

<p style="text-align: center;">The Laws of War in the Age of Terror 16 May 2002</p>

<p style="text-align: center;">Panel 2: Quiet Diplomacy or Front Page Headlines</p>
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Hello, welcome to the programme. Today's edition of Agenda comes from the London School of Economics, where we are in front of an audience, in the LSE's Old Theatre. We're going to be discussing how best to deal with alleged breaches of international humanitarian law and in particular the belief of the International Committee of the Red Cross that it is more effective operating in confidence, behind the scenes, than going public with allegations of human rights abuses.

At the American military facility in Guantanamo Bay in Cuba, for example, why won't the Red Cross tell us what their inspectors have found? Do we have a right to know whether prisoners captured in Afghanistan and transferred to Guantanamo Bay are being properly treated? Or can the Red Cross do more by being discreet, not embarrassing government authorities, winning the trust of all sides by not criticising them in public? What is the best way to guarantee basic human rights for all and the upholding of international human rights laws, quiet diplomacy or front-page headlines?

With me are Marion Harroff-Tavel (**MHT**) who's the Deputy Director of the International Law and Communication at the International Committee of the Red Cross; Kenneth Roth (**KR**) who is the Director of Human Rights Watch, which is the largest US based international human rights organisation; and Kevin Clements (**KC**), Secretary General of International Alert, a human rights organisation here in Britain which says its mission is to address the root causes of violence and contribute to the just and peaceful transformation of violent internal conflict.

Marion Harroff-Tavel, let me start with you. Explain why the International Committee of the Red Cross does believe that it is more effective to operate quietly than noisily?

MHT: The ICRC works in the field close to the victim. It brings relief, medical assistance, visits prisoners. To be able to carry out some of those activities, in particular visits to prisoners, we need to have a confidential approach. We work on the basis of a relationship of, would you say in English confidence?

RL: Confidence, yes.

MHT: Persuasion is the ICRC mode of action, other modes of action available to humanitarian or human rights actors being denunciation or mobilisation.

RL: So, is it simply then that you do not believe, as the ICRC, that you would get access to prisoners in these conditions if you did not operate in that way? Is it as simple as that?

MHT: It would be very difficult to obtain access to prisoners without confidentiality. It is because the authorities know that we will tell them what we have seen, we will bring them confidential reports, we will discuss our observations with them, that they let us visit prisoners. We have gained access for example, to close to 347,000 prisoners in 70 countries

RL: Okay. Kenneth Roth. Would you like to have access to those ICRC reports?

KR: Of course I would. But I have to say I don't think that this is an issue of which method is superior. If there was not an ICRC we would need to create one, because there are really two complementary and quite compatible methodologies. On the ICRC, in essence, sacrifices its right to speak out in return for gaining greater access. Human Rights Watch sacrifices to some extent our right to access in order to preserve our right to speak out. There is a trade off there, but there are important things to be gained on each side and I think you need the two institutions.

RL: Kevin Clements?

KC: Yes, I agree with that completely. I think in fact they are complimentary processes and its absolutely critical that there is some sort of real articulation between the two and I think it is also important to kind of try and identify what you phase you are in relation to different kinds of conflict. If you are pre-conflict, for example, you can see some sort of warning signs on the horizon, you can see some polarisation, escalation occurring, you can see you've got some very nasty characters at work. I mean, then it seems to me that, you know, a combination of sort of quiet diplomacy with some implicit threats of denunciation is quite important. If you are in the middle of a conflict then the ICRC strategy of confidentiality, gaining access as part of that trade off is really crucial; and if you are post-conflict I mean I think it's really a combination is needed, there's a need to have quiet processes whereby you can begin trying to identify the perpetrators, bring them to justice and so forth, and then also is to institute a restitute of justice type methodologies and truth and reconciliation commissions and things like that and then there's also probably a need to have some sort of public kinds of consciousness raising as well.

RL: Ah, now you see, consciousness raising depends upon accurate, credible information and what some people say is that the ICRC is perfectly placed to provide that but it doesn't.

MHT: First of all let me comment on what has just been said. Just to agree with the fact these are complementary modes of action. Each organisation actually may use different modes of action but has a preferred one. Now...

RL: Consciousness raising, information made available.

MHT: Well, it's true that consciousness raising about humanitarian issues is important and if a human rights organisation, like Amnesty International, raises publicly an issue in a country, it's true that sometimes we may have after that more easily the possibility to achieve certain activities because of the awareness...

RL: Public pressure can help?

MHT: ... public pressure can help. But again we will work in a confidential mode and we will not share any information with these organisations.

RL: You see, Kenneth Roth, if one looks specifically at Guantanamo Bay, which is where this issue has become most alive, the American people in whose name these men are being held, some of them at least would argue they have a right to know what conditions these people are being held in.

KR: I would agree with that and I think though that when one talks about consciousness raising there are again two ways of going about it. The ICRC actually does do some consciousness raising, but it tends to do it in the form broad dissemination about the general principles of international humanitarian law. They will explain what the Geneva Conventions mean and so forth. Human Rights Watch will go about this more in terms of case studies. We will very publicly describe a particular factual situation, Guantanamo say, and highlight the extent to which it does or in that case does not comply with humanitarian law.

RL: Based on what information? Based on what data?

