to human rights treaties, states undertake to implement their provisions; states have the sole authority to introduce and enforce domestic law; they also have the authority (and means) to protect those under their jurisdiction from abuse by others. Whereas almost all human rights advocacy until the 1990s monitored state conduct in order to identify violations of rights, in the last fifteen years human rights organisations have broadened their agenda to include a much wider range of activities. They have developed sophisticated analyses of government and governance. Human rights advocates are also increasingly involved in every level of state activity, from making policy, to legal reform and reform of state institutions. Governments (and not only the liberal democracies) take more account of human rights too. They have understood the regulatory influence that human rights can exercise; and many have integrated human rights principles in domestic legislation. In addition, human rights advocates – inside and outside government – have developed new programmes and new advocacy focusing on the human rights responsibilities of institutions other than the state (non-state actors).

Various factors caused perceptions of state responsibility to evolve. They included widespread devolution of government powers to other bodies, via local government reform and privatisation; the emergence of powerful new actors (notably business); the shift most societies made from a state-centred to a market-driven economy; an evident crisis of governance in some societies; and the increasing influence of multilateral law and policy, and multilateral institutions, on national law and policy. (The devolution of state powers, downwards to lower authorities, and upwards to global and regional bodies, such as the UN and Bretton Woods institutions, is discussed in the next section.)

In relation to human rights specifically, changes in perception of the state also reflected a more complex understanding of what is required to change state practices. Those involved in human rights work moved from emphasising the development of international legal norms to an understanding of human rights that included their application in programmes and policies. Government officials in many countries came to recognise there was value in human rights and public accountability; effective human rights organisations took shape in most countries, nationalising (and legitimising) human rights advocacy; and human rights practitioners gained experience and became more conscious of the complexity of what they were trying to do.

These trends need to be set in the context of significant political changes in the world. Simplifying, the state model that human rights law historically promoted was exemplified by democratic Western governments. These dominated the forums in which human rights were discussed. In recent years, however, this

Western perspective has had to give intellectual ground. On human rights and in many other areas of policy, emerging powers and regional groups of states have won more room for their views, while the interests and positions of OECD states have diverged on certain matters. As a result, multilateral policy-making has become more inclusive and in some respects more disputatious.

For human rights organisations, these changes have had practical implications. In the new Human Rights Council, for example, the 'Western Group' has fewer votes than it did, while other 'Groups' have more – creating a situation in which human rights are likely to be contested, but in which smaller powers and new powers can potentially engage more creatively in multilateral discussions of rights. The effect in the short-term may be to disarm the human rights system; but, equally, multilateral human rights negotiations might become more truly representative of international power dynamics, creating conditions for a more legitimate and more inclusive political process.

The duties of states

Reflecting these trends (which are not confined to human rights), from the 1990s a debate began about the nature of the state and its responsibilities.

This debate was more energetic in other disciplines (political science, governance, development); human rights professionals addressed it with hesitation precisely because the state is so central to human rights law and advocacy. Nonetheless, the state's role and responsibilities generated at least four arguments: about privatisation; about the link between democracy and equity; about governance and capacity; and about devolution. None of these issues was considered to be theoretically problematic until quite recently; all became troubling on the ground, as human rights advocates tried to change institutions in the real world.

With respect to the first, some argue that neo-liberal policies have permitted private companies to arrogate much of the power and capacity that states formerly controlled; that the state is shrinking and is no longer able to carry the weight of responsibility that human rights law attributes to it; and that, on these grounds, companies and other private actors must be made more directly subject to human rights standards. We return to the debate on business accountability below.

With regard to democracy and equity, many activists became aware that, though their struggles for parliamentary democracy were successful, the entrenchment of human rights law did not generate more equitable societies. The problem was felt particularly acutely in some Latin American economies and subsequently in some of the emerging economies in Africa and Asia. Is the conception of human rights therefore flawed? We consider the issue of democracy and access below.

A third discussion – about governance and capacity – connects directly into the human rights vision of the state. Reflecting its universal character, human rights law does not distinguish types of state: the latter are presumed to have a single, recognisable form, even though they are granted some latitude in the law's interpretation. In practice, however, it is intellectually difficult to sustain the claim that governments in the United States and Germany, or the United Kingdom and Luxembourg, operate from exactly the same template, let alone that their values and capacity are the same as states such as China or India, or the DRC, Jamaica or Papua New Guinea.

Below, we look first at the emergence of governance as a human rights issue; then at the devolution of state powers *downwards* (to local government for example) and *upwards* (to the United Nations and other international bodies); and finally at the new prominence of non-state actors.

Governance and capacity

As policy-makers and scholars have increasingly accepted that states are diverse (in their values and history as well as their practice), they have focused more on issues of governance. 'Good governance' became a central theme of international policy, invading areas of economic as well as administrative and social planning. Human rights theory and practice began to think about state diversity for the same reason. It has become possible – even necessary – to explore the distinctive approach to human rights of Japan or China or the United States; and it has become evident that very poor states, including those that are well governed, do not always have all the requisite capacities and/or the will to respect, promote or enforce human rights provisions on the terms set out in international human rights treaties. Nor in many cases are their judicial and law enforcement systems robust enough to do the tasks that are expected of them.

This has drawn attention both to the issue of international obligation (discussed below) and to the need for human rights policies that are adapted to context. If states are diverse, this implies that their capacity is too, and that different policy strategies are appropriate for different states. Current international development and governance programmes increasingly take this approach – which is reinforced by the assumption that policies of all sorts will be more successful if they are nationally defined and owned.

Human rights programming has flowed in the same direction. The Office of the United Nations High Commissioner for Human Rights (OHCHR) plans to spend more of its resources on national programmes and expects these programmes to be locally-defined, tailored to local needs and context. Other UN agencies have integrated human rights principles inside their larger frameworks of national development planning. Most of these now affirm that national governments should determine their priorities.

In practice, this assertion is both reasonable (if open to challenge because power is not distributed equally) and a source of tension. How are locally-tailored approaches to human rights to be reconciled with universal human rights principles? What assurance is there that localisation, even if it promotes the legitimacy and effectiveness of human rights practice, will not dilute the content of human rights principles and law? (It is no coincidence that claims of cultural distinctiveness underpin several of the sharpest recent controversies associated with human rights: see below.)

The issue of capacity therefore became an important catalyst of new human rights work during the 1990s. An increasing number of human rights organisations began to support and assist state institutions that attempted to reform themselves. Monitoring and 'shame and blame' advocacy continued, but many organisations also began to train judges and police forces, and agreed to cooperate with and be paid by state institutions for doing so. Assisted by the work of UN experts (working as Special Rapporteurs or in the Treaty Bodies), human rights advocates also developed more detailed and specific interpretations of human rights law, which they applied to policies on health, education, housing, child protection etc. All this work brought human rights organisations closer in their thinking and practice to organisations that focus on development and governance, creating new spaces of common interest and opportunities for sharing experience.

The same work revealed the difficulty of reforming institutions successfully. It proved to take a long time, consistent investment and good judgement to change the culture of judicial, police and prison institutions. Clear success has been achieved infrequently. This experience helped generate a sense of hard realism. Many human rights workers now engage directly with the bureaucracy and inertia of large institutions and recognise the great obstacles that governments face in reforming themselves. Here too, human rights advocates can find much common ground with the experience of development workers.

It is worth noting that human rights organisations (though in advance of other sectors in many areas of policy) have responded belatedly to several emerging issues related to governance. One of these is corruption – a theme that has steadily risen up the policy agenda since Transparency International was formed in 1993 but on which virtually no detailed work has been done from a specifically human rights perspective. Decentralisation provides an equally obvious example.

Devolving state authority, improving accountability

Governments in about eighty per cent of poorer countries devolved some powers to local government during the 1990s, bringing decision-making closer to communities and sometimes transforming the way services were financed and delivered. Human rights organisations scarcely registered this trend. Despite

its importance, and though decentralisation has a mixed record, sometimes proving beneficial for local communities and sometimes regressive, their advocacy remained focused on central government and its responsibilities.

Decentralisation reflected a broader effort to increase government's transparency and accountability by bringing decision-making closer to those most directly affected. Democratic election was one important dimension of this trend. The creation of various monitoring and auditing institutions was another. Here, human rights organisations have played an active role. They gave an impulse to the creation of national human rights institutions in many countries, and helped to develop new auditing procedures and accountability tools.

The strongest argument for decentralisation used by its proponents was that it enhanced democracy. By bringing government *closer* to the people, it was supposed to make government more accountable. Auditing and monitoring processes and new institutions created to audit and monitor governments (national human rights institutions, anti-discrimination commissions etc.) are meant to do the same. The focus on accountability in turn drew attention to process – to the transparency of government procedures, the participation of people in decisions that concerned them and access to information. During the period under review, all the major institutions involved in the development of international policy gave attention (albeit not always consistently) to process and methods for rendering decision-making accountable, inclusive and legitimate.

