



Discussion Paper no.12

**THE POWER OF JUSTICE, JUSTICE AS
POWER:
OBSERVATIONS ON THE TRAJECTORY OF
THE INTERNATIONAL HUMAN RIGHTS
MOVEMENT**

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September 2005

DISCUSSION PAPERS

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The Power of Justice, Justice as Power: Observations on the Trajectory of the International Human Rights Movement

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Leading international human rights NGOs, such as Amnesty International and Human Rights Watch, have increasingly become a locus of power in the post-cold war global order, even as they seek to sustain their self-characterisation as movements that are ‘outside’ those global power structures. This development has changed the context within which their activities must be understood and evaluated. While they have consciously expanded their frames of reference over the past decade to include a broader range of social, economic and cultural rights, they have not adequately addressed (perhaps are unable to) the issues of ‘trade-offs’ and ‘transitions’ that those working in these spheres are daily confronted with. Indeed, in that sphere where their power is most forcefully expressed – international, or ‘global justice’, as exemplified by the debates about the international criminal court and universal jurisdiction – there appears to be a growing ‘international legal absolutism’ that reflects the increased domination of lawyers in decision-making processes.

The consequences of this trend are felt particularly sharply in contexts of ‘internal conflict’, where messy and complex local realities appear increasingly subordinated to ‘global justice’ agendas. Specific historical and political analysis appears increasingly often to have been submerged by these agendas. Questions of how we get ‘from here to there’ over time, and regarding ‘imperfect’ strategies, are addressed simplistically, if at all. Beneath the rhetorical claims, ‘Justice’ in the context of internal conflicts becomes more and more narrowly defined as judicial action at all costs, with international interventions viewed as inherently a good thing. Also, their capacity to project these agendas inevitably shapes debate within affected countries or regions amongst local or regional NGOs – not in itself invidious, but potentially problematic given the asymmetries of power and resources that often exist between these ostensible ‘partners’ (or, indeed, between the centre and local chapters). No less importantly, these agendas are – for better or for worse – coming increasingly to fill a vacuum left by the crisis in ‘non-political humanitarian intervention’ that has developed over the past decade. Justice has been increasingly posited as a way of recasting and re-legitimising international military interventions. This process has gathered pace dramatically since the terrorist attacks on the US on 11 September 2001 and the ‘war on terror’ that has ensued. Not for nothing was the US-led campaign against ‘terror’ initially called ‘operation infinite justice’.¹

This paper reviews the ongoing debates about justice within the international human rights movement and the strategies that have flowed from these debates. I begin by briefly identifying the changing historical and social bases and accompanying culture-ideologies over time of key international players in this drama, and how they have impacted upon the actions of governments and multilateral bodies such as the UN. In doing so, I chart the emergence of what I call the ‘power of justice/justice as power’ nexus (henceforth abbreviated in the text to ‘power/justice’) that I believe is now emerging. I also seek to review the impact of this

¹ Protests from across the Islamic world, for whom only Allah can dispense ‘infinite justice’, led to its renaming as ‘operation enduring freedom’.

paradigm on humanitarianism and in doing so reflect upon the kind of politics that human rights workers can and should seek to adopt. Finally, I refract my arguments through a case study of Sierra Leone, where the ‘power/justice’ nexus has heavily shaped efforts to end conflict over the past five years. In Sierra Leone, there has been both a Special Court to try those with ‘greatest responsibility’ for human rights abuses and an official Truth and Reconciliation Commission.

If it is legitimate and important for international development and humanitarian organisations to be subject to critical scrutiny, as they have increasingly been over the past decade, then so too is it for the world of international human rights NGOs – particularly now that they are a locus of power. So far, there has been remarkably little critical scrutiny of them. For understandable reasons, they have not gone out of their way to encourage it themselves.² But if human rights are to be genuinely promoted and strengthened in the coming years, I believe that more critical scrutiny (and, perhaps, greater degrees of reflexive humility) is now essential. Hopefully, this paper will be a useful contribution to the debate.

The emergence of the ‘power/justice’ nexus

In terms of the wider explosion of international NGOs since 1945, human rights organisations represent a ‘second wave’, following on from the first, which was predominantly characterised by increasing numbers of international development and humanitarian organisations. 1961 saw the birth of Amnesty International (AI), which has become the leading international NGO in the human rights field, with over one million members around the world. Although the majority of these are in the north, it has a significant southern constituency, particularly in Asia and Latin America. AI has always described itself as a movement of citizens, and it is certainly the nearest thing there is to a cosmopolitan social movement at the global level in the human rights sphere. However, it has always been well-connected. Its senior echelons have been full of people who had good access to the corridors of power, at least in the West.³ But this did not necessarily mean that they had much leverage over those who held power. For that to happen, a convergence of interests that was more than temporary was necessary. This began to emerge from the mid-1970s, as the need to create a more sophisticated strategy to combat communism was acknowledged in the West, one which drew more from universal legal instruments protecting human rights than from the comparatively amorphous notions of freedom that had prevailed previously.

The establishment of Human Rights Watch (HRW) at that time was a reflection outside the government sphere in the US of this important shift. While not a mass membership organisation like AI, HRW has progressively expanded over the subsequent decades, establishing regional divisions across the globe. Its mandate has traditionally been broader than AI’s, explicitly embracing economic, social and cultural rights. But the struggle against impunity – the failure by national governments and/or the wider international community to bring to justice alleged perpetrators of human rights violations – has always been central to both organisations.

² The academic and wider literature on organisations like Amnesty International ranges from the practically-oriented (i.e. ‘how it does a – z’) to the semi-hagiographical. For an example of the latter, see Jonathan Power, *Like Water on Stone: The Story of Amnesty International*, London: Penguin, 2001. One of the few scholarly works that addresses the ‘real history’ of the organization is Tom Buchanan’s ‘The Truth will Set you Free: The Making of Amnesty International’, *Journal of Contemporary History*, 37:4 (2002).

³ For an interesting study of the relationship between AI and the UK Government over the Rhodesia crisis, see T. Buchanan, ‘Amnesty International in Crisis, 1966-7’, *Twentieth Century British History*, 15:3 (2004).