KR: Well, in Guantanamo, frankly, the major problem according to all the data we have received is not the physical treatment of the detainees, but the fact that the US government has essentially ripped up the Third Geneva Convention in terms of the legal status it is, or more precisely is not according to the detainees. At minimum the Taliban detainees should be treated as prisoners of war and as to the rest there should be a competent tribunal set up to determine their POW status. The US government's refusal to apply this very straight forward requirement of the Third Geneva Convention is not only legally wrong but is going to come back to haunt western militaries across the board when other governments decide to refuse to recognise the rights of American or NATO troops that are captured.

RL: Kevin Clements, we've already had the phrase "quiet diplomacy" used. Do you believe in quiet diplomacy, do you know of cases where quiet diplomacy has brought dividends?

KC: Yes. I mean, in fact we try and practice quiet diplomacy. I have a sort of inverse Clements Law here in relation to peace building. That is that the more your ego and the more your quest for reputation and the more you are trying to advance your organisation's interests in relation to kind of human rights and peace building issues the less effective you are likely to be. So, that it seems to me that the most effective actors are those who are actually relatively ego-less and altruistic in relation to these kinds of processes. Now, in terms of some of the instances, where I think quiet diplomacy has paid dividends for us, for example, to give you one illustration.

In Burundi where we're working, there were 11,000 prisoners two years ago and the prison was designed for 3,000. There were no court proceedings or legal proceedings to start moving those prisoners through the court system. We did a very quiet analysis of the whole situation, managed to broker some funds from the good Swedish government, they managed to kind of hire some prosecutors skilled in French law, they started going through all of the cases and now I can announce there are about 3,000 or 4,000 prisoners who have been released as a consequence of that kind of action. Now, if we'd simply gone in and denounced the Burundian government for its, you know, shameless holding of 11,000 prisoners, in prisons designed for 3,000, we probably wouldn't have made the same kind of progress, wouldn't have had the same kind of access and probably wouldn't have been as effective. American Friends Service Committee, you know, before the Second World War, for example, did a deal with the Gestapo, where 500 Jews were allowed, they were given safe passage. Some people felt they were supping with the devil but they did save 500 people.

So I think there are some very interesting ethical issues around this, but I think there are numerous examples of quiet diplomacy being effective.

Second point I would want to make, it seems to me is that there really is an issue here about whether or not you're interested in problem solving or catharsis and you know to some extent sort of, you know, I don't want to kind of disparage, you know, the work of the human rights organisations but sometimes, you know, you wonder when the naming and blaming and denunciation occurs, you know, I mean who's interests are really advanced by that? You know, is it the interests of the organisation that's doing the denunciation? So, that's why I just want to reiterate, I think there really is a need to develop a lot of skill and subtlety in relation to these kinds of issues so that you can do the quiet work necessary, that demands the access necessary, that will actually solve the problems, while having as a reserve in the contingency the, you know, access to the media and to public opinion and to mass mobilisation that will in a sense provide a kind of different court that you can kind of take the case to.

RL: Okay. Kenneth Roth, do you want to respond to that?

KR: Yes, I mean I think that the assumption that quiet diplomacy is always superior is just wrong. There are times when quiet diplomacy works better and times when public pressure is required and frankly, I mean in order to sort of try to sum up a very complex issue, if you have a government where at the top you have officials who are essentially a goodwill and they may not have adequate information about what their lieutenants are doing or they may not have access to resources that you can quietly provide, in those circumstances quiet diplomacy works well, in fact that's the whole theory behind the ICRC's work. They presume good is based at the top but that the top may not understand the way the prison wardens, say, is treating the prisoners. If they just bring that information to the attention of the senior authorities the senior authorities will step in and rectify the situation.

Where that approach doesn't work is when the senior authorities lack the goodwill, the good faith and in that circumstance you can, you know, quietly talk to them until you're blue in the face and it won't make any difference. The only way to change their mind is to pressure them and then you've got to resort to a range of pressures. It could be public shaming and stigmatisation; it could economic pressure by conditioning military aid or blocking the transfer of arms; it could in an extreme case the threat of criminal prosecution. But you've got to play tough, if you just go and rely on quiet diplomacy, quiet diplomacy in a situation where there is no goodwill you're going to get no place.

KC: If I could just make...

RL: Let Marion Harroff-Tavel come in.

MHT: I think it's right that quiet diplomacy works better in some circumstances than others. It depends on the willingness of the authorities to want to improve the situation. Maybe sometimes they ignore what's going on, as you mentioned. Another factor to take into consideration is how cohesive the authorities are, because sometimes you have in front of you different ministries, different people within ministries and then you have to convince some people who are actually within their own constituency going to push forward a positive word. So it's a strategy of influence that we exert. This quiet diplomacy that you mentioned aims at putting an end to violations of humanitarian law.

We are also very discreet about personal data that we gather about the victims. But quiet

diplomacy also has limits because it's true there are circumstances in which suddenly we think, 'Well maybe the moment has come to go public'. We have given ourselves guidelines in this respect. The ICRC reserves the right to make public statements concerning violations of humanitarian law if the following conditions are met: essentially the violations have to be grave and repeated and we must have tried through bilateral, confidential methods to put an end to those grave breaches, we must have witnessed the violations or we must be absolutely sure that they have taken place and we must think that publicity given to the violations is in the interest of the victims. If these conditions are met, then it is the moment when we start thinking may be we should shift to another strategy which I could explain.