For human rights, this was significant on several grounds. First of all, it made human rights relevant to other institutions because the human rights framework defines and promotes key elements of process more clearly than most other approaches and does so in legal terms. The rights to information, to association, to opinion, to participate in public and political life, combined with the prohibition of discrimination, provide clear rules for good procedure.

At the same time, the emergence of these values at the heart of public policy helped human rights advocates to restore the systemic coherence of human rights. Human rights had been declared indivisible in theory but during much of the Cold War the two families of civil and political rights, and economic, social and cultural rights, were treated separately in practice. When activists and governments linked the delivery of services (in development programmes and decentralisation strategies) to the exercise of democratic principles, they restored meaning to the claim of 'indivisibility' and gave it practical as well as theoretical value. They also created new and robust links between human rights and work on governance and development.

Focusing on the value of process also caused those involved to look more closely at what they meant, and to experiment in new directions. As a result, notions like 'participation' were understood to be more complex than had been assumed; and some innovative and effective campaigning and analytical methodologies emerged. Examples of the latter are use of the right to information to empower

very poor communities in India, and the development of powerful techniques of budget analysis.

In much of this work, advocates have begun to apply human rights advocacy techniques to empower the poor, increase the accountability of officials, force disclosure of information, strengthen forms of public consultation, and extend democratic rights and free expression. Originally inspired by grassroots activism, these values have become mainstream. They were adopted explicitly by the OECD in the mid-1990s, by the UN towards the end of the century (e.g. the Office of the UN High Commissioner for Refugees (UNHCR) participatory assessment of its operations) and most recently by the World Bank. Even though implementation leaves much to be desired, and many gaps remain between policy and practice, this is a major achievement for which credit should be shared by development, human rights and governance campaigners.

HUMAN RIGHTS AT INTERNATIONAL LEVEL

Flow of authority upwards

If state powers have been devolved downwards in increasingly practical ways, directly affecting the delivery of services to very large numbers of people, efforts have also been made to increase the authority and quality of international institutions and decision-making – though arguably to less effect. Major changes have been made to the architecture of the UN, including changes to its human rights institutions. Governments and international organisations are applying or referring to human rights more often in their bilateral and international relations (even if they are sometimes weakening their multilateral commitments). And far more than in the past, attention is being given to the content of international obligations, including ethical and humanitarian obligations. While these changes are hesitant, inconsistent and may appear rhetorical, they indicate the degree to which states and other actors recognise that many important policy challenges cannot be solved by national policies alone. As a result national interest is being gradually redefined to include international cooperation, notwithstanding the reluctance of more powerful states to accept this logic.

United Nations reform

At UN level, the most obvious institutional change with respect to human rights is the creation of the UN Human Rights Council in 2006 (in place of the UN Human Rights Commission). It is too early to say what this reform will achieve. The evolution of the Office of the UN High Commissioner for Human Rights has also been important. In less than two decades, a minor facilitating office has become a recognised (though still small) member institution of the UN. Its emergence, combined with the trend to incorporate human rights in UN policy, will gradually increase the influence of human rights on the ground in different countries.

More influential still is the gradual integration of UN programming to include human rights, and the effort that is being made to coordinate the UN's institutions efficiently, both globally and at national level. This is a slow process, encumbered by differences of political interest. It is much too early to guess whether the United Nations can come to act as an effective, truly supra-national body (rather than the servant of its Member States) with an identity and voice that is additional to the interests of its Members. This is no doubt what the world's people want – and occasionally the UN does indeed rise to the high calling set out in its Charter. The last few years have demonstrated many of the UN's weaknesses, but also that it alone is able to fulfil certain peacekeeping and humanitarian functions and resolve certain political problems.

The regional human rights systems have also experienced change. The European system, established by Western European parliamentary democracies, has faced new challenges following the entry of countries from Central and Eastern Europe. On one side, the European Court started to deal with major human rights violations, such as those committed in Chechnya; on the other, the number of cases rose rapidly, causing serious delays (even after reforms in 2004). The Inter-American system, which has considerable experience of dealing with gross and systematic violations of human rights, recently began taking on a broader range of issues. The African Union (established in 2000) has a more explicit human rights focus than the Organisation of African Unity which it succeeded, but it is premature to judge how it will evolve; it needs no doubt to become stronger and more independent. Within the League of Arab States, the Permanent Arab Commission on Human Rights adopted a revised Arab Charter of Human Rights in 2004 that included a promising human rights mechanism. At regional level, the major weakness remains the continued lack of a regional human rights mechanism for Asia – but even here progress was made in 2007, when the member governments of the Association of Southeast Asian Nations resolved that a human rights body for Asia should be established.

Obligations abroad

It has become essential to create forms of legitimate supra-national authority because action taken only at national level will not solve many of the world's larger problems. A list of examples might include global warming; deforestation and a range of environmental issues; water management; competition over energy resources; achievement of the Millennium Development Goals; poverty reduction; debt overhangs; trade imbalances; the spread of pandemics and new diseases; the illegal trade in weapons; regulation and monitoring of nuclear technology – and many others. In all these matters, international coordination, sharing of resources and collective action are required to make an impact. Yet it is evident that the capacity of states to achieve effective cooperation remains extremely weak except when their national interests are explicitly engaged.

This weakness is reflected in human rights law, which has not (yet) evolved to deal with the transnational responsibilities of states. States acknowledge

that they have a responsibility to work actively towards social justice; almost all have also signed treaties and declarations in which they agree to cooperate to promote and protect human rights. However, these documents do not indicate the limits or extent of this international obligation, or when an obligation is triggered, or what factors condition it. As a result, states consistently promise too much and deliver too little.

Norms governing transnational obligation will obviously need to address cases when states are responsible for causing harm abroad. In addition, they will have to handle a variety of other situations: when it is in the national interest of given states to act abroad; when it is in their long-term (but not immediate) interest to act; when the action required protects the global good (but is not in the immediate national interest of particular states); and so on. At present, the jurisdiction of human rights law, and therefore rights protection, is largely restricted to national territory. The problem is that, although human rights advocates and international legal bodies are increasingly interested in 'extraterritorial' obligation, robust norms and agreed practice in this area will not emerge rapidly. The 'delivery gap' between the felt need for effective international action on global issues, and ability to deliver action, is likely to widen, with increasingly harmful effects on individuals and communities, and on the political credibility of governments.

NON-STATE ACTORS

International civil society

International law and regulation of state behaviour is only one dimension of this challenge. The emergence of new social movements has also been a key trend in recent years. Many formal and informal global networks have emerged – to reduce poverty and landlessness, eliminate child labour and use of child soldiers, oppose forced evictions, make treatment available to HIV-Aids sufferers etc. Facilitated by new communications technologies, these movements have asserted new notions of global democracy and new claims that civil society should be heard in international as well as national discussions.

Non-state actors

The term 'non-state actors' in human rights discourse indicates the peculiarly strong role of the state in human rights law and practice. It has taken a considerable intellectual and institutional effort to create conditions in which human rights advocates feel entitled and equipped to talk about the responsibilities of private individuals, private companies, armed movements and other civil society organisations with respect to human rights. Though much of this effort is recent, it has been broadly fruitful. Discussions about non-state actors and human rights now occur in many contexts and are perceived to be increasingly legitimate. What this implies is more complicated to describe,

because state responsibilities remain at the centre of human rights law and practice. Nevertheless, whether one examines discussions of the human rights responsibilities of armed groups, business or civil society organisations, there is discussion and it has become significantly more detailed in recent years.

With respect to armed groups, the main change is that atrocities and abuses can be discussed in relation to human rights law (and not only humanitarian law). This has broadened and enriched dialogue with armed groups, whether by humanitarian organisations, UN agencies, human rights groups or mediators. Though many would still not recognise the legitimacy of human rights law, or its relevance to them, more armed groups have been ready to discuss the value of adopting human rights norms in their conduct; reference to human rights has also become more frequent in peace negotiations and agreements.

Business and economic actors

Discussion of business responsibilities in relation to human rights has moved forward even faster. While there have been setbacks (notably the breakdown of consensus in 2004-05 over the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights), the notion that businesses should make themselves properly accountable in relation to human rights, and should take steps as organisations to ensure they do not commit human rights abuses, has made rapid strides since the UN created the Global Compact in 2000. Companies have given the issue attention for many reasons, of course, and the vast majority have still not integrated human rights in their management policies. Criminal or abusive behaviour by private companies also continues to elude effective regulation in many jurisdictions; in the worst cases, impunity is guaranteed by the political authorities. Nevertheless, many more companies have started to consider human rights as a practical policy issue. Even if there is still no consensus about how companies should make themselves accountable to human rights law, most large companies have come to accept, at least in rhetoric and some even in practice, that due diligence requires them to respect human rights and consider the risks involved in neglecting to do so. This is quite new.