These organisations – and others that progressively emerged in the following years – found themselves getting increasingly receptive hearings from Western governments from the mid-1970s, although this happened mainly when they were criticizing communist countries in Eastern Europe, the Caribbean and East Asia. As the environment for radical activism seemed to be shrinking in the West, and as disillusionment with the Communist bloc grew, organisations such as AI became potential vehicles for achieving political objectives by degrees of stealth. The focus for such people became helping to create the space for the radical social movements they hoped would emerge or gather strength. At the same time, there was a process of professionalisation of human rights activism as organisations looked for greater expertise within their ranks. This had many necessary dimensions but, as always, carried with it the risk of greater bureaucracy and, in AI's case, distance between the International Secretariat in London and the wider membership. It also increased tendencies between organisations – not least between AI and HRW, both of whom obtain the largest part of their funds from the US – towards competition and empire-building, at least at senior management level.⁴

With the fall of the Berlin Wall and the collapse of communism across most of the globe, an ideological and discursive vacuum developed. Apparently non-political discourses of humanitarianism and human rights have come gradually to fill this vacuum. Although they are often partly camouflaged by self-interested actions by powerful states, this does not mean that we should dismiss this shift simply as conspiratorial opportunism by the victors of the cold war. As Hardt and Negri have argued, a new form of Empire is taking shape. As they write:

...what used to be conflict or competition among several imperialist powers has in important respects been replaced by the idea of a single power that overdetermines them all, structures them in a unitary way, and treats them under one common notion of right that is decidedly post colonial and postimperialist. This is really the point of departure for our study of Empire: a new notion of right, or rather, a new inscription of authority and a new design of the production of norms and legal instruments of coercion that guarantee contracts and resolve conflicts.⁵

The dramatic expansion of the right of intervention that is flowing from this development is underpinned, according to Hardt and Negri, by:

not just a permanent state of emergency and exception, but a permanent state of emergency and exception justified by *the appeal to essential values of justice*. In other words, the right of the police is legitimated by universal values.⁶

⁴ This reflects my experience at AI while working for the organisation during the mid-1990s.

⁵ M. Hardt & A. Negri, *Empire*, Cambridge: Harvard University Press, 2000, p.9.

⁶ Hardt & Negri (2000), p.18. It is worth noting that their reference in the last sentence to the “right of the police” directly echoes the language used so positively to justify international intervention by keen advocates of global justice such as Mary Kaldor, who has long combined academic research on ‘new wars’ and liberal-cosmopolitan alternatives with human rights work in central and Eastern Europe. Finally, a key question often asked on the left about Hardt and Negri’s new Empire is, ‘who is running it?’. They claim that although the US undoubtedly occupies a “privileged position” in the new Empire (pp.xiii-xiv), it does not dominate it in the way that individual states did so during previous imperial epochs. This perhaps looks less convincing in the immediate aftermath of September 11 2001. Nonetheless, I believe it will prove an accurate analysis in the longer-term if the new Empire is to sustain and consolidate itself. It will be unable to do either on any other basis.

This is the context in which the international human rights movement is increasingly operating. Although organisations such as AI and HRW potentially retain the ‘double-edged’ character that originally attracted many on the left into them, there is a real danger that they will become normalised and incorporated into global structures of power and interest on the basis of what have become the ‘official values’ of contemporary global governance. They now have unparalleled access to power-holders within Western governments and multilateral organisations such as the UN. But their power, while ostensibly greater than it has ever been, is still largely dependent upon the selective patronage of powerful Northern governments. When these governments do not wish to hear them, there is still little that they can do about that. International human rights NGOs persistently complain about the ‘double standards’ that endlessly arise in this context. At the same time, the degree of interchange of personnel between international human rights organisations and Western governments or multilateral organisations has increased enormously, to the point where they often share a common culture-ideology. This confluence has helped shape one of the most important “strategic complexes” that Duffield has described as central to the emerging structures of global governance.⁷ A further development has been the growing preponderance of lawyers within these organisations over other specialists, including those with national or regional experience. This preponderance has had the biggest impact in the sphere of global justice. Following the collapse of communism, the possibility of pursuing the longstanding objective of an international criminal court reasserted itself. This was reflected in the way in which ‘second best’ strategies of promoting accountability in so-called post-conflict situations like truth commissions, which both AI and HRW had taken a relatively positive stance on during the 1980s (most notably in the context of so-called peace processes and democratic transitions in Latin America), have come to be viewed with much less enthusiasm by both organisations during the 1990s and into the new century.⁸

Even the emergence of *ad hoc* tribunals, while initially strongly supported by AI and HRW, has been viewed with a growing degree of ambivalence by these organisations, embodying what they consider to be over-politicised and imperfect justice. A narrow definition of justice in primarily legalistic and judicial terms can play into the hands of powerful governments that are reluctant to address the root causes of poverty and violent conflict. International human rights organisations like AI and HRW have so far been relatively peripheral to wider campaigns for social and economic justice within the global order, and have often found it difficult to construct genuine partnerships with local NGOs.⁹ There remain problems of accountability and legitimacy in terms of their own ‘right to intervene’ that they have yet to properly address.¹⁰ In sum, they are in serious danger, through a combination of hubris and naivety, of becoming adjuncts to the emerging imperial project.

⁷ M. Duffield, *Global governance and the new wars*, London: Zed, 2001, ch.3. Duffield prefers the term ‘liberal’ over the terms ‘imperial’ or ‘imperialist’ to describe the emerging structures of global governance. This on the grounds that there are few, if any, instances in the contemporary world of formal imperial occupations. However, along with Hardt and Negri, I am with those who prefer ‘imperial’. Historians are familiar with the concept of ‘informal empire’ and it seems to me to adequately encapsulate what is developing today.

⁸ I am not necessarily arguing that this cooling of enthusiasm is the result of a ‘formal’ decision by these organisations. In my experience, it has happened more subtly than that as the ‘parameters of the possible’ on impunity have changed.

⁹ The problems they have in constructing partnerships are not so different from those encountered in the past by international organisations operating in the spheres of development and humanitarianism, on which there is an extensive academic literature.

¹⁰ On the right of intervention, see T. Allen & D. Styan, ‘A right to interfere? Bernard Kouchner and the new humanitarianism’, *Journal of International Development*, 12 (2000).

Justice and the crisis of humanitarianism

In the early 1990s, as the dust was settling after the cold war, neutralist humanitarian discourse and practice played a dominant role in justifying international interventions in the 'post-ideological' small wars that appeared to have replaced it. However, humanitarianism proved to be an inadequate ideological basis on its own for the emerging imperial project. Over the years that have followed, neutralist humanitarianism has come to be overshadowed and reshaped by impartial ideologies of human rights.