RL: Kevin Clements, I'm a journalist and so I suppose I have a natural instinct in favour of the divulging of information. I have a sort of innate belief that in any democracy people who have elected a government have a right to know what that government does, particularly in conflict, particularly when it is holding people in detention. Now, do you argue that instinct is wrong?

KC: No, not at all and I am not saying that, you know, sort of truths shouldn't be revealed, I mean, I'm simply saying that we need to enlarge the kind of repertoire of responses to these kind of very complex situations where humanitarian emergencies are occurring so that we can exhaust all of the sort of non-violent options before we get into the naming and blaming, exclusion, marginalizing and so forth. I mean, you see, underlying all of this has to with kind of different theories of what motivates human behaviour. Now, one of the things which we know is that when you kind of isolate people and marginalize people and exclude and name and shame them, actually they become totally insecure, totally frantic and anxious and they do reprehensible things and so, even in those sort of situations, I mean who is talking to Saddam Hussein right now for example? Not that you are going to have influence on the guy, but I mean, you know, what are the real entry points there, you know, who has the ear on these characters, who's able to listen to these appalling, you know, violators?

Now, I am not saying that, you know, that that's a panacea in itself, but you know, there needs to be access points to those that are close to the violators and to the violators themselves so there is some real sense, you know, of what it is that motivates them so that you can utilise the right leaders to change their behaviour. I mean, I'm on a group which is looking a targeted sanctions right now, for example, and sanctions are extraordinarily ineffective, even targeted sanctions, because we're not really sure what it is that changes behaviour and changes the behaviour of, you know, autocrats and dictators.

RL: And that, it seems to me, Kenneth Roth, is very close to the kernel of the issue. The most effective way to change behaviour if you see human rights being violated, if you see abuses being committed, the question arises what is the best way to alter that behaviour pattern?

KR: Right, in fact I think it's a caricature of the Human Rights Movement to suggest that we never use quiet diplomacy, in fact there have been many circumstances where we have opened up a very constructive dialogue with governments and have not had to resort to a naming and shaming because they have responded to our initial enquires. But, you know, at the same time when I think of Saddam Hussein, I mean, I can't get out of my mind the 100,000 men and boys, Kurdish men and boys who 1988 during the <UNKNOWN> campaign, were trucked out to the middle of nowhere, lined up in front of trenches and summarily executed, and you can spend all your time with Saddam on the

couch, you know, engaging in psycho-babble about what is going to make him feel isolated and he deserves to be not only named and blamed, but prosecuted, and you know, there are just times when quiet diplomacy is inappropriate.

RL: Marion Harroff-Tavel, you were talking about circumstances in which sometimes the International Committee of the Red Cross decides that it would be right even for the ICRC to go public. What circumstances?

MHT: Well, I have told you the kind of questions we ask ourselves before making public statements about violations of humanitarian law. I would say that if the conditions I have mentioned are met we have different options. It's not that we are going to go suddenly public. We can for example discuss with a group of states parties to the Geneva Conventions which may have an influence on the government which should modify its behaviour. This being said, the ICRC is always very transparent about its action.

RL: So it's a last resort?

MHT: It's a last resort and there are stages. You can escalate the level at which you notify authorities of acts which are contrary to international humanitarian law. For example, in a place of detention, you can make an oral remark to the penitentiary authority, or you can send a detailed confidential report to the Head of State. For other violations of humanitarian law, you can at some point decide you want to share some humanitarian concerns with States, such as the members of the Security Council or of a regional organisation. Finally you can decide that you make an appeal to the States parties to the Geneva Conventions which have the obligation to ensure respect for those Conventions. But then maybe what is a bit different with the approach of others is when we make public appeals they are usually appeals for respect of the law. They are not denunciatory. We say there is a pattern of abuse that we have observed in such regional context and we draw attention to the rules which have to be respected. But I would not say it's in a shaming frame of mind, it's in reminding what rules are and calling for their respect.

RL: Kevin Clements, you accept this notion, do you, of there being a trade off? For example, you accept that an organisation like yours could not expect to be granted access to a facility like Guantanamo Bay because if you were you would tell us what you found there?

KC: Yes, absolutely.

RL: And that's just the way it is?

KC: That's the way it is with me, yeah, with our organisation, that's true, because we don't have, we're not operating within the same framework as the Red Cross operates in that regard.

RL: Kenneth Roth, you accept that that's the way of the world?

KR: Well, that's the way, but I should say the one advantage that I think Human Rights Watch has in terms of access even over the ICRC is that the ICRC basically behaviours like an international organisation, say like the UN. It asks permission and so while that permission is more likely to be granted because of the confidentiality promised by the

ICRC. Human Rights Watch has the one advantage that we don't bother asking permission and so when the UN fact finding team, you know, is blocked by Israel from getting into the Jenin refugee camp, we've already had our people in there for a week collecting information and we put our report out the next day. So, there are times when there are advantages to operating differently from sort of the official way, but that said, generally the confidentiality of the ICRC provides greater access.

RL: Let's just extend that one notch further. You say there are advantages to that approach. Advantages to whom? Who did that benefit, the fact that you were in there, that you published that report?