The trend to privatise public utilities that deliver essential services (water, electricity, transport, communications) is one reason why companies have been obliged to consider human rights. While governments cannot devolve their human rights duties (and continue to be responsible for regulating the adequacy of services they privatise) companies increasingly need to understand what human rights responsibilities attach to the services they deliver.

Other non-state actors

Other non-state actors generally received less attention. They include the media, individuals, professionals of different kinds and non-governmental

organisations – though the media may be considered as private or public companies, and the responsibilities of many professional groupings (doctors, prison officers, police officers, judges etc.) were codified in some detail during the 1970s and 1980s.

Non-governmental and civil society organisations represent another dynamic emerging sector that remains relatively unregulated – though here too, humanitarian and development organisations, and very large NGOs, introduced several measures of self-regulation during the period. Civil society has become a more powerful force for change in most countries. Almost everywhere that social movements and civil society bodies have become organised and been recognised (at least rhetorically), they have pushed human rights higher up the public agenda. Though most perceive themselves as gadflies rather than gorillas, human rights organisations now come in many forms and other institutions consider them to be actors that must be dealt with (or suppressed) because of their number and their ability to coordinate advocacy across different issues and regions. Here too, therefore, recognition comes laced with resistance; taking them more seriously, governments, the media, businesses and public opinion have become more critical – generating new challenges. Many governments have imposed new regulations on civil society organisations, requiring them to provide detailed reports on income, prohibiting them from accepting grants from abroad or generally restricting their ability to work. At the UN, where human rights NGOs have historically enjoyed good access, a number of governments have sought to restrict their participation.

Human rights defenders

In this context, the 1999 Declaration on Human Rights Defenders has been particularly important because it affirms in detail the legitimate rights of activists who seek to promote and protect human rights: their rights to demonstrate peacefully, to express their views, to argue their case, to physical integrity, to due process etc. One of the most impressive developments of the last few years is the emergence of well coordinated networks of defenders, able to support one another, identify key areas of risk, and improve their capacity. The Human Rights Defenders' Declaration has helped to create a self-identifying sector of activists where one did not exist before. Its inclusiveness, its work on security, and the development of a movement of women human rights defenders, are likely to be of particular value in years to come.

WOMEN'S RIGHTS

Gender rights and the women's movement deeply influenced human rights advocacy and human rights organisations during the period, and they remain influential, as the global campaign on violence against women and the campaign for a UN agency to represent women's interests both attest.

Though there has been a strong commitment to gender mainstreaming since 1997, targeted interventions to promote gender equality and women's empowerment continue to be essential. Human rights research and advocacy (not to speak of research by humanitarian and development organisations) confirm that, in every dimension, women are particularly exposed to violations of rights. In terms of physical safety, poverty, allocation of resources and property, access to health and education, or other forms of discrimination (as members of minorities for example), women and girls are almost everywhere disadvantaged and more exposed to risk than men.

It is also widely held, especially within the women's movement, that women's issues have been marginalised institutionally (not least financially) because the mainstreaming of women's rights by development and human rights donors in the late 1990s had the paradoxical effect of diluting budgets and institutional spaces devoted specifically to women's issues.

Women's rights organisations pushed forward work on human rights in a variety of ways. First of all, they were the first to argue successfully that women's human rights, while based on universal principles, needed to be given specific and separate attention in a human rights treaty. This opened the way for other groups – children, indigenous peoples, people with disabilities – to make similar arguments, giving birth to a new generation of human rights standards.

In making this claim, they also challenged human rights organisations to recognise their own bias and lack of gender awareness. For the first time, in passionate arguments for and against recognising the special claims of women, human rights advocates were led to recognise that they too could be complicit in forms of discrimination. This opened the way for a broader, more frank discussion both of rights in the private sphere and about the responsibilities of non-state actors.

This work in turn led to a number of effective advocacy campaigns, for a new standard to sanction sexual crimes in war, for protection of women (and children) displaced by violence and for action to stop sexual trafficking. More recent campaigns – against domestic violence, to increase the accountability of international officials who commit abuses and on sexual identity – have also extended the boundaries of human rights advocacy.

In broader terms, the women's movement has encouraged human rights organisations to widen their range of concerns, to include the private sphere, and to address issues of culture, including sexuality. These are emerging, sensitive issues that are likely to continue to move towards the top of the human rights agenda.

At the same time, the sheer diversity of women's interests will be a challenge for advocates of women's rights in the future. Half the world does not speak with a single voice. Activists will need to develop new forms of advocacy

and inclusiveness if they are to represent the great variety of conflicting and coinciding interests in rights that women have. On a smaller scale, this is a challenge that also faces other groups that assert human rights claims on the basis of their identity (for example, sexual minorities, migrants, indigenous societies and those who are disabled).

EXTENDING THE MARGINS

One of the recent achievements of human rights organisations has been to extend the range of human rights to include groups of people who were formerly marginalised or even unrecognised. This trend, pioneered and powered by the women's rights movement, has now drawn in a range of groups, enriching the application and relevance of rights.

Minorities and indigenous peoples

An exceptionally long campaign was waged to secure UN recognition of the claims of indigenous communities: it culminated in the adoption of the Declaration on Indigenous People in 2007 by the UN General Assembly. Equally significant struggles for recognition and basic rights were waged nationally and regionally, notably by indigenous peoples in Latin America, *dalit* communities in South Asia and the Roma in Europe.

It must be emphasised how much the status of communities that have been subject to entrenched historical political and economic discrimination remains contested. It is evidence, if evidence were needed, of the extreme sensitivity generated by issues of racial and ethnic discrimination on one hand, and claims to self-determination (national independence or autonomy) on the other. These sensitivities were sharply revealed at the World Conference on Racism in 2001 and more recently during negotiation of the Declaration on Indigenous People; they are a bellwether of political health.

Events since 2001 have made this even more evident. Accusations of discrimination and racism have permeated discussion of anti-terrorism policies since September 2001, having a hugely damaging impact on relations between Muslim and non-Muslim societies and Muslim minorities in non-Muslim societies.

People with disabilities

Progress has been made on some other emerging human rights issues. The Convention on the Rights of Persons with Disabilities, and an Optional Protocol to the Convention, were adopted by the UN General Assembly in 2006, marking a significant positive step towards the wider recognition of disability, including the rights of people who are mentally ill.

Sexual rights and identity

Issues related to sexual identity took on a much higher profile. On one side, marriage between people of the same sex was legally recognised in a number of countries. On the other, cases of violence, discrimination, exclusion and stigmatisation continued to occur in all regions of the world against people because of their sexual orientation or gender identity. Efforts to take forward an international standard that would protect the rights of such people did not make formal progress. However, substantial advances were made in conceptualising the issues, bringing different movements and organisations closer together and into dialogue, and in framing the rights in legally precise terms. The publication of the *Yogyakarta Principles* in 2007 may mark a significant step forward.

Migrants

Migrants very frequently suffer both racial and economic discrimination. Driven by global economic inequities, to which it draws attention, migration moved steadily towards the centre of political discussions during the period, not least in richer countries that attract large numbers of economic migrants.

In terms of law, some progress was achieved and real efforts were made to curtail the sexual or labour trafficking of women and children. More broadly, nevertheless, the record is not positive. Few states became parties to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990), and no receiving country did so. This reflects a continued absence of effective protection for migrants. In many countries – from the EU and the United States to South Africa, Saudi Arabia and Malaysia – they continue to face widespread discrimination in employment conditions and suffer from punitive police enforcement. Worldwide, numerous 'undocumented' migrants die annually as they illegally cross borders. Many more are exploited by employers, repatriated without compensation or legal protection, or penalised by law enforcement procedures. The decision to build a wall to prevent movement across the United States/Mexican border, or hold potential migrants in internment camps in Libya, as envisaged by the European Union, illustrated the extraordinary state of international policy on this issue.

Stateless persons

While most human rights are to be enjoyed by all individuals regardless of nationality, in practice those who do not possess a nationality are unable to exercise or enjoy many human rights. Individuals who are stateless typically cannot claim political rights and may not be allowed to enter or live in the country in which they habitually reside; they are frequently denied access to a broader range of economic and other rights. It will be important to guarantee the rights of people who are stateless and to prevent statelessness from occurring in the first place.