The dilemmas of humanitarianism are, of course, many. They are particularly vividly illustrated, as other authors have already argued, by Operation Lifeline Sudan (OLS).¹¹ The OLS experience played a significant part in shaping the thinking of key advocates for a human rights-dominated political humanitarianism. OLS arose out of the famine of 1985-1989 in southern Sudan, site of a brutal and protracted civil war between a series of Arab-dominated northern-based governments (currently the National Islamic Front, NIF) and a predominantly African, Christian/animist insurgency, led by the Sudan People's Liberation Army (SPLA). At the time of its first introduction, it seemed to many people to represent an important advance in the humanitarian agenda: negotiated access to areas of insurgency that had previously been blocked by the government, and the provision of food aid to those in need. Over time OLS came to be part of an institutionalised arrangement with the government. This inevitably gave the government some control over the operation. Critics argued that OLS became progressively integrated into the political economy of the civil war in Sudan. Both the government and the SPLA worked out sophisticated strategies for the manipulation of aid to provision their forces and maintain their garrisons. OLS consistently helped the government to avoid the fall of the key town of Juba, for example. In the Nuba mountains, the government forced OLS to provide support only to the areas that it held. During the 1990s, when there were splits between different factions originally in the SPLA, food aid undoubtedly also helped to sustain these different factions.

The UN had to decide whether to supply relief in the absence of guarantees that it would not be misappropriated. For its critics, it allowed the imperative of 'operationality' to triumph over 'principle'. But is that fair criticism? Which principles are we talking about here? Should there be no relief unless there are such guarantees? How are such guarantees to be obtained? Who is to enforce them? While it is crucial to seek ways to address such concerns – for example, by doing everything possible to improve safeguards that relief is not misappropriated, the fundamental question remains: what is your bottom line, the point at which you decide not to provide relief? These dilemmas are certainly not unique to OLS. They have been encountered in many other complex emergencies in Africa – Angola, for example. The move towards 'negotiated access' arose out of what were perceived as the costs of all other alternatives: if you simply work with the government, vast numbers of people might starve in 'enemy areas'. However, if you simply defy the government, relief moves explicitly into the political domain, makes itself a target, may lead to expulsion of your organisation from government-held areas. The experience of humanitarians in the first great African intervention of the Biafran war still looms large in people's minds. So, then, is 'negotiated access' actually the 'least worst solution'? Is that the most we can hope for?

¹¹ There is now a voluminous literature on OLS. For important points of departure, see chapters 8 and 9 of Duffield (2001), and chapter 7 of Alex de Waal, *Famine crimes. Politics and the disaster relief industry in Africa*, London & Bloomington: James Currey & Indiana University Press, 1997a.

In February 2002, the Sudanese air force bombed civilians collecting a World Food Programme (WFP) food drop in southern Sudan, five people, including a Medecin Sans Frontiers (MSF) worker, were killed. In the same month, it also attacked a relief centre in a rebel-held area of southern Sudan, where major deposits of oil lie waiting to be exploited that the government is desperate to control. At least 24 civilians were killed that time. The US promptly suspended its mediation of 'peace talks' between the government and the SPLA. Thirteen NGOs working in north and south Sudan condemned the attack and suggested that "clear and consistent 'disincentives' [i.e. sanctions] for warring parties who commit abuses should be agreed". The Sudanese government called this attack a "mistake", and set up a military-led commission of inquiry to investigate the incident. Alex de Waal, commented:

For the last 18 years the south has been an ethics-free zone. If Khartoum were to forgo attacking civilians it would have to abandon its current military strategy in the oilfields. Its entire strategy is based on displacing the population that lives around the oilfields.

Catherine Bertini, chief of the WFP, described this attack as "an intolerable affront to human life and humanitarian work".¹² For Alex de Waal, what these and other examples of humanitarianism in practice shows is that "when the intolerable occurs, they [humanitarians] proceed to tolerate it".¹³

The critique of humanitarian aid has been perhaps most forcefully expressed in Alex de Waal's 1997 book, *Famine Crimes*, which focuses on the role of what he calls "the humanitarian international" in policies to address and relieve famine in Africa. The humanitarian international, according to him, is composed of a transnational elite of relief workers, aid-dispensing officials, academics, journalists and the institutions they work for. Also joining its ranks increasingly are experts in conflict resolution and human rights workers.¹⁴ There are a number of problems with the activities of this 'international', according to de Waal and others. First, it has often shown itself to be fundamentally unaccountable to the 'objects' of its interventions in African complex emergencies: the local state (where it functions and has a degree of legitimacy) and the wider local population. If the internationals that flood in whenever there is an emergency are accountable to anybody it is to their own organisations (which must successfully reproduce themselves) and to funders. Local knowledge and survival/coping strategies are too often discounted and undervalued. Second, humanitarian aid in Africa is only pretendedly 'non-political'. Behind the scenes it is often manipulated by those who control and fund it to fit their 'political objectives'. This can lead to an unacceptable selectivity in where, when and how much humanitarian aid is supplied. Agencies dependent on international government funding are often slow to criticise their paymasters openly. The experience in Somalia during 1991-1993 contained many such examples of this, according to de Waal. The pretendedly non-political stance of humanitarian agencies means that they generally remain silent in the face of human rights abuses, or at best pass information about abuses on to human rights NGOs that are prepared to go public. The need to protect aid operations is thus 'traded off' against actions that could address issues of accountability and impunity that are root causes of the conflict. Third, when humanitarian aid agencies intervene in complex emergencies in Africa, they often fuel conflict rather than dousing the flames, for example by creating opportunities for the (mis)appropriation of funds and food or for the achievement of wider political objectives by parties to a conflict. Humanitarian aid agencies usually have to act in cooperation with state authorities or armed

¹² *Guardian*, 7 March 2002.

¹³ De Waal (1997a), p.147.

¹⁴ De Waal (1997a), p.65.

groups that are parties to the conflict. All too often, they try to direct resources towards their own supporters and away from their enemies. This was certainly the case in the refugee camps in Eastern Zaire between 1994-1997, when Hutu militias used humanitarian aid to rebuild their fighting capacity. This problem has become increasingly important because much violence in sub-Saharan Africa has an economic motivation, whatever claims are made in terms of grievances. Also, the herding of refugees or internally-displaced people (IDPs) into 'camps', while convenient for agencies and host states, is often disempowering and, again, can play into the hands of armed groups, which are often not effectively disarmed and have a captive audience in camps.