KR: Okay, well let me give you an example. We met with the Israeli defence forces and in fact the chief legal advisor to them and handed him a draft of the report and just three or four days later, I forget exactly, the IDF issued a statement. It said first that it had ordered all of its troops to stop using Israeli civilians as shields, one of our major findings...

RL: Palestinian civilians.

KR: Sorry, Palestinian civilians as shields, one of our major findings they had acted on immediately. Second, another one of our findings was that the IDF was using Palestinian civilians to do dangerous military tasks and the IDF said it would investigate that. It's not quite where we want it to be but it's a step in the right direction. So that was an immediate impact to the benefit of Palestinians who would have been endangered by future Israeli military actions and frankly it was only the global uproar resulting from the publication of our report that that changed the IDF's mind.

RL: Marion Harroff-Tavel, is perhaps, do you think, part of the reason why people do sometimes criticise the ICRC's insistence that acts in a confidential manner that you and your colleagues see your prime function almost as a charitable one, you are there for the benefit of people in detention, you are there for the benefit of those people who are at risk of having their rights abused. You are not primarily a campaigning organisation. Is that a fair description?

MHT: It's very interesting what you say because I would say proximity to the victims, helping the victims by the type of activities, medical, relief and so on, I have described is extremely important to us and we don't want to jeopardise that. On the other hand, the ICRC is an organisation which is called Guardian of International Humanitarian Law. We have a responsibility to make sure that the rules of international humanitarian law are not weakened. So I would say we have a dual responsibility and this is why answering your questions is not always easy. You shouldn't imagine that we just have policy guidelines and we know when we go right and when we go left and when we go straight. Very often there are ethical questions that we ask ourselves and we think is it more important in some circumstances to have a rather low key profile, because being close to the victims is very important, and other organisations are expressing publicly humanitarian concerns. In other circumstances the ICRC may be the only witness of violations of humanitarian law in a region and has a special responsibility if quiet diplomacy does not work. So we put that in balance, you know.

RL: But that formula, that formula, the Guardian of International Law is an interesting one because, Kevin Clements, if a Guardian of International Law when it finds the law being broken just goes along to the perpetrator and says "By the way, you've broken the

law" and leaves it that, is that enough in your view?

KC: No, not at all. I mean, we practice what we call, sort of, principled impartiality, I mean, so that groups and organisations that we're working and governments that we work with know that we are operating within the framework of international law, we certainly don't want to do anything that confers any hint of impunity on those that are committing gross violations of human rights and we keep reminding those who we are working with, even when we are working quietly, that there is a human rights framework, an international legal framework in fact to which we're accountable and they're accountable. So I think it's really important to kind of underline that we're all operating within and under the same framework.

Now, how to kind of get respect for that is the challenge really. I mean, how do you do that in situations where it manifestly is not being respected and that's most of the conflict zones around the world at the moment and how do you do that when the country that's most committed to constitutionalism, the United States, is willing to kind of, you know, place security above liberty and right? So, I mean it seems to me that there are some sort of fundamental issues here that we really have to look at in terms of, you know, how best do we advance that human rights regime and the human rights principles while doing that sort of rather delicate work of solving the problems?

Now one of the things which I think needs to be addressed here is, you know, what is the nature of the partnership you have with partners in conflict, those who are suffering at the hands of autocrats and so forth? How do you develop sort of empowering partnerships which enable them to solve their own problems, which enable them to exert the kind of local pressure which might in fact begin withdrawing legitimacy from autocracy? I mean, and it's a very challenging issue there and one of the things that we've been, sort of, grappling with is this whole notion of accompaniment, how do you accompany those who are in extremely difficult circumstances, how do you accompany the sort of ordinary Iraqi on the street or in the bazaar as they struggle to kind of survive in the kind of regime which Saddam Hussein has in place?

RL: But is ministering to the victim enough or does it have to be accompanied by pursuing and punishing those who have made that person into a victim?

KC: Administering to the victim is clearly not enough, but I mean working with the victims so that the victims themselves can address and confront their persecutors is a much more challenging task and I think that's the challenge for us. How do you do this? I mean, how do you do it in ways in which are going to be effective? Because the reality is that, you know, you can bomb Saddam Hussein, you know, with a well-placed missile, but if somebody else emerges to take his place you haven't changed anything. So, how do you begin that sort of transformation of consciousness, transformation of political culture and so forth? I mean, it's an extremely challenging task.

RL: Marion?

MHT: When there is a pattern of abuse, such as forced relocation, torture, there are different ways of handling the issue: there is the need for a responsive action and you immediately try to stop the pattern of abuse or to stop its repetition, and to alleviate its immediate effects. Then, you can have a remedial action, aiming at restoring people's dignity, for example helping families of the victims. Or you can work on the environment, to make it more conducive to the full

respect for the rights of the individual, suggest new treaties, push for the adhesion of states to treaties they have not signed and ratified, promote national measures of implementation of humanitarian law.

RL: It's fine.

MHT: So, you can work at different levels to try to put an end to a pattern of abuse. What I think is very important is to make the standards known, to disseminate humanitarian law to the arms bearers, to the political authorities, to the young people so that they reflect upon it. So, you have lots of different manners to approach a problem, you have different organisations to approach the problem and the challenge is to find the right complementary.

RL: So, Kenneth Roth, you have challenges, you have different ways of meeting those challenges, are there a set of principles that you are able to look at and say "In this circumstance this is the best way to approach it. In that circumstance that's the best way to approach it"?