Environment and rights

Though conflict is the principal cause of forced displacement, natural and environmental disasters and epidemics are likely to exert a growing influence on forced movement of people in the future.

The linkages between protection of human rights and protection of the environment have been recognised internationally at least since the Stockholm Declaration (1972 UN Conference on the Human Environment) declared that "man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself". Since then, several international treaties have been established to protect the environment; but rather less work has been done to build practical cooperation between the human rights and environmental traditions. Recognition that climate change poses a major and immediate threat to many human societies underscores the need for cooperation, on matters of policy as well as action.

ECONOMIC EQUITY

More than one billion people still live below the extreme poverty line of one dollar per day; and, during the period reviewed, the gap between rich and poor increased. Those who are very poor are the largest group to suffer widespread social and economic exclusion and discrimination. They usually suffer more, and more extremely, from the violations of rights that occur in a society. They earn less; they eat less well; they have worse access to housing and clean water; they obtain services less successfully and are therefore less healthy and less well educated; they are less likely to have land and are more likely to be forcibly evicted; they are more likely to suffer official or police discrimination; in case of conflict they are more likely to lack contacts or resources which can protect them from risk and displacement. In many instances, they also suffer discrimination as members of minorities (including sexual minorities) or indigenous communities, or as migrants, or women (and even child) heads of families.

For many years, though major social movements and official and multilateral programmes sought to promote development and reduce poverty, governments, intergovernmental organisations and NGOs devoted relatively little attention to economic and social rights. At the end of the Cold War, this began to change. In the last decade much serious new work began on these rights. Civil society and human rights activists started to assert economic and social rights in national courts, national human rights institutions monitor them more often, and they are coming to be recognised in National Plans of Action. UN human rights experts have also made a particular contribution in this area. Mandated to monitor the delivery of social and economic rights and explain the application of human rights law in areas of economic and social policy, their work has clarified state responsibilities in relation to health, education, adequate housing, access to

food and clean water, and other areas. In parallel, human rights have been 'mainstreamed' into the economic and social policies of international institutions, particularly those concerned with different aspects of economic development.

Development organisations were also attracted to human rights, first because of their legal power, but also because, working out of their own tradition, development NGOs and (from the mid-1990s) bilateral aid agencies had already prioritised some of the procedural rights that are formally set out in human rights law – participation and consultation, transparency and access to information, and decision-making that is legally accountable. From this perspective, important progress can be reported from the mid-1990s. The vision of community-based NGOs was not only embraced by donor governments (OECD-DAC, 1994), the UN (Mainstreaming 2000), and finally the World Bank (PRSPs from 2002); in addition these organisations progressively accepted the relevance of human rights to their work. This was simply not the case prior to the early 1990s.

In parallel (though with less acknowledgement) human rights organisations borrowed from development experience, recognising that most human rights organisations had a duty to focus more on economic and social rights, and that most also lacked an established base in poor communities. From the 1990s a community-based tradition of human rights activism, often rather indistinguishable from community-based development work, greatly enriched the human rights movement.

At international level too, progress was made in integrating different traditions as the United Nations Chidlren's Fund (UNICEF), the United Nations Development Programme (UNDP), UNHCR and other UN agencies began to apply human rights principles and adopt human rights practices – and OHCHR began to learn from the experience of sister agencies about the complexities of development programming. The adoption in 2003 at Stanford of a *Common Understanding Among the UN Agencies of the Human Rights Based Approach to Development Cooperation* marked a turning point in these relationships. It was followed by the OHCHR's adoption in 2005 of a reform plan that aimed to transform the organisation from an office that essentially facilitated the definition of human rights norms to one that would also be operationally competent to assist governments to implement human rights principles on the ground.

The impact of these trends will take time to assess. Professional reservations may fall away when doctors, economists and environmentalists become more familiar with human rights. As they try things out and learn what works, the current propensity to over-theorise will hopefully diminish. Human rights activists will also learn by doing and this will bring them closer to the more pragmatic traditions of development. They are already skilled in identifying exclusion, discrimination and inequity; human rights thinking too will evolve to address new challenges that cooperation will throw up.

This said, there is a long way to go. Institutional resistance and conceptual obstacles continue to impede the integration of human rights and development practice. Though many institutions now make reference to human rights, few professionals in other disciplines are familiar with human rights law (just as few human rights professionals are familiar with the values and traditions of other disciplines). Some conceptual obstacles may also prove substantive and difficult to remove. Precisely because of its legal strengths and coherence, it is not self-evident that the human rights framework will be able to evolve in response to demand. Its legal terminology is constraining; and human rights do not trade easily with other disciplines. Nor is it yet clear whether human rights is a primary or secondary policy discourse. Can the framework guide decision-making, or should it be used merely to condition decisions in certain respects? If the latter, are human rights advocates prepared to cede the field to economic arguments? If not, how will they integrate economic analysis into the human rights framework (with respect to issues such as growth, investment, employment, taxation etc.)?

In the end, removal of poverty requires the generation of wealth. A movement has begun to form around the theme of 'decent work', initially identified by the International Labour Organization (ILO) in 2004 and since taken up by a widening circle of campaigning NGOs and networks. This movement could create the conditions in which human rights organisations could develop new ways of applying rights to economic matters; for the moment, nevertheless, human rights advocates have continued to focus on the distribution rather than creation of resources.

However these arguments develop, what is currently important to note is that, in one decade, a whole new sector has emerged, active at every level from global to local, involving most of the major development institutions as well as civil society. Focused on poverty-reduction, it uses human rights with varying degrees of precision to develop different kinds of 'rights-based approaches to development', and it is generating a bewildering variety of work.

A final point may be made about effective poverty reduction. The focus that human rights puts on the state caused human rights advocates to suppose that state action will determine whether poverty is reduced, and that state policies should provide the poor with remedies. Recent research, notably the World Bank's *Voices of the Poor*, has revealed how complex are the political and economic relations that poor communities have with other institutions, including those of government. In many cases, poor communities have no experience of positive cooperation, and are profoundly suspicious of all outside actors. In the light of this information, the Council's report *Enhancing Access to Human Rights* (2003) concluded that, if human rights organisations are to be useful to such communities, they (as well as state officials) will need to create new and much deeper relationships with poor communities – a huge challenge in terms of resources and capacity that requires a corresponding adjustment in thinking.

There has never been a greater need to convince individuals that poverty is not an inescapable aspect of the human condition. Nationally and internationally, states still need to prove their willingness to work towards the protection of these rights. Further coordination is needed between international organisations to simultaneously advance poverty reduction, to achieve the Millennium Development Goals and to promote recognition of health, housing, education and food as human rights.

Culture

In the last fifteen years, human rights action has perhaps advanced most slowly in the area of culture. To an extent this is inevitable because 'culture' is a fluid idea in an unbound space. For those involved with human rights, however, it is particularly difficult to handle coherently. This is because 'culture' has notoriously been used by critics to undermine the legitimacy of human rights and challenge their universality – but is equally recognised in human rights law to be an important element of identity, especially for certain groups of people whose rights are at risk (notably indigenous peoples and minorities and especially women amongst them). In addition, cultural values are often used spuriously to defend a given status quo or abusively to suppress the rights or dignity of individuals who wish to live differently – and these problems occur not least in indigenous societies and minority communities. Culture and cultural values are in permanent evolution; absolute reverence for them is inappropriate but they are not less important because they are elusive.

Culture comes to life, first, where the 'personal' and the 'public' (both highly contested categories) intersect: around the web of relationships that give form to a person's social life. This occurs in a world where, to an increasing extent, individuals have multiple expressions of identity – recognising themselves as citizens of a country, speakers of a language, members of a minority or a region, residents of a city or village, having a sexual identity, loyalty to a faith, an organisation, a cause, music or art, circles of friends etc. For many reasons, in fact, the space that culture occupies is only partly subject to law; and the application of law to matters of culture is often an uncomfortable process, felt to involve an artificial or inappropriate invasion of the private sphere.

At the same time, culture is one of the spaces within which 'private choices' and 'public expectations' (another difficult conceptual pair) most often collide. Public attitudes impose expectations on the individual, obliging her or him to act in conformity with a certain behaviour or tradition. Wherever such expectations are oppressive, they tend to generate classical human rights violations. Here, the law is often applied precisely to protect personal liberty and the sphere of private choice.

To complicate matters further, because issues of culture are about identity they are experienced personally, and tend to arouse strong, uncurbed private

feelings that frequently influence their public expression. As a result, many of the issues associated with culture are highly sensitive politically.