De Waal does propose a way forward for humanitarian aid agencies in complex emergencies in Africa. Although he is critical of the type of 'politics' that underpins their activities in too many cases, he has increasingly argued that the way forward is not to try to depoliticise humanitarianism but to acknowledge that it cannot avoid politics and seek to politicise it in ways that mean that its interventions empower local capacities and help promote respect for human rights – above all the principle of retributive justice (i.e. the prosecution of perpetrators of abuses). For the empowerment of local capacities to happen, he argues that the power relations within the humanitarian community must change fundamentally. With regard to the latter, humanitarian aid agencies should place enforcement of human rights at the heart of their agendas and must 'speak out' when they encounter human rights abuses. In the absence of such a shift, it will often be better if there are no outside interventions.

In recent years we have seen the emergence of a 'critique of the critique' of humanitarian aid in Africa's complex emergencies. Among the most important exponents of this 'critique of the critique' have been Macrae and Stockton.¹⁵ They are not simple apologists for the humanitarian international, to return to de Waal's phrase. They accept that there is a crisis and indeed, that this crisis may turn out to be fatal. However, they do not accept that the many failings mean that the entire 'project' is invalidated. The true agenda, they would argue, is to improve the ways in which humanitarian aid is provided. This obviously involves action to improve logistical systems, distribution and monitoring mechanisms, needs assessment processes, but also the development of more effective and meaningful structures of local participation and systems of accountability. They believe that de Waal's emphasis on "relief as encouraging dependency" is exaggerated and that his privileging of local solutions is misplaced. Local solutions, they point out, need not be creative. Such an emphasis may simply mean that the local power brokers have a free hand in places where 'civil society' is weak or non-existent. Indeed, conflict/crisis is a particularly hostile context for civil society, which is often itself under direct attack. The struggle will be for survival and if humanitarian aid agencies take a hands-off attitude, the outcome could simply be greater casualties.

Stockton also quite convincingly argues that humanitarian aid is only one part of the political economy of war. Many wars have been fuelled by struggles over natural resources and trading profits, rather than over humanitarian aid. It is important to note that much of the critique of the role of humanitarian aid in fuelling conflict was developed in relation to countries like Sudan, Ethiopia and Mozambique, which lacked easily exploitable high-value commodities such as diamonds. Finally, in terms of humanitarian aid propping up unrepresentative regimes, Stockton and others have claimed that this argument applies more to development aid than to humanitarian aid. Longer-term aid has certainly played that role. As for the thorny question of politics, they defend the principle that humanitarian aid agencies should avoid

¹⁵ Joanna Macrae, 'The death of humanitarianism? An anatomy of the attack', *Disasters*, 22:4 (December 1998); Nick Stockton, 'In defence of humanitarianism', *Disasters*, 22:4 (December 1998).

overtly political interventions – not because it is possible to operate ‘outside of politics’ but because there are different imperatives in humanitarian emergencies and a *division of labour* is necessary. Humanitarian aid workers should focus on the preservation of human life and dignity in complex emergencies. *Other actors* should take on the politics and broader questions of active and effective enforcement of human rights. For her part, Macrae has argued that what in fact has been happening is the capture of humanitarian action by political action (a certain kind of integration) and that this development has been *endorsed* by the majority of humanitarian aid agencies, so legitimising it.¹⁶

It seems to me that a ‘new humanitarianism’ that is rights-based rather than needs based may be trying to emerge. The human rights agenda could become the official face of this ‘new humanitarianism’. Some advocates of this seem to assume that humanitarianism can unproblematically absorb a human rights agenda. However, I agree with Macrae when she argues that the possibility has to be left open that in practice it will not be possible to square every circle. There will be ‘moral dilemmas’ or ‘tough choices’ to face, in which it may be unavoidable to choose between two evils. Hugo Slim’s work has been extremely instructive in this regard.¹⁷ He looks at a number of scenarios where ‘moral dilemmas’ have been presented. For example, he looks at the provision of humanitarian aid to Hutu refugees in East Zaire following the Rwandan genocide, which he presents as ‘aid without justice’. He argues that it was justified to provide humanitarian aid here on the grounds that it would have been dangerous to withhold a definite good or benefit (aid) for the sake of a desirable but uncertain future good (justice). Alex de Waal has taken the view that the greater good here, given that many of the refugees were genocidaires, should have been justice. Accordingly, he opposed any efforts to prevent the Rwandan government and its surrogates from enforcing a less than fully voluntary repatriation of hundreds of thousands of the refugees in 1997 through military action.¹⁸ Slim applies the same argument with regard to the Ethiopian famine in the mid-1980s, where he argues that had all agencies told the truth about how the Ethiopian government was using the refugee camps established to provide aid to the starving as a basis for organising politically-motivated forced resettlement schemes, there was little guarantee that the international community would have responded. Much more certain was that the government would throw them out of the country, as were MSF, the only agency to speak out.

The ‘new humanitarianism’ also presents wider ‘moral dilemmas’ that touch on issues of power. Governmental global elites in the North have to a significant degree internalised the discourse of human rights. But they have done so with varying degrees of sincerity. I fear that some aspects of human rights are going to be raised above others in this discourse of power. Within the language of human rights, the concept of retributive justice, or punishment of perpetrators of abuses, has been elevated above others. But these elites have not abandoned their realpolitik hats. Decisions about interventions are still strongly shaped by this realpolitik, making the ‘new humanitarianism’ an unstable mix of principle and pragmatism, inherently selective in character. In the end, for all of the power of De Waal’s critique, I do not believe that the conditions exist for the effective and legitimate ‘full operationalisation’ of the justice-based approach to humanitarian aid he posits, based on his African case-studies in *Famine Crimes*. If humanitarian aid is to be withheld from a particular area or group, then

¹⁶ J. Macrae & N. Leader, ‘Apples, pears and porridge: The origins and impact of the search for ‘coherence’ between humanitarian and political responses to chronic political emergencies’, *Disasters*, 25:4 (2001).

¹⁷ Hugo Slim, ‘Doing the right thing: Relief agencies, moral dilemmas and moral responsibility in political emergencies and war’, *Nordiska Afrikainstitutet, Studies on emergencies and disaster relief*, 6, 1997.