KR: Well, we have talked about situations in which different approaches are probably going to be more or less productive depending on the degree of goodwill that is fair to assume senior government officials have. But, I think we don't think there are many situations that warrant an either/or analysis. In other words, Human Rights Watch is regularly working in situations where the ICRC is working too and I'm very glad that we're both there. The ICRC can accomplish certain things frankly, even if it's not changing governmental conduct, simply being able to have access to prisoners and give them basic necessities in prison is terribly important. That's something that Human Rights Watch can't do. At the same time we have the option of addressing at a public level, building the kind of pressure that may be necessary to change a government over the long term. So, I think we have to get beyond the either/or analysis, there's an important role for both kinds of organisation.

KC: Absolutely.

RL: You say "absolutely". That's right?

KC: Yeah, no, I think so and I think that kind the fundamental challenge really is to get an adequate division of labour between all of these different organisations so that each knows what we have comparative advantage in and can pursue that, so that you can have some organisations who are just committed to that business of really trying to work their way quietly into the centres of power, you know, getting alongside, you know, absolutely appalling and egregious violations of human rights in order to begin seeing if it's possible to sort of modify, change their behaviour at the margins and we need Human Rights Watch as well and others to do that sort of work and to kind of have at their disposal a timely report which denounces the violations that are taking place; and I think it's also important that, you know, we really have some sense, you know, the complimentary of all of these different organisations in response to these complex humanitarian emergencies.

RL: But, Marion Harroff-Tavel, the ICRC representative at Guantanamo Bay, <NAME>, was quoted as saying "We have a very low profile with the press, quite a high profile with the prisoners, that's the way it should be". Clearly he sees it as being either/or, you can't have both.

MHT: With regard to places of detention, it's quite clear that confidentiality is a must.

RL: So, those people who are demanding from ICRC that it should tell us what it had found at Guantanamo Bay, they were being unreasonable?

MHT: The public, yes, I would say it's unreasonable. I mean what does the public want to achieve here? Does it want to have a neutral humanitarian organisation go and visit the prisoners and have a dialogue with the detaining authorities, or not? and if that's what the public wants it has to agree with the confidential way we act. But, let me come back to another issue you mentioned, impunity, just before. What I wanted to say also is that we don't have to give testimony to the International Criminal Court or to the International Criminal Tribunal for Former Yugoslavia. Both have recognised that the ICRC cannot be obliged to be...

RL: Cannot be a witness in a court?

MHT: Yes, cannot be obliged to give testimony, which is I think the recognition of the fact that confidentiality is a tool that we need to assume our task. This doesn't mean that I don't think fighting against impunity is important. Often a whole people is considered collectively guilty of serious violations of humanitarian law and if individuals are held responsible, it's a step forward.

RL: All right. So, Kenneth Roth, the question we posed at the beginning, quiet diplomacy or front-page headlines? You seem to be suggesting that what we actually need is both?

KR: That's exactly what I'm suggesting and I personally would not pressure the ICRC to make public the information it collects, because I recognise that there is a need for an organisation like it, that by sacrificing its right to speak out gains a level of access that is simply not available and won't be available to organisations like Human Rights Watch that insist foremost on the right to speak out, but that said, I think that there is a need for a tougher, more public approach, often in the same situation. So you take a place like Guantanamo, I want the ICRC in there because they need to provide certain kinds of protection that only they can provide by having access to the detainees, at the same time I'm going to preserve the right to speak out because if the United States is utterly ripping up the Geneva Conventions, somebody's got to say that and the ICRC can't say it consistent with its access.

RL: Kevin Clements, the problem with saying you can have both quiet diplomacy and front page headlines is that by its very nature quiet diplomacy does not generate front page headlines, what we seem to be saying here is that you need two different sets of organisations working to two different methodologies?

KC: Yes, exactly and I mean and to use a Burundian example again for example, we have rather high access to a whole range of political leaders, some of whom may have committed human rights violations in the past, some of whom may have no desire to kind of adhere to human rights principles in the present. But in order to protect our relationship with them we develop other groups to kind of monitor the human rights situation and to act on them. So I think you have to become a bit sophisticated here, so that you can actually do both simultaneously and you can keep true to your principles of confidentiality at the same time as knowing that there are other groups around that are monitoring progress and monitoring lapses and documenting instances of human rights violations.

RL: So, Marion Harroff-Tavel, does the ICRC sometimes feel that it is being unfairly criticised in a sense for not being what it isn't?

MHT: I think we sometimes feel unfairly criticised because we believe in our method, we believe it works, we believe that somebody has got to do it that way. Neutrality, confidentiality can be very dynamic concepts and they bring a result. But, you know, they may not bring a result from one day to the next, you have to work over time. I have given reports on places of detention or protection of the civilian population to authorities every few months. As they get to know the activities the ICRC has in the field, its principles, how it works, well often the dialogue changes in nature. Some people are a bit cynical and will say "Well, you know how some of the people you have in front of you behave, how can you believe they are ever going to change?" Well, it's true that there is in the ICRC's work a basic assumption that yes, we will find a way of finding convincing arguments, but that's...

RL: That's the way you do it.