Recent controversies illustrate the kinds of challenge that are likely to emerge. In a number of countries, freedom of religious belief has come into conflict with principles of tolerance and freedom of expression; in other cases religious precepts have come into conflict with issues of sexual identity and choice. On one side claims have been made that respect for religion should be protected formally in law; on the other, it has been asserted that respect for sexual choice (women's sexual rights, lesbian and homosexual rights, transgender rights) should be made explicit in an international human rights standard. The former claim has been sharply contested by many secular democracies. The latter demand has been rejected with equal force by conservative religious and political leaders across the spectrum. These issues, in many instances entangled with equally sensitive claims to minority rights and self-determination, are likely to be among the most conflictive human rights issues in coming years.

Alongside these controversies, arguments have divided those who argue that human rights law must fundamentally be constructed on the basis of individual rights and liberties, and those who argue that in many societies collective rights are no less important to identity and dignity. Using a related argument, some feel that the human rights framework focuses too much on entitlement and too little on duty. The atomisation of industrialised societies, and the social fragmentation and consumerism that characterise them, may well give this claim a new vigour in years ahead – even if it was never the intention of those who drafted human rights laws to disregard the role of community or individual duties.

Adding to this mix, the gradual redistribution of economic power and political influence across the globe will sharpen the challenge of culture for adherents of rights – a challenge that is also an opportunity. As new powers rise, human rights advocates will need to find new ways to speak persuasively and legitimately about rights. Countries and regions will bring to this discussion not only a wider range of views but a different level of engagement – because rights matter more than they did. East Asian states such as Korea and Taiwan have adopted and integrated human rights policies, no less than Sweden and France, but they will not apply them in exactly the same manner. China will engage more deeply with human rights as it becomes more powerful, but it will no doubt do so in a distinctive way. Old alliances will also evolve. The United States and Australia, formerly in the vanguard of states that claimed to promote human rights, have recently been among the first to question certain basic human rights principles. The same may be said of civil society. Many more kinds of civil society organisations have started to use human rights as a policy reference – from religious bodies to trades unions and social movements. But they too do so in their own manner, and in different societies they will do so differently. Northern NGOs have for some time been asked to take fuller account of the experience and perspectives of other regions when they develop advocacy; indeed, the legitimacy and effectiveness of human rights advocacy depend

increasingly on it being local. This has made human rights more relevant and increased their impact, but has also complicated and enriched the context in which human rights are applied. This too has been achieved in the last fifteen years – and is part of the future.

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Human rights have shown a remarkable ability to evolve and remain relevant over the last sixty years in a rapidly changing world. If they are to continue to exercise the same influence, they will need to continue to respond and evolve. For activists, the challenge is to uphold the core values of human rights at the same time as they identify where their practice and application must evolve to remain relevant as societies change. This is the test against which a future human rights agenda should be judged. So what's new?

LOOKING FORWARD

INTRODUCTION

This chapter faces a different challenge: to signal and at times also generalise about events that have not yet occurred or are as yet incipient. It focuses on three areas, each at global level: context; ideas of state, society and economy; and international public policy.

Issues of context and international policy include: urbanisation; climate change; migration; the return of religious power; ageing populations; employment creation and conditions of employment; private and criminal transnational networks; and the spread of ad hoc and voluntary models of global management. In discussing these, the chapter highlights problems that are explicitly linked to global management – regardless of whether institutional structures to manage them are absent or inadequate. Its main theme is global public policy.

Such issues stand out against a background of continuously changing ideas about how the world works and what society is: ideas about 'global public opinion'; conceptions of government and the state; and understandings of obligation, to those who are distant (relative to those who are close) and even to future generations.

Both – problems of governance and ideas – are in turn deeply influenced by technological change, political and economic insecurity, and resource constraints. These, the context, are discussed first.

A number of things this chapter does not do. It does not ask if human rights will be more or less 'successful' in future. It is hard to know what criteria might be used for such an exercise. Is progress best measured by the dissemination of laws and procedures, or the revitalisation of human rights values? Is disrespect for international law or gradual dilution of legal precision more dangerous to the human rights cause? Can one imagine a future in which the values that human rights represent might be replaced by a new ethic, as yet unformed?

Nor does it make judgements about general changes in global power relations. The emergence of new economic and political powers is clearly relevant to an assessment of future human rights concerns. But it poses questions that are too complex for a document of this kind. The same may be said about the future of human rights institutions. Some decades ago few human rights advocates would have foretold the creation of a UN Human Rights Council, an International Criminal Court, or a United Nations Peacebuilding Commission; but it is difficult to judge whether, a decade from today, these bodies will be respected, moribund or flourishing in a new form. We therefore do not examine UN reform, the 'responsibility to protect' or institutional changes elsewhere, even though these matters undoubtedly deserve appraisal.

This chapter is an opportunity to think circumspectly about the future direction of human rights policy. But what is policy? This is not a straightforward question. To be relevant, policy should address itself to government and other institutions that can effect change. Yet international institutions are ill-equipped to tackle many of the problems they are expected to resolve, while at national level the human rights legal framework is not designed to address the policy responsibilities of actors outside government. And practical recommendations about implementation *within* countries – the key level for effect – cannot be written in broad terms. These questions stand in the wings throughout the chapter, which is not always specific about what forms of human rights action might be necessary, and certainly does not frame a programme of action. If it stimulates fresh thinking in relation to some relatively unexplored areas, where new human rights policies and thinking will be needed, it fulfils its purpose. We ask readers to borrow what they find useful and interesting.

CONTEXT

Science and society

Despite the information and knowledge 'revolutions', very large numbers of people remain illiterate, without access to education; or uninformed, without access to information. Knowledge is distributed as unevenly as economic opportunity, even if scientific research and technological innovation are key components of economic progress, vital for protection against a wide range of risks (human epidemics, crop and livestock diseases, natural and environmental disasters etc). As knowledge has acquired economic value, questions of equity are likely increasingly to infuse the relationship between science and society.

In key areas – energy, the environment, health, food production – scientific innovation will be crucial to our ability to manage our future and that of the planet. In this context, dramatic advances in the biological sciences, biotechnology and biomedicine, are already generating new ethical and human rights concerns and opportunities. Nanotechnology has similar potential. Leaps forward in neuroscience will make it possible to analyse and alter human intellectual and emotional capacity, creating a range of potential risks and benefits. Cloning and genetic manipulation have long raised ethical flags: further experimentation may lead to the elimination of debilitating or fatal genetic conditions, but also to new concerns around identity and, almost certainly, discrimination.

As medical advances allow some people to live longer, new questions of access, exploitation and equity will arise, for instance in relation to treatments (for a wide range of diseases) and transplants. Given their social and economic vulnerability, and the expanding use of the body as a site of new technologies, women are likely to face particular risks.

More broadly, privatisation of scientific knowledge will continue to pose concerns. Mapping the human genome generated a controversy about whether it should

belong to the global commons. Scientific research into new medicines has generated numerous controversies about access and about whether research priorities reflect human needs. Many issues of this sort are likely to arise. Might open-source biology transform the emerging biotechnology industries in much the same way that open-source software may transform information technology?

Terrorism, militarisation, security and the rule of law

In the immediate future those interested in human rights will need to adapt to the fact that counter-terrorism and internal security will be an organising principle of government policies, nationally and internationally. An effect of this, already visible, is that states are likely to criminalise more forms of protest, dissent and illegal behaviour. There will frequently be public support for such steps; and beliefs and expressions of identity, as well as irregular migration, are likely to be affected. In response to this threat to rights it will be important to advocate for a rigorous and narrow application of the term 'terrorism', which still has no agreed general definition in international law. Human rights organisations may need to take part more actively in negotiation of this question.

In the same context, in courts as well as government, it is widely accepted that human rights and security interests must be 'balanced' in relation to one another. It will be a challenge to find new ways of talking about security, terrorism and the rule of law when continuing acts of indiscriminate violence heighten public anxiety, boosting public support for granting special powers to the executive and law enforcement agencies, thereby curtailing civil rights. Human rights organisations may need to develop new approaches to advocacy that continue to emphasise the responsibility of government to protect the rule of law and principles of due process, but which address more explicitly the fact that indiscriminate acts of violence, by state or non-state actors, violate human rights and create legitimate public concern about security.

Information technology

The rapid evolution of information technology creates new opportunities but also risks. The technological environment is redefining personal boundaries and networks – not only transforming the way people live and how they relate to one another personally and professionally, but transforming how they relate to private and public institutions. Over time this will generate layers of new legal entitlements and duties. In this way information technology both empowers the individual and opens questions of power, access, distribution and discrimination.

Techniques of surveillance have become increasingly powerful and ubiquitous (video cameras, mobile phone monitoring, email keyword tracking, biometric data, face and voice recognition, financial transaction tracking, satellite and

drone monitoring and so on). In a world that is increasingly monitored, in which emails, phone calls and physical locations are available to national security officials and private companies, principles of privacy and the freedoms of expression and information are coming under new pressures; and these are experienced differently in different parts of the world because access to technology is so uneven.