¹⁸ Alex de Waal, ‘Becoming shameless. The failure of human rights organisations in Rwanda’, *Times Literary Supplement* (21 February 1997b). See also De Waal (1997a), ch.10.

who exactly is entitled to make these decisions and what mechanisms of representation can make these decisions legitimate?¹⁹

It should be noted that, for all of his criticisms of neutralist humanitarianism, De Waal is also highly critical of international human rights organisations. His grounds are that they can never be fully and explicitly political. While their commitment to impartiality is an advance upon neutrality, they are still, in his view, often infected by the bacillus of even-handedness. This can limit their ability to take sides and back political and military forces that are likely to be the best hope for change. In his view, this was what happened in Rwanda, where AI and HRW focused excessively on the failings of the new Rwanda Patriotic Front government and too little on the genocidaires.²⁰

My view is different. I believe that both humanitarian agencies and human rights organisations need to understand and accept that they are indeed engaged, and unavoidably implicated, in politics. To pretend otherwise is naïve. They need to formulate strategies based on high-quality historical and political analysis and establish criteria for assessing what their ‘bottom-lines’ are in specific situations where there may be ‘moral dilemmas’ for them. The inherent value of humanitarian aid based on need should be upheld – the presumption should be *for* such provision – but these bottom-lines may indeed justify non-provision of humanitarian aid on occasions. In terms of Slim’s distinction between deontology and teleology – that is, undertaking a ‘good’ action regardless of possible ‘bad consequences’ or only undertaking a ‘good’ action if there are no or insufficient ‘bad consequences’ – the best course is surely to seek to negotiate the inevitable tensions between the two when they arise and reach a judgement, not to opt *a priori* for one or the other.²¹ But this is not the same as becoming ‘explicitly political’, wearing politics on your sleeve, which is what De Waal and others seem to suggest should happen. To do so would be to run the danger of entirely closing the traditional ‘humanitarian space’ of neutral and impartial provision based on need, for all of its many problems. I suggest that what is required are variations upon a sophisticated and self-reflexive political ‘anti-politics’ that reflects a clear division of labour between the international humanitarian NGOs and their human rights counterparts.²²

Above all else, both international humanitarian and human rights NGOs must continuously strive to avoid becoming too close to the most powerful states and funders within the global order. Of course, this is a bit like trying to defy gravity. Although they are formally ‘independent’, more and more have close, sometimes umbilical, links to governments. This does not require a ban on constructive engagement with officialdom, but that engagement should be based on as independent a position as possible. This may mean a reduction in the amount of funds that can be accessed and in the capacity to operate on the ground, at least in the short term. New strategies for increasing independent capacities to provide aid may need to be devised that involve, greater self-reliance, much greater decentralisation of power,

¹⁹ I owe this observation to David Keen.

²⁰ De Waal (1997b).

²¹ Slim (1997). As Jenny Edkins has written: “you’ve got to decide, but you’ll never know” (‘Legality with a vengeance: humanitarian relief in complex emergencies’, *Millennium*, 25:3 (1996), p.575). This does not, of course, mean that we should not build up bodies of evidence to help us decide; rather, it points out correctly that we can never generate sufficient evidence to know for sure what the right action would be.

²² This is not a blanket or unconditional affirmation of ‘anti-politics’. The term ‘anti-politics’ has a long history of its own that I do not have space to go into here. For example, see James Ferguson, *The anti-politics machine. ‘Development’, depoliticization and bureaucratic power in Lesotho*, London: University of Minnesota Press, 1997.

personnel and resources to local allies, construction of more equitable partnerships with local organisations and even greater mobilisation of public opinion in home countries.

It is, of course, essential that explicit politics of the right kind (i.e. that which pursues social justice, including an end to impunity) occurs where there are complex emergencies if they are ever to be brought to an end. With that I am entirely with De Waal. But international humanitarian or human rights NGOs should not attempt to substitute themselves (or allow themselves to be substituted) for it. They cannot themselves be explicitly political; nor should they simply act as cheerleaders for selective interventions by powerful states. From their different vantage points, humanitarians and human rights activists should seek at all times to avoid endangering or closing the spaces within which forces for positive political change may be developing. But solidarities and advocacy for that change should remain ‘relatively veiled’, wrapped up in the twin discourses of neutrality and impartiality. This is the relatively limited role that they can play.²³

Justice and reconstruction

A debate has been going on within the international human rights movement over the past decade between the absolutists and those who advocate strategies of ‘transitional justice’.²⁴ Over the past 20 years, it has become increasingly widely accepted that strategies for resolving conflict and the reconstruction of societies following conflict should contain elements that address issues of accountability for human rights violations and preventing future such violations. This reflects the rise of a new moral discourse and the growing legitimacy of international humanitarian and human rights law, not least through the efforts of international NGOs like AI and HRW. It is worth noting too, that the rise of this new moral discourse was also in part due to its usefulness to the West in the context of the cold war. The focus of the new ‘human rights discourse’ was on civil and political rights – although with varying degrees of sincerity, these were seen as essential preconditions for the realisation of economic, social and political rights, with which the socialist world was more concerned. With the collapse of communism after 1989, the main obstacle to the further consolidation of the new moral discourse of human rights was removed.

There have been a range of ways in which issues of accountability for human rights violations, known as the fight against impunity in ‘human rights discourse’, have been addressed since the early 1980s. There have been justice strategies, truth strategies and reconciliation strategies in the context of reconstruction efforts. What I want to do is to summarise what I mean by each of them – as Pankhurst writes, there is no straightforward

²³ While I would not want to overstretch the point, I have been intrigued by possible echoes here of John Rawls’s “veil of ignorance” (*A theory of justice*, London: Oxford University Press, 1971). Rawls asks us to construct a theory of justice by imagining what kind of social order would best suit us if we did not know our own gender, race or class, or those of our parents. The result, he suggests, is that we would choose a social order that was fair, so that if we turned out to suffer from certain disadvantages we could be hopeful that opportunities would be provided for redressing them. In terms of my own argument, the primary echo of Rawls derives from his suggestion that progressive politics may sometimes best be served by pretending that you are not in full possession of the facts. Perhaps his “veil of ignorance” is an exercise in the “strategic naivety” that I argue in the conclusion is a necessary approach for human rights activists?

²⁴ The literature is now voluminous, so I will refer here only to a few of the most important contributions: Priscilla Hayner, *Unspeakable truths. Confronting state terror and anarchy*, New York: Routledge, 2001; Neil Kritz (ed.), *Transitional justice. How emerging democracies reckon with former regimes*, New York: United States Institute for Peace, 1993; Juan Mendez, ‘Accountability for human rights abuses’, *Human Rights Quarterly*, 19:2 (1997).

consensus as to their meaning – and then to review the intense debate that has taken place over their value and what the appropriate relationship between them should be.²⁵

*Justice strategies*²⁶

These have a long but, until recently, rather episodic history. Justice here means retributive justice – trial and punishment – rather than restorative justice (non-judicial forms of reparation and compensation), which is briefly addressed below in the context of reconciliation strategies.