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Question 1

My name is Jim Kennedy. A question for Madam Harroff-Tavel with the request for <FRENCH>. You stated that the cornerstone of ICRC policy is based upon quiet diplomacy, acting in a confidential manner and not sharing information. You further stated that only as a last resort and most exceptionally would you venture to approach, for example, other governments on the presumption that they had privileged access to the ear of a certain violator. Would not such a discreet approach necessarily involve your violating this principle of not sharing information? I would think that to a degree it would be inevitable that you would have alerted some of these governments to certain information you possess.

MHT: Well, if we talk about places of detention, our information is very confidential. Now, if we talk of other patterns of abuse that others might observe as well, because they are outside closed doors, for example, civilians being targeted because they belong to a certain ethnic group, then it's true that's easier to share information. I can think of only one case where we actually went public with regard to questions relating to detention and it was about 20 years ago in the framework of the Iran/Iraq conflict.

Other than that, when we have sometimes made appeals to States parties to the Geneva Conventions or talked about detention, it was to remind that, at the end of active hostilities some prisoners within a specific context should be freed or that we would like to have access to prisons in a country, but we do not make observations on what goes on within the prisons. I would say activities in favour of detainees have their own specificity. But then there are also other patterns of violations on which we speak much more openly by making appeals. If you go on our web site and look at our latest communications, you will find that we have reacted to the taking of some ambulances in Nepal or you will find some statements we have made about the Middle East. It depends on what sort of violations we are talking about.

RL: Okay, thank you. Gentleman there.

Question 2

Richard <NAME>. Recently a lobbyist for the Quakers in Brussels – just for the record I'd like to mention a couple of cases where the quiet versus public approaches have combined. One is the Committee on Prevention of Torture at the Council of Europe, which investigates prisons and this representative had spoken of going into an empty room with blood on the wall, in Europe and they do national reports and the country has to reply, but the country who has been reported on can delay publication indefinitely if necessarily if they don't like the story. Britain has done this in cases relating to Northern Ireland and this is quite an interesting one, because, you know, there's a combination of the confidential and eventually the thing becoming public. The other one is Peace Brigades International, which probably everyone knows about, their workers accompany human rights workers or equivalents who under threat from a wicked regime and if the person's threat becomes real they use their mobiles and alert the outside world, diplomats or whoever, to put pressure on the government.

In both cases of course, these are non-Saddam type governments that can actually be shamed to some extent. I don't know whether the team would like to contrast the shameable versus the non-shameable governments.

RL: Okay, thank you for that.

KC: Well, I mean, I think that's an absolutely fair point. I mean you're looking, you've got to array all of these regimes along a continuum from, you know, exceptional gross violators of human rights of which, you know, <UNKNOWN> kind of figure at one end, I mean to those that are modest violators of human rights and then the whole issue about, I mean going back to the kind of question of motivation and so on, it's not just a question of sort of psycho-babble and making governments feel good, it's a question of really whether or not there are some things which individual leaders want for themselves and for their countries, and we've got to sort of try and identify those and utilise them; and I mean, so reputation and, you know, place in history and things like that are important to some of these people and so we've got to really work on those so that we can kind of, you know, utilise those as levers to kind of modify behaviour and so I think it is important to know what kind of regime we're addressing in that regard and clearly I mean it's something which would apply to a modest violator of human rights, it wouldn't apply to a gross violator of human necessarily. But even with the gross violator of human rights you have to ask yourself is there a combination of friendly persuasion and coercion that can be applied.

RL: Anything from you, Kenneth? No, right. Anybody else. Yes, right at the back and right at the top.

Question 3

My name <NAME> I'm a professor at George Mason university near Washington DC and I've done a lot of research on political prisoners and apartheid and I want to use it to suggest that not only is it not a case of quiet diplomacy versus going public it's very much both as I think almost everyone on the panel, or everyone on the panel has said. But it is also important to recognise that there are a range of actors across the political spectrum, across the international spectrum and even within institutions of government, the courts might do one thing, the executive branch might do one thing, opposition politicians might do one thing and it's really important that a false dichotomy is not set up where it's an either/or solution to human rights and one recognises that all of these groups and constituencies and organisations have a critical role to play, because if we don't do that

we'll be retarding the goal of human rights and certainly in South Africa it was all these forces, the ICRC and far more vocal public critics of the apartheid regime as well as many other actors that all served to help human rights and in particular political prisoners.

RL: Okay, thank you very much indeed. We've got time for one more, yeah?

Question 4

Hello, my name's Anthony Dawkin, I'm the editor of the web site of the Crimes of War Project and I want to ask the panel whether this picture that they've all effectively agreed on a balance with different approaches being effective in different circumstances whether this balance might be shifted in some way by the increasing prevalence of legal processes to deal with <UNKNOWN> and particularly the advent of the International Criminal Court and I'm just wondering whether something that might tilt the balance a little bit more towards the importance of public information and providing a practical basis might be the importance of the evidence that could be used in courts, Marion Harroff-Tavel spoke of the importance of ICRC people not being able to be subpoenaed by these international tribunals but I'm just wondering whether that's something that would provide an additional incentive for facts being public on the table, because they would enable prosecutions to be built.