Environment: climate change

The scale on which climate change will have an impact has barely been understood. It will touch all areas of policy. Over time (and soon) it is likely to cause some economies to wither and collapse, impoverishing the communities affected, and causing large movements of population. Its social and economic effects cannot be calculated easily in advance, but they will be numerous, unequal in their impact, and in many parts of the world profound. They will deeply influence government policies, driving states towards more extensive cooperation and tempting the better off and more protected to put their own interests first. For human rights advocates, climate change and the environmental degradation it will cause will generate numerous inequities and tensions especially around issues of burden-sharing and risk allocation – a new agenda that will need concentrated attention from a variety of quarters.

To date, negotiations on climate change mitigation and adaptation have taken little account of human rights language or input. The latter is regarded as overly adversarial and possibly irrelevant to an issue that lacks clearly defined victims or perpetrators. For their part, human rights thinkers and actors too have generally ignored climate change. Both positions are likely to shift as individuals increasingly recognise the potential of restating the human effects of climate change in rights terms. Climate change will raise profound issues of equity because it will cause enormous but unequal disruption and suffering across the planet; in many respects, however, human rights mechanisms are ill-equipped to respond adequately to the demands that will be made on them – and human rights organisations will therefore be challenged to show that they can really make a relevant contribution.

IDEAS OF STATE, ECONOMY AND SOCIETY

Reconceptualising the state

The role of the state is central to human rights theory and practice. As the sole legitimate source of political authority, the state is presumed to possess institutions sound enough to be both effective and accountable. These assumptions explain why human rights law affirms state sovereignty and why advocates have focused primarily on state reporting and accountability when they lobby in support of human rights; they also explain why it has been difficult to apply human rights law to non-state actors. This standard model of state

and sovereignty tends to determine the operational application of human rights and increasingly presents challenges for the future. For one thing, not all states are financially independent or institutionally competent in the manner that the presumption of sovereignty indicates. For another, the theory cannot easily take adequate account of the role and responsibilities of non-state or private actors – notably business. In addition, states have an increasing number of multilateral obligations that condition their exercise of sovereignty and their capacity to enforce (or suppress) rights.

With regard to the multilateral regime, an additional concern is that states may retreat from multilateral commitments they have made, to focus on bilateral or regional arrangements, thereby weakening the coherence and effect of international norms. This problem affected both the Kyoto Protocol and the International Criminal Court; in contravention of international obligations, bilateral agreements have also sometimes been used to manage migration and transfer detainees (diplomatic assurances). Since such agreements often set lower standards than international ones, or are in conflict with them, human rights advocates will need to monitor this trend in case what initially appeared to be an occasional practice becomes a more general challenge to multilaterally agreed standards. In addition, some governments (and courts) have questioned the authority of bodies that monitor the implementation of international and regional human rights treaties, or threatened to withdraw from refugee and human rights treaties they have ratified.

In many parts of the world privatisation and private-public partnerships are also changing the way people experience the state. Central to this are changing ideas of what constitutes the 'public interest' (and who should determine it). Efficiency and participation, widely held to be in the public interest, are both used to justify policies of privatisation, especially in regard to the provision of basic services and public goods, and reduced investment in public resources. Unravelling the complex intersections between public policy, private actors and public interest will pose some of the biggest challenges for human rights advocates. There will be significant implications for the delivery, adjudication and advocacy of rights claims. Human rights organisations will need to develop new understandings of the ideas of 'responsibility', 'liability' and 'accountability' when they tackle emerging human rights issues generated by new forms of economic organisation. A more specific challenge (already recognised) is to safeguard the interests of those who are poor in situations where the state, civil society and the market compete over who will provide public goods.

Many ethnic and religious minorities, and other social groups have never fully or successfully integrated within the nation-state system. In many cases, such groups have also lost out in competition for resources and social opportunities. This has fuelled the rise of identity politics, and cultural, ethnic or religious nationalism. The resulting polarisation and hardening of identity often precipitates violent conflict. Human rights advocates have tended to ignore the tension between 'nation' and 'state' or to address it superficially. It will be

important to clarify, from the point of view of human rights, the rights of 'peoples', and peoples in 'nations'. In policy terms, the right to self-determination will continue to prove a difficult but unavoidable issue, as will claims to political and economic autonomy and self-government.

Civil society and the 'global public sphere'

Civil society originally included all private (non-state) relations, including economic. More recently, it has come to refer to all kinds of voluntary organisations engaged with social issues and concerns of public interest. This new constituency of privately-organised actors, privately or publicly funded, working in the public interest, has led to calls for the sector's regulation. Such calls are likely to intensify and the issue of civil society accountability is likely to present a significant challenge in coming years. Is civil society a secular space? What exactly is its position vis-a-vis government? Where non-governmental organisations provide public services – often acting on behalf of the state, and funded by it – they are required to measure their performance and impact. Are such institutions different in essential ways from organisations that, for example, do human rights advocacy? Is the notion of civil society a coherent one?

Transnational civil society networks and organisations are likely to continue to evolve rapidly, stimulated by the penetration of information technology, the development of communities of practice and new forms of solidarity. Does this amount, as some suggest, to a new 'global public sphere' that might create forms of 'global public opinion'? Certainly, the global media create conditions in which something like 'global public opinion' might coalesce. Transnational civil society has also learned how to mobilise on a large scale around public policy issues (poverty, the environment, debt, landmines). This has created opportunities for new forms of global social movements and networks, working on trade, the environment or peace. Learning how to build large interdisciplinary coalitions around human rights issues, and avoid their fragmentation, will be an organisational challenge in coming years.

At the same time, transnational elites have also integrated, reflecting the global economy. Mirroring the shift in state relations, Southern leaders are influential in business and government, while elite migration and fast-growing Southern diasporas have altered and sometimes reinforced economic and social inequalities between North and South. Along with powerful multinational actors from the South, the emergence of Southern philanthropy will create new resources for civil society, while presenting new challenges to voluntary organisations in the South as well as networks and donors in the North. Viewed this way, civil society networks remains what they always were – means by which private actors of all kinds influence the public sphere.

The very idea of global public opinion is therefore as problematic as it is attractive, precisely because of its potential to influence global politics. The

evolution of networked media and global polling techniques, pioneered in the last ten years, will permit political actors – in civil society as well as business and government – to read, monitor and perhaps even manage global shifts in opinion. But, though transnational civil society and global media provide mechanisms, these lack the representativeness and legitimacy that might breathe life into new forms of global politics. As a result, global public debate is likely to continue to reflect the views of different elites, North and South. While these will continue to be challenged from below, the implication of this for human rights policy will need (over time) to be recognised and addressed.

Economic and social security

Human rights advocates have said too little about the generation of wealth and resources and have focused almost exclusively on their distribution. Though valuable work has been done on budget analysis, on financial allocation, on labour rights (notably through the ILO), and on rights-based approaches, this omission has marginalised the influence of human rights on economic policies. If human rights advocates wish to change public policy, they will need to engage with employment, economic activity *and* equity (rather than just equity). This will require new forms of human rights analysis – and closer cooperation with organisations that specialise in these areas, such as trades unions and companies. Might economic policy be evaluated in human rights terms, for example, against its capacity to create conditions in which most people can provide for their needs, and in which governments can fulfil their functions and responsibilities? This would imply discussing macroeconomic management in terms of the generation (as well as distribution) of public resources, by private actors (including citizens) as well as the state. Such an approach would lead human rights advocates to consider the effects of fiscal policies and the generation of durable livelihoods, as well as delivery of services, social assistance and state policies to promote and regulate the private sector.

Research on the responsibilities of companies will need to continue, because private companies continue to expand their sphere of activity and influence over public policy, while selectively enlarging their sphere of obligations. For human rights, it will remain important to develop law and practice for strengthening and enforcing corporate accountability.

Economic polarisation has occurred within and between countries as market-driven policies have taken root and material consumption has become more central to the personal life and standing of individuals. Very rich people tend to have become very much richer, everywhere, while poor people have progressed much less or not at all – and middle class incomes (at least in many Northern countries) have stagnated. In practice, this can be a serious challenge to the universal appeal of human rights: members of societies that are economically fractured and polarised are much less likely to perceive their common interests, or act in defence of public goods. Broad protection of human rights becomes

extremely difficult if human rights are reconceived as a mosaic of special interests rather than an interlocking system of shared values.