The founding moment for justice strategies is the trial of German ‘war criminals’ following the end of the Second World War. But justice has been the exception rather than the rule in the period since then in terms of peace processes/democratic transitions. Most peace agreements/transition processes have been accompanied by amnesties, although that is becoming less common now. It is only since the end of the Cold War that justice strategies have come back onto the agenda with the creation of the *ad hoc* international tribunals in Rwanda and former Yugoslavia and the beginning of prosecutions by domestic governments in, for example, South Africa and Cambodia. The international tribunals reflect a growing acceptance that, where national governments will not or cannot act, the international community has an obligation to do so under international human rights law in relation to crimes against humanity and war crimes. Trials are often, but do not have to be, left to a post-conflict/regime-change period, in contrast to Truth Commissions (see below).

Arguments for the justice ‘track’ are primarily based on the right of victims to effective remedy, whether under national or international human rights law. If societies are to be built on new foundations based on the supremacy of the rule of law, it is argued, individual perpetrators must be held accountable and punished wherever possible. Criminal responsibility must be established and sanctions imposed or potential future perpetrators will know that they will be able to get away with abuses in future. At the same time, trials can also assist in helping victims to find out the truth about what happened to their loved ones. Punishment of those who have transgressed is also the best form of promoting individual healing.

*Truth strategies*²⁷

These first came to the fore in Latin and Central America in the 1980s, both before the end of the cold war and afterwards. The best-known mechanism is the official Truth Commission, established in the context of a peace agreement between the government and guerrilla groups or in the context of the end of authoritarian rule and a ‘democratic transition’. As such, they are post-conflict/regime-change institutions. Countries in Latin and Central America that have set up Truth Commissions are Chile, Argentina, El Salvador, Guatemala. A Commission was established in Peru following the downfall of Alberto Fujimori. However, the ‘model’ has spread and been adapted to other parts of the world, for example Africa, where commissions have been established in Uganda, Sierra Leone, Nigeria – and most famously, South Africa.²⁸

²⁵ Donna Pankhurst, ‘Issues of justice and reconciliation in complex political emergencies: conceptualizing reconciliation, justice and peace’, *Third World Quarterly*, 20:1 (1999).

²⁶ For passionate and sophisticated argument in favour of strategies that prioritise retributive justice, see Geoffrey Robertson, *Crimes against humanity. The struggle for global justice*, London: Penguin, 2000.

²⁷ For the best introduction to arguments in favour of truth processes, see Hayner (2001).

²⁸ On the South African Truth and Reconciliation Commission, see in particular: Brandon Hamber & Steve Kibble, ‘From truth to transformation: South Africa’s Truth and Reconciliation Commission’, *CIIR Briefing Paper*, London: Catholic Institute for International Relations, 1999; Richard A. Wilson, *The politics of truth and*

There has also been a growth in civil society ‘truth strategies’ during the 1990s, often responding to the absence of official action in this sphere but also to perceived weaknesses in official commissions. Two notable examples have been Guatemala, where the Catholic Church undertook its own unofficial commission of inquiry; and Zimbabwe, where a coalition of NGOs and religious bodies did the same.²⁹ It is crucial to note that official truth commissions are not judicial but political bodies. They address accountability in a non-judicial form, although the South African variant had some ‘semi-judicial’ qualities.

What are the key arguments for a truth ‘track’? Several are put forward. It is argued that truth processes provide means by which the facts can be established as to what happened during a conflict or period of dictatorship. Truth processes respond to the fact that people have a right to know the truth about past human rights violations. Unless the truth is known, it is argued, how can a new society be built? An official policy of amnesia increases the possibility of a repetition. Michael Ignatieff has written that such processes are vital in “narrowing the range of permissible lies”.³⁰ At the same time, people can only begin to move on, try to get over their suffering, if they know what happened to their loved ones. As such, truth processes are vital to national and individual healing processes.

Reconciliation strategies³¹

Strategies for promoting reconciliation have developed considerably over the past 20 years as well, particularly in the context of efforts to end conflicts. National Reconciliation Commissions often create forums for debate and dialogue and undertake public awareness work. Reconciliation activities sometimes involve non-judicial forms of reparation and compensation, as is supposed to be the case in South Africa in terms of the recommendations of the TRC. Some governments also provide public psychosocial/‘therapeutic’ services. Community-level activities, frequently led by local NGOs and religious bodies, often do more of this type of work. This work can take place at any time, although security considerations mean that it is usually most effective and concerted post-conflict/regime-change.

What are the arguments for a reconciliation ‘track’? Those who emphasise reconciliation strategies argue that official truth or justice strategies will not necessarily be sufficient to promote peace at national or community/individual levels. They claim that there is a need for specific initiatives aimed at bringing about reconciliation at both the national and community/individual levels. Protagonists for reconciliation work point out that by promoting means of debate, dialogue and ‘therapy’, all of which help people come to terms with the past, foundations for greater accountability and respect for the rule of law can be strengthened. The reconciliation dimension can also be more sensitive to local and cultural realities and geared to the long-term. Those who work in this area claim that these considerations can also ensure that the prospects for building a new society are improved.³²

reconciliation in South Africa. Legitimising the Post-Apartheid state, Cambridge: Cambridge University Press, 2001.

²⁹ Human Rights Office of the Archdiocese of Guatemala, *Guatemala. Never Again!*, London: Catholic Institute for International Relations/Latin America Bureau, 1999; Catholic Commission for Justice and Peace Zimbabwe and the Legal Resources Foundation, *Breaking the silence, building true peace: A report on the disturbances in Matabeleland and the Midlands, 1980-88*, Harare: CCJP/LRF, 1997.

³⁰ Michael Ignatieff, ‘Articles of faith’, *Index on Censorship*, 25:5 (1996), p.113.

³¹ For a particularly eloquent albeit highly personal discussion of the issue of reconciliation, see Bishop Desmond Tutu, *No future without forgiveness*, London: Rider Books, 1999.

³² Pankhurst (1999), pp.241-248.