KR: I think the answer is yes. I mean, I accept the fact that there are certain types of professions that require confidentiality as their essence, just as you don't ask priests or doctors or lawyers to reveal you know confidential information provided by the confessor or the patient or the client. Similarly I accept that the ICRC needs by virtue of the way it operates, to maintain confidentiality even in legal process. But that said, if you are trying to devise a scheme in which sometimes a more public approach is more appropriate than their private approach one factor you do have to weigh in here, as you say, is the fact that these days the human rights movement can rely not simply on stigmatisation, not simply on diplomatic or economic pressure, but also increasingly on the possibility of arrest, trial and punishment and that kind of very targeted sanction, aiming at the tyrant's future freedom holds forth a prospect of very strong deterrents and I think there's you know some cases tilt the balance in favour of a more public approach.

RL: Marion?

MHT: Yes, what I would like to say about the fight against impunity also is that we have been contributing to this fight but as a legal expert, at the time of the drafting of the Rome Statute. Now we try to help states, as I mentioned before, take national measures to implement humanitarian law, adopt legislation, for example, which would say what type of sanctions would be taken for a certain violation, so that also there can be justice nationally. So, we support this fight against impunity, in an expert legal capacity in so far as we have expertise about international humanitarian law, but the restriction I put was that we do not want to get involved in specific cases.

KC: I agree with the International Criminal Court and all of the sort of new legal arrangements that are being set in place are really fundamental as well and one of the things which I think is most worrying at the moment, you know, is that the United States' withdrawal from the International Criminal Court and so forth is sending exactly the opposite signal, it's signalling that you know, that power is much more important than right, that, you know, the cohesive diplomacy where you have the power to exercise your cohesion, you know, in the final analysis will bring order and security welfare for peoples.

So the signals that are coming out of the United States at the moment are all, I mean, undermining and subverting, I mean the other more multi-lateral legal pressures and I think that's a kind of fundamental challenge to the whole regime, you know, in so far as, you know, the US itself is kind of based on constitutionalism, respect for the rule of the law and so forth. I mean the fact that it's so willing to subvert the fragile emergence of international law I think is a calamity.

RL: Thank you very much indeed. I think that just about completes our task. Before we end can I just ask Fred Halliday to say a few words to draw the event to a close.

Concluding remarks

Fred Halliday

Well, we've had a very stimulating but also I think disturbing afternoon. If I have one negative experience to make about this discussion, it's to use the phrase of one of the speakers, there is not enough blood on the wall. We are talking about people who are being tortured, we are talking as the representative of the ICRC have told us about hundreds of thousands of prisoners in the world at the moment who they know about and many other who they don't. We are talking in all probability, looking at the world we live in, not at the end of such conflicts and not at the end of the violation of the rules of war but of continued and in some ways increasing violations of the rules of war by states who think these things are outmoded, by self-appointed liberation movements and guiders and all of the rest of them and fronts for the liberation of this, that and the other, who think that right is on their side; and I think nothing should detract us from the point which has been clearly spoken to us by the experts today that we're talking about people who are imprisoned, people who are in fear, people whose families are in fear, people who at best are bored to death for months and years, living in confined circumstances and I think that's something which puts an urgency on the issues which we have discussed this afternoon and we've talked politely, necessarily but politely about politics.

The politics of it are that many states in the world and many others who play a political role in the world, these fronts and these foundations and all the rest of them, do not wish to participate in this discussion. They come up with bogus arguments as to why these things are outmoded or no longer necessary and make fun of the provisions on tobacco in the Geneva Conventions of 1949 as if when they're tortured people do not feel pain and is if when people are killed they aren't dead; and I think that the issues we're discussing today are very much issues of the present and of the future and that's above all why what we're discussing today is important.

But what we've heard today are two, in my mind, very important, they're simple but they're absolutely fundamental lessons: number one, is the alternative to the laws of war and to the incorporation of international criminal law and international humanitarian law into international practice, the alternative is barbarism, is the jungle and we see much of it in the world today and the *raison-detre* of the people who have spoken today is to try and reduce, not to abolish, but to reduce that jungle and to reduce the degree to which human suffering is perpetrated in conflicts and if it is an age of terror now, measured in terms of victims or in terms of those who intend to perpetrate terror it has been an age of terror for some time and will continue to be so and that's why laws matter; and secondly, we have heard that there is a body, a substantial body of law, of practices, of conventions, of norms and of expertise and of raw human commitment, I mean the ICRC colleagues are too polite to talk about it but they are spending months of the year in dreadful and dangerous

situations in Tajikistan, in <COUNTRY>, in Bosnia, in Kosovo, in Burundi as are the other colleagues from International Alert, Human Rights Watch, Amnesty and elsewhere and the existence of those laws and that commitment is absolutely central to addressing these questions; and I think we must leave here with a sense of commitment but also with a certain sense of outrage at the violation of these laws and also the need to do something about it and it is at this point I think that the issues that have been raised today become so relevant. I just want to mention three of them out of many which I could have mentioned.

The issue treaties being outdated or outmoded. It's perfectly proper to say of any law or any treaty it was produced in a particular time, norms have changed, technologies have changed, politics have changed, let's look at this again, but so often when that issue is raised it isn't raised in a positive, creative way, it's raised as a way of trying to kill core provisions of the treaty, just think of calls to reform the outdated 1951 UN Convention on refugees, just think of calls to reform the supposedly ABM Treaty, all of these and any other treaty we can think of can quite properly be looked at again, the UN Charter can be looked at again, the US Constitution can be looked at again, if the British had a constitution it could be looked at again.