This is also relevant internationally. There continues to be a tension, even disconnect, between macroeconomic policies and models of inclusive and participatory human development. This greatly complicates efforts to 'mainstream' human rights into development programmes. The latter often continue legally to displace and dispossess large numbers of people, but rarely succeed in adequately compensating or protecting the rights of those whose lives are affected. Recent efforts to redefine the goals of development and international cooperation (such as the Paris Declaration) mark a step forward in some respects. Nevertheless, the 'nationally owned' processes they advocate will rarely address grievances and problems of dislocation effectively in the absence of rigorous rules of public and human rights accountability that good governance models do not provide. In this area familiar issues are taking new forms, and will therefore continue to require fresh human rights attention.

Social security is another challenge. Rapid economic change generates new risks for individuals, and spreads risk unevenly. Those who are poor or who suffer discrimination (on the basis of gender, religion, caste, sexual orientation, nationality etc.) tend to be especially exposed. Demographic shifts can exacerbate risk further – for the elderly, for example, or children. Because social support systems are breaking down in many parts of the world, more formal arrangements to provide social security will have to be found. The human rights policy issue that this represents needs to be defined; and it is potentially an area of future advocacy.

The rising costs of financing social protection and welfare systems, especially in the light of demographic changes, is already a significant issue in many countries, leading to the possible return of ideas like 'workfare' and cutbacks on social spending that will hit those on the margins the hardest. Effective and sustainable financing of social welfare and security is one issue. Secure and meaningful employment is another, because it is fundamental to the creation of a sustainable welfare system in the long-term. Access to livelihoods and 'decent work' underpins not only the economic security of individuals and their families but the viability of any human rights regime. There is an opportunity here to engage with a fundamental human rights concern that has not attracted the research or advocacy it merits.

Intergenerational rights

Human rights advocacy tends to focus on current violations while prosecutorial and accountability mechanisms are generally retrospective; from a human rights perspective, the future is a foreign country. Yet many of the large policy issues that need to be addressed require decisions that balance the claims of those living today against the interests (and potential claims) of those who will be alive in the future. Balancing of this sort is central to most investment

decisions (in infrastructure, health, education, justice reform) and it is obviously required when dealing with climate change and environmental sustainability. Human rights organisations will need to develop methods for balancing short-term costs and long-term benefits. In particular, they will need to develop an ability to think about the future, and the duties that governments and those alive now have to future generations.

Identity, difference and social inclusion

The principles of equality and non-discrimination, and universality, have been central to human rights work. In the coming period, difference, diversity and pluralism will need to be understood more deeply. Human rights analysis has so far relied on a (largely Western) liberal democratic understanding of multiculturalism. Growing religious intolerance in a number of regions, coupled with the consolidation of communal identities in many societies, is forcing states and societies to grapple more intensely with this notion and with the right to be different. A central concern here is how human rights can engage effectively with discrimination that occurs within specific cultural or religious contexts, while upholding the collective rights of communities and peoples to their culture and religion. Tensions arise, for example, in relation to language, education, and reproductive and sexual rights.

They are probably most pronounced in the realm of religion. Some argue that the emergence of religiously-inspired political movements (both North and South) marks a swing towards 'conservatism'; others that it reflects a deeper reaction to unaccountable and unrestrained modernisation in richer as well as poorer economies. Wherever religiously-inspired political movements are dogmatic and intolerant of views other than their own, however, they present a challenge to human rights – not least because their authority is based on different sources of legitimacy. Judging from the recent past, areas of tension are likely to include freedom of expression; legal norms, including on crime and punishment, based on religious teachings; blasphemy; sexual identity and sexual rights; and claims to religious and cultural exceptionalism.

The interaction between the sacred and the secular, especially in the context of the growth of religious politics and fundamentalism, has profound implications for human rights. In secular and theocratic states, the collective rights of minorities pose different but equally daunting challenges for human rights advocates. One is to deal with individual rights and freedoms (especially of women and those on the margins) *within* the minority community, while also recognising the rights of that community. Another is to address claims of *public morality* that emerge from identity-based rights advocacy, when these may also pose restrictions on rights such as freedom of speech and expression.

All this suggests that social inclusion and social diversity will both require attention. A more detailed approach may be needed that can encompass on one hand the human rights issues that arise in large, highly diverse and

differentiated urban societies, and on the other the situation of impoverished minorities vulnerable to frequent or systematic violations or neglect of their rights for a wide variety of reasons. To address these claims of rights, and rightlessness, it will not be enough to re-articulate standard human rights ideas and principles: new thinking will be required about difference, diversity, inclusion and equality.

GLOBAL PUBLIC POLICY

Global economic and financial architecture

Tracing the human rights consequences of the increasingly complex relationship between global capital investment flows and structures is likely to prove necessary and also difficult. The impact of the Asian financial crisis, nearly a decade ago, brought home dramatically the impact that financial markets and monetary policy can have on the economic and social security of very large sections of the population who are excluded from them but are not protected against their vicissitudes. Yet little has been done to put in place a global financial architecture that would effectively manage this volatility and mitigate its effects on poor people and others who are financially vulnerable. Making the link between the continuing impenetrability of transnational banking and capital flows, and the economic and social security of millions of ordinary individuals, is likely to become a priority; work will be needed to develop analytical techniques that can frame the issues in human rights terms and eventually apply them.

Human rights groups have started to give attention to global trade issues, focusing especially on the structure and functioning of the World Trade Organization (WTO). At the same time, the pre-eminence of the WTO is being challenged, as trade flows change and more trade is managed on a bilateral or regional basis, while the stalling of the Doha Round means that structural biases which favour the interests of more powerful economies (including some outside the global North) are likely to remain entrenched. Human rights issues abound in this context. Examples include the impacts of agricultural trade on poverty; on poor/marginal farmers and landless people; and on rural communities whose access to food, education, health and livelihoods may be jeopardised.

Organised transnational crime

The scale and sophistication of transnational criminal networks and crimes (corruption, money laundering, and the trafficking and smuggling of arms, drugs and human beings) pose substantial challenges to human rights as well as to the security of people and states.

It is clear that such phenomena should not be understood only in terms of criminality. The circulation of illegal money is extraordinarily difficult to detach from the complex transactions of the formal legal economy. Trafficking of persons

involves discrimination, vulnerability, unequal access to social and economic opportunities (especially for women and girls), and a host of other factors, only some of which are criminal in character. Nevertheless, transnational crime tends to generate rights-free zones and corrupt the rule of law; and states that do not control such crimes cannot provide durable human rights protection. The escalation of indiscriminate violence associated with arms trafficking, for example, threatens both state institutions and individuals' rights.

International measures have been introduced to deal with transnational criminal networks, notably the UN Convention against Transnational Organized Crime (2000); but these have already given rise to new human rights tensions. Pressing for more precise definitions of some crimes – for example 'smuggling' and 'trafficking' of persons – will require the resolution of complex questions of culpability and liability for both state and non-state actors. In the case of some crimes (notably corruption and money laundering), it will be useful to link specific acts more clearly with specific human rights violations. Applying human rights principles and techniques in such areas, and making them useful, deserves more attention than they have so far received.

Demography

Longer lives and fewer births mean that, with some exceptions, the world's population is ageing. Most countries in the North have stable or falling populations, which over time will create a string of new economic and social pressures. Caring for the elderly will become a major issue, and this will generate further pressures on health and social security budgets, pension systems and retirement patterns. The relative youthfulness of countries in the South will bring economic opportunities; yet here too an absolute increase in the number of elderly is inevitable. As in the North, this will affect interpersonal relationships and family structures. Demographic changes will have an impact on social institutions such as marriage, the family and other civil partnerships, and gender relations. They will tend to disrupt relations between generations, vital threads in the fabric of any society. Older people risk being marginalised and denied equal access to opportunities, resources and entitlements; it is clear already that a high proportion of elderly people are poor in many societies. Across the globe, private and professional carers will carry an increased burden: this is likely to fall on women, and to affect their rights, especially their participation in the workforce and family. For all these reasons, human rights issues associated with age are likely to become more prominent.

In the absence of migration, declines in population will be even higher than projected and ageing of the demographic profile will be more rapid. Although fertility may rebound in the coming decades, few believe that in most wealthy economies it will recover sufficiently to reach replacement level in the foreseeable future, making population decline inevitable in the absence of replacement migration.

These trends will generate new migration movements and new programmes to attract and repel migration – immigration policies that attract skilled young professionals to high income countries, for example, with consequent implications for the countries they leave. Governments will be obliged to reassess many economic, social and political policies, including those relating to migration, replacement migration, and the integration of migrants and their families.