In principle, all three ‘tracks’ can clearly be seen to have a role to play in reconstructing war-torn societies or building democracy after a regime-change. They are not inherently incompatible with each other and can reinforce each other. Truth processes have undoubtedly helped to deliver justice, whether of the restorative or retributive kind. Trials have indeed produced facts, as have reconciliation processes based on dialogue and debate. Reconciliation activities can assist in processes of restorative justice and encourage truth-telling. Yet in practice, there can also be tensions between the different ‘tracks’ depending on the specific context in which they are operating. It is certainly not always possible to run the three tracks simultaneously. This is particularly so in relationship to the tracks of truth and justice. Most peace processes and regime-changes take place in a context where there has been no decisive victor. There is no simple ‘winner’ and ‘loser’ in such contests. Those who are engaged in conflict resolution or promoting ‘democratic transition’ are then faced with a dilemma. If there is no clear ‘loser’, what is the incentive for those who still hold power or who have lived by the barrel of the gun to give ground if their reward will be prosecution for human rights violations? If that is the case, do you renounce the possibility of a peace based on compromise in order to carry on the struggle until you have defeated them and can try them whether they like it or not? Is a possible price of many more innocent civilian deaths worth it? Archbishop Tutu has called this approach “justice with ashes”. It starts to look as if the absence of trials in the immediate context of past conflict-resolution/regime-change is not simply a matter of lack of political will, but reflects the fact that most such processes are based on political compromise, however much we might prefer them not to be. Furthermore, it is often not easy to make clear and easy distinctions between ‘victim’ and ‘perpetrator’ – child soldiers in Sierra Leone, for example – which is the language of retributive justice. Who do you prosecute in this situation?

It was the fact that so many conflict-resolution/regime-change processes were based on compromise that made the justice track a difficult or impossible one, and created the space for the development of the truth track in South and Central America in the 1980s. While there are self-sufficient, independent and strong grounds for arguing for the value of Truth Commissions, in practice there is no doubt in my mind that they emerged at that moment in part as a second-best form of accountability, a partial substitute for the lack of retributive justice where that was not possible politically. What is striking is that human rights NGOs such as AI and HRW, both of which are justice-oriented organisations, were relatively positive about Truth Commissions in the late-1980s and early-1990s. That seems to have changed in recent years.³³ They have moved steadily towards a position of judicial absolutism. The imperatives of the struggle for justice at the global level – boosted by the successful establishment of the *ad hoc* international tribunals and, more recently, the International Criminal Court – now appear to be prevailing over messy local realities in which the struggle for justice is likely to be fully won only over a prolonged period of time. This in turn has created a greater enthusiasm for a potentially endless ‘war for human rights’. It has also promoted a tendency to go for ‘quick fix’ solutions in which the ends justify the means. Witness, for example, the ‘buying’ in 2001 of Slobodan Milosevic for the Hague Tribunal through a US threat to withdraw aid to Serbia.

Against this judicial absolutism I would support an approach which I think is much more likely to promote durable and credible processes of reconstruction where a conflict has ended or a regime-transition is under way. This is the approach of ‘transitional justice’, under which a wider range of strategies for promoting accountability are viewed as potentially valuable.

³³ For example, see some of AI’s reports on El Salvador in the early 1990s at the time of its Truth Commission.

This school of thought first surfaced in the 1980s in a context where the possibility of judicial prosecution was more remote than it is today.

I would argue that it is important to consider the consequences of pursuing the three ‘tracks’ I have identified for building peace and not to see judicial action as the be-all and end-all. This does not require the complete abandonment of principles. But there will be tensions during many transitions between principles and consequences and they cannot be wished away. Accordingly, so-called ‘second best’ strategies may be more appropriate in the short to medium-term while helping to keep the option of judicial action open in the longer-term. If the new Chilean government had tried to try Pinochet for human rights abuses straight after he had left office, what would the consequences for Chile’s democratic transition have been?

The debate about transitional justice is heating up. In 2001, a well-funded International Center for Transitional Justice (ICTJ) set up shop in New York.³⁴ Yet ‘transitional justice’ also has some weaknesses that need to be addressed. The most important is that while it has embraced ‘transition’, it is still sometimes too quick to posit strategies that wish away the realities of ‘trade-off’s’. This has been seen in Sierra Leone, where a ‘have it all’ philosophy seems to have prevailed, in which the ‘over time’ dimension was almost entirely lost. Also, having become increasingly located wholly inside the discourse of human rights, there are in-built limits to how far interventions can be based on solidly grounded historical and political analysis. It also tends to privilege the international over the local, which is reflected in the lack of clear thinking to date on *local processes* that can build legitimacy for ‘appropriate’ transitional justice strategies (taking us to problematic but important concepts of participation and ownership). Finally, the ‘transitional justice’ camp needs to do more to open up the debate with stakeholders in the south, including those who work in the spheres of economic, social and cultural rights.

Case study: Sierra Leone

In the context of the peace process in Sierra Leone, two institutions have been established to address the legacy of human rights abuses committed during ten years of violent conflict. A Truth and Reconciliation Commission (TRC) was endorsed under the 1999 peace agreement to undertake an honest reckoning with the past, including addressing the causes of the conflict. It was established in the context of a blanket amnesty for perpetrators of human rights abuses, although the UN refused to accept that the amnesty applied under international law. A Special Court was agreed by the UN and the Government of Sierra Leone (GOSL) in 2000, following events in May of that year in which the rebel group, the Revolutionary United Front (RUF) was accused of attempting a coup against the peace process. The weakened position of the RUF following the May events made it possible partially to amend the amnesty provisions in the 1999 peace agreement. In legislation passed in early 2002 by the GOSL it was stated that those with the ‘greatest responsibility’ for crimes against humanity and war crimes committed after 1996 would now be brought to justice by an *ad hoc* tribunal.³⁵ What was new, as compared with its Rwandan and former-Yugoslavian cousins,

³⁴ The ICTJ (<http://www.ictj.org>) is currently heavily backed financially by the Ford Foundation, which has traditionally been sympathetic to strategies of transitional justice. This is in contrast to George Soros’ Open Society Institute, the other major foundation that supports human rights activities, which has become more sceptical of such strategies during the 1990s, much as have done AI and HRW.