But, the spirit and the issues that are raised in regard to this out datedness need to be looked at very carefully and yet norms do change, as Louise Doswald Beck works on and others, technology's changed and run ahead of the law as they do in many other areas, but we in the human rights community in the broad sense, academic, policy and elsewhere, have to get ahead of the argument about what it is or is not to be outmoded, just as people say labour practices in Europe are outmoded, what does this mean or it's just an excuse for getting rid of protection of employees.

Secondly, we have heard much and it's appropriate because we're are in a sense on the back of September 11th about the role of the non-state actors, of those who are not states and again we will not be able to take part in the argument if we don't get in there and try and address some of the issues, Kenneth Roth mentioned the absolutely classic distinction which I think can be found in all cultures and in all religions and legal systems between the authority to go to war, who's entitled to use violence and the forms of violence, the means of violence and that distinction is logical and necessary and helpful, and we have to say to the non-state actors, "By what right do you attack other states?", "By what right do you attack civilians?", "Who gave you the authority?" and most of us have <UNKNOWN> criteria, most people would accept that the ANC had the authority to fight the South African government. Whether we would accept the right of self appointed liberation movements, in the imperfect but nevertheless western European democracies, such as Corsica, the Bask country and Northern Ireland to do so is quite another matter and whether we would accept the right Al Qaeda speaking allegedly on the behalf of the billion oppressed Muslims but without any democratic mandate or any other mandate is another matter still. So, the question of authority can be applied to them as can the question of means and whether it is blowing pizza parlours or whether it's attacking tower blocks, one may or may not sympathise with some of the issues, but the question of means has to be asked of them.

This brings up a very important question of politics and of the debate we've been having in the second half and of the press coverage which is although those two categories, authority and means are separate and logically separate, in the public mind they are fused. If you want to discredit just authority you say these people have committed crimes, that's the way you do it, and if you want to defend your right to do whatever you're doing, to wage liberation by the Palestinians or to keep occupation of the West Bank by the Israelis,

you have to deny that you ever committed a violation. Right outside this building stands a statue, one of the most controversial figures of the 20th century European history, Vice-Marshall Harris, the man who ordered the incineration of Dresden in which 225,000 civilians were killed in one night. His supporters and those who erected the statue will say that he's not a war criminal and that above all because they don't want to detract from the overall cause of fighting Nazi Germany, but what's the connection between the two claims, can't you admit one and not defend the other? Those who are critical of him or critical of Hiroshima and Nagasaki, would make a different argument. So the question of there is a tariff there is an interaction of the two in the public mind and in the public debate following from September 11th, which is why if you don't like what the Americans doing in Kosovo, or you don't like what they are doing in Afghanistan, you say "Well, they bombed a village", or "they killed people in friendly fire", or "they have abused prisoners" as if that answers the whole question which it doesn't.

So the whole issue of the right of people to revolt and non-state actors is mixed up with a very confused public debate and the right to go to war and the right means of doing so and this brings me back by conclusion to the third point which is what we have called here, for want of a better term, politics, Louise Doswald Beck is absolutely right to say prime responsibility for the upholding of international humanitarian law lies with states, but of course that means states individually, whom the human rights groups and others address, it means international organisations comprised of states, the UN, EU, it means one state leaning on another as we see in the African context, sometimes in the Arab context, we see it in the European context where the price of joining the Council of Europe or the EU or NATO will be for states to improve their human rights record. But on their own, states aren't going to do the job, that's why we need the ICRC, that's why we need the human rights groups speaking in different registers, that's why we and do not have an informed press, much of the confusion that we see on these issues, the sensationalism of these issues, the confusion of the right to go to war and just means and the completely promiscuous use of the word terrorism is the responsibility of the media who are abetting confusing politicians but also have their own agenda, and the role of the press in sustaining an informed discussion of these things and in highlighting abuses is one for which they should be held to account, but so, if I may say so, in a more partisan spirit is the role of the human rights centres in the university, our job is to have meetings of this kind, our job is to probe on the difficult issues, if we don't have an understanding of the ethics of terrorism or definition of terrorism it's our job to push that issue, we don't have an understanding of what covers the detention of non-state combatants in Afghanistan let's have the discussion here, we can also play our role and do play our role in quiet diplomacy. So, politics has got to go from the world organisations and the states down to the grass roots and cover the responsibility of all of us in this domain and I think today's event has been a very good example of collaboration between three different groups with three very different jobs and three different forms of responsibility.

I would like to thank the ICRC and particularly Kim Gordon Bates for doing so much to set this up and these take a lot of getting together and for getting such a clear agenda and such a fine group of speakers together. I would like to thank Jenny Waters of the BBC for recording this event, for getting Robin Lustig along and for giving us a very clear and brisk format for the day and also for broadcasting these discussions and to thank Sharon Shalev of the Human Rights Centre for weeks, if not months of work to get this together.

But it brings me to a final and very polemical point. We hear a lot about outdated mandates, post Cold War, new situations and post 11th September, and everybody going round saying "We have to reconfigure ourselves, we have to restructure ourselves, we

have to redefine our mandates". My message to all three of these organisations, the ICRC and to the human rights groups as well, and to the BBC and to the LSE is stick to your mandates as it's more than enough to do.

Ends.