Borders and access

Cross-border movement of people, forced or voluntary, continues to increase and to pose difficult political, social, economic and legal questions with substantial human rights implications. Widening disparities in wage and employment opportunities between countries, as well as political instability, have created conditions for an upsurge in international migration, while the entrenchment of 'national security' policies since 2001 has weakened international protection regimes and led to criminalisation of much undocumented migration. Movement has become harder and more dangerous for both migrants and asylum seekers; they are less able to claim protection from persecution, and more exposed to human rights violations and abuse. In parallel, the burden of receiving, hosting and caring for immigrants has shifted more than ever to poorer countries.

Looking ahead, therefore, the asylum-migration relationship is likely to become even more complex, and refugees, asylum seekers, migrant workers, and trafficked and smuggled persons will raise substantial and also new human rights questions. Advocates will need to develop appropriate human rights responses to mixed migration and secondary migration. The struggle of migrant workers for recognition and entitlement will need continued support. In addition new forms of discrimination, exploitation and even slavery are likely, especially for migrant women employed in care-giving. More receiving countries are adopting selective and replacement migration policies, and their impact on migrants as well as countries of origin and destination will need attention. Difficult questions arise concerning residence, naturalisation and citizenship, where processes will be needed that ensure effective integration but also protect the right of migrants to assert their identities.

The urban age

By 2008, more than half the world's population will live in cities and towns. While countries in the South are urbanising faster than those in the North, urbanisation there is not expected to be accompanied by industrialisation of the sort that Europe (and more recently parts of the South) have experienced. Because the number of those who are poor is growing in absolute terms much faster in cities (even if the majority of the poorest people still live in rural areas), large numbers of people will be absorbed into the informal sector, transforming the social and economic fabric of cities and posing new challenges for governance and

provision of basic needs and services. Rapid urbanisation will exacerbate as many problems of poverty, social exclusion and environmental dilapidation as it solves. Even where rapid growth provides resources, in the absence of human rights inputs and advocacy, planners are likely to neglect essential social and equity dimensions of reform policies.

The city environment will create spaces for the development of new social alliances and solidarity, and opportunities to challenge forms of entrenched discrimination; it may also consolidate or reinvent backward-looking, xenophobic or parochial identities, in reaction to insecurity and change. The most vulnerable to these contradictory pressures will be youth, possibly plagued by high levels of insecure employment or unemployment and caught up in new urban sub-cultures that promote unexpected lines of resistance and solidarity. Taken together, these trends will generate complex challenges for human rights protection.

Liberty and the criminal justice

We have noted the trend to criminalise dissent. More people are likely to be imprisoned (or be subject to curtailment of liberty) as a result of pre-trial detention or stricter sentencing practices. There is a need to review the demand for penal sanctions that criminalise social misbehaviour and dissent, and which curb liberty. In addition, increased recourse to 'special laws' is likely to compromise the autonomy and professionalism of some criminal justice systems (already frail in many countries) by normalising a regime of exceptions: reversal of burden of proof, lengthened periods of pre-trial custody, allowing confessions as evidence, drawing adverse inference from silence of the defendant and so on.

These trends will bring secondary consequences. In many countries, the justice and prison system is likely to be overloaded – worsening prison conditions and also encroaching upon liberty in new ways. These problems are not new, but their nature is evolving. The increasing privatisation of prisons and growth of special detention centres (for instance immigration related detention) also raises concerns about human rights standards, accountability and monitoring. The use of new technology such as trials by video and electronic tagging is also changing the face of criminal justice procedurally and substantively. Effective alternatives to imprisonment require further analysis and advocacy.

The limits to consumption

Even as human rights groups seek to expand social and economic opportunities, they will increasingly face questions raised by the limits to consumption. Certain resources are diminishing in absolute terms. Some – such as carbon-based fuels – will have to be abandoned as supply shrinks. The impact of climate change will rapidly problematise extraction practices and inequalities of consumption, making it necessary to consider access to resources in new

human rights terms. Pressures on land, water and forests are already at the heart of several conflicts around the world and this is only likely to intensify.

Many questions will arise here. What is appropriate land use? How does one balance the interests and claims of food consumers and food producers? How to balance biodiversity and conservation with the rights of people, especially indigenous people, who depend on the land and its resources for their livelihood? What criteria (and who) should guide decision-making on such matters?

Urbanisation presents new challenges and opportunities in this regard too. While urban agglomerations cause environmental degradation, their population density may create opportunities to manage energy, water, waste and pollution more efficiently. This too is an area where human rights consequences will need to be monitored.

Time for a new orientation towards politics?

The extent to which human rights organisations can make human rights relevant to management of the many social, political, economic and technological challenges that lie ahead will determine whether human rights continue to mobilise public and political support. Widespread disillusionment with political processes across the world, especially with electoral politics, itself needs human rights attention.

Disillusionment, where it exists, appears linked to complacency, especially in older and wealthier democracies; apathy, especially amongst the well-to-do in less wealthy democracies; and indifference or helplessness in contexts where political processes are weak, highly abused or corrupt. At the same time, intense political engagement occurred during several recent elections (United States, France); there has been a dramatic increase in political participation by the rural poor in India and Brazil; and in many parts of the world strong movements are adopting human rights language and demanding greater political accountability. It is likely that new thinking about the politics of human rights, and the links between human rights and 'democracy', as well as political accountability, will be needed.

Dialogue with other disciplines

Human rights actors are already engaged in many kinds of dialogue with other professions – doctors, engineers, environmentalists, governance and development specialists, economists, the military, trade unions and so on. The United Nations has officially 'mainstreamed' this discussion; all UN agencies are expected to integrate human rights in their policy processes and programmes. However, the trend is both larger and more diffuse. Governments are involved, internally and in their bilateral and multilateral relations; many

NGOs are attempting to adopt or internalise human rights; and a wide range of professional disciplines are testing the relevance of human rights to their work.

The dilemma before human rights organisations is that they will not achieve change if they seek simply to export human rights into other professional and social environments. Their impact may be deep in certain areas but overall it will remain relatively confined because every mature professional discipline, and every social and political movement, has its own history, logic and values, and most will resist the adoption of a new and systemic ethical creed. On the other hand, if human rights actors seek to exchange expertise and values with other traditions, enriching and borrowing, then human rights actors (along with those with whom they dialogue) will need to be prepared to allow their ideas to be more permeable – more open to other ideas.

Can the human rights framework accommodate ideas of human dignity and security that come from outside its intellectual and legal tradition, without losing its efficacy and rigour? Alternatively, should it be understood that human rights is at its best a technical discipline, highly coherent but limited in its application? These questions raise deeper ones, about the core values of human rights. Do these need to be rethought and reaffirmed – and perhaps detached from their legal and institutional expression? Some argue that they do, in order to enable a more open conversation to take place with people from different intellectual or political traditions. Others argue from the opposite direction, that the values of human rights need to be reasserted precisely to protect them against popularisers, mainstreamers and new conservatives. Finally, there are those who wonder whether human rights provide an adequate vocabulary for the many kinds of injustice that persist. Most human rights advocates would acknowledge that they have been relatively unsuccessful at addressing social and economic inequities and effectively enforcing civil and political rights standards. There are reasons to pause before extending human rights into new areas; and to be apprehensive that over-extension may soften the life out of human rights values.

These debates draw attention to the assertion that human rights are universal. The claim to universality is usually challenged on the grounds that its values do not reflect the history and culture of all regions, and are overly influenced by Europe's experience. This argument quickly returns us, on a larger scale, to the difficult questions (mentioned above) of diversity, inclusion and difference. The politics of human rights raises questions from other directions, however. It is striking that neo-conservatives, middle class liberals, and representatives of social movements all defend and promote human rights for different purposes. Is this evidence of their power and universality, or does it suggest that the framework is breaking up as human rights are exploited opportunistically to advance particular ideologies or interests? It may become unpersuasive simply to assert that human rights are impartial, when human rights advocates (if not human rights laws) position themselves socially in very different ways. For their own credibility, activists of all persuasions may need to speak more frankly both

about their interpretation of human rights principles and their allegiances to those whose interests and values their advocacy serves. At the same time, if the notion of impartiality needs to be reclaimed, the survival of diverse opinions is vital; increased uniformity should not be the outcome.

Ultimately human rights provides an organised framework of universal values that claims space for difference and different beliefs, and acknowledges the presence of moral and policy dilemmas that principle alone cannot resolve. If human rights values and advocacy are to be refreshed and renewed and made relevant for the future, we will need to embrace and reinterpret this rich apparent paradox.

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It should be read as a reflection – designed to start debate, not draw conclusions. It will fulfil its purpose if those who read it become curious to explore human rights in new directions.

Human rights have shown a remarkable ability to evolve and remain relevant in a rapidly changing world. If they are to continue to exercise the same influence, they will need to continue to respond and evolve. The challenge has always been to uphold the core values of human rights while allowing practice and application to evolve as societies change. This is the test against which a future human rights agenda should be judged. So what's new?