³⁵ The Statute to establish the International Criminal Court had not yet come into force and the Court has no capacity to try cases retrospectively. Accordingly, crimes against humanity and war crimes committed during the conflict in Sierra Leone cannot come under its jurisdiction.

was that this tribunal would be deliberately ‘hybrid’, in that it would have a joint international/Sierra Leone character and composition and would operate simultaneously under both international and national jurisdiction. It was anticipated that it would try 20-30 people. The vast majority of alleged perpetrators would appear before the TRC, whose mandate extends from 1991 to the end of the conflict.

Between 1998 and 2001 I was working in London for the small international free expression organisation, ARTICLE 19. I first visited Sierra Leone in July 1998 and became involved in truth, justice and reconciliation issues in the years that followed.³⁶ While we always opposed any idea of a blanket amnesty for perpetrators, as a freedom of expression organisation, we focused particularly strongly on the importance of truth processes, possibly including a truth commission, as an essential piece in the jigsaw of Sierra Leone’s long-term recovery. Such processes could assist in the realisation of the right of its citizens to know the truth about what happened and why, while at the same time providing a forum for them to have their own say. As the possibility of peace negotiations increased in early 1999, we along with many local organisations tactically supported the idea of a Truth, Justice and Reconciliation Commission as a way of avoiding in any future peace deal a repetition of the blanket amnesty that featured in the abortive 1996 Abidjan agreement. However, this tactic was unsuccessful and what emerged was the TRC. It has become clear since then that the international community, including key actors such as Britain and the US, exerted great pressure on the GOSL to accept another blanket amnesty in pursuit of peace. Following the RUF ‘coup’ of May 2000, both Britain and the US abruptly changed policies and pushed strongly for some kind of judicial tribunal. It could be speculated that May 2000 was in part an act of *force majeure* by Britain and the US, with GOSL support, to shift the balance of forces against the RUF. If so, it may throw new light upon their alleged ‘appeasement’ of the RUF in 1999.

Following the 1999 peace agreement, while continuing to call for a judicial component in the peace process, ARTICLE 19 argued for critical support for the TRC on the grounds that a process that unearthed the truth (or, at least, some of it) would still be worthwhile, provided it passed key tests of credibility and effectiveness. It was at this point that we parted company with AI and HRW. While they did not condemn the TRC, their position was a blend of indifference and scepticism about what it could achieve in the absence of judicial action. Following the establishment of the Special Court, the two organisations did not engage with the TRC process, except insofar as it might complicate criminal prosecutions by the Special Court, to which they assigned primacy.

In 2001, as preparations for the establishment of the two institutions advanced slowly, ARTICLE 19 publicly suggested that they should be *consciously sequenced*. The TRC should go first, as it went with the grain of a fragile peace process, was non-punitive and thereby less of a ‘threat’.³⁷ The Special Court should come afterwards, once peace was consolidated and the possibility of returning to conflict had been reduced through disarmament and other measures. ARTICLE 19’s arguments found few international supporters. One of the key organisations involved with both transitional institutions, the ICTJ, dismissed the proposal on the grounds that individuals that might be prosecuted by the Special Court, including jailed RUF leader Foday Sankoh, would have to remain in detention for a very long period while the

³⁶ For an account of ARTICLE 19’s activities between 1998 and 2000, see its report, *Moments of truth in Sierra Leone. Contextualising the Truth and Reconciliation Commission*, London: ARTICLE 19, 2000.

³⁷ This argument was summarised in an article in the June/July 2001 issue of the bi-monthly *Truth Bulletin* published in Freetown by the Sierra Leone Working Group on the Truth and Reconciliation Commission. Copies are available from the author or the Working Group.

TRC ran its course.³⁸ By taking this stand, an organisation that advocates ‘transitional justice’ allied itself with AI and HRW, both of whom were adamant that justice deferred could only be justice denied. For the ICTJ, the transition could be highly compressed. In the end, the UN and the GOSL decided to run the two institutions in parallel.

The ICTJ’s position at the time seemed to me to illustrate vividly the problems with a conception of ‘transitional justice’ that simply operates through human rights criteria and that appears to lack a capacity to undertake historical and political analysis in the context of specific transitions. To have advocated otherwise might have been to prejudice the ICTJ’s human rights credentials, given that they increasingly depend upon an unquestioning acceptance of the mantra ‘no peace without justice’.³⁹ Certainly, the emergence on the scene of the ICTJ has been met with some ambivalence on the part of AI and HRW.

One of the tests of credibility and effectiveness of the TRC identified by ARTICLE 19 and its main partner in Sierra Leone, the Working Group on Truth and Reconciliation (SLWG), was the degree to which it would be based on Sierra Leone participation and ownership. While the formal structures and mechanisms established under the TRC Act of February 2000 appeared to lay a solid basis for meeting these tests (four out of seven commissioners, including the chair, are Sierra Leoneans), the TRC process almost immediately failed this test. The Office of the UN High Commissioner for Human Rights (OHCHR) had a lead responsibility for developing the mandate and parameters of the TRC, and drafting legislation. Once the legislation was passed, it took on the task of overseeing the process of setting up the institution before handing over to an Interim Secretariat for the three-month preparatory phase ahead of full operationalisation. There were warning signs during the consultation phase leading up to the passage of the TRC Act. The OHCHR, working with the UN mission in Sierra Leone (UNAMSIL), displayed a decidedly limited sense of what ‘consultation’ means. There was certainly only a cursory effort to consult with ordinary Sierra Leoneans. Even with regard to local NGOs, consultation was not extensive. Draft documents on the TRC’s prospective mandate and parameters were poorly and reluctantly circulated by the OHCHR. Once the draft legislation had been tabled in parliament, it was rushed through very quickly. There was little time for comment, and certainly none of the public hearings that were seen in South Africa prior to the passage of TRC legislation.

Despite this, the legislation that was passed in February 2000 did appear to lay the basis for a credible and effective TRC. For example, it gave the TRC *sub-poenas* powers and did not rule out the naming of perpetrators in the final report. However, within months of the passing of the TRC Act, ARTICLE 19 was joining with the SLWG in criticising the OHCHR’s failure adequately to publicise the recruitment process of Sierra Leonean commissioners across the country and its slowness to begin public sensitisation work. The response given was that the security situation was insufficiently stable to allow for widespread sensitisation. Even if that was so in the immediate aftermath of May 2000, it also reflected a preference on the part of the OHCHR to place resources and tasks in the hands of international NGOs, rather than Sierra Leonean organisations. The International Human Rights Law Group (IHLRG), one of

³⁸ International Center for Transitional Justice, ‘The Special Court and the Truth and Reconciliation Commission in Sierra Leone: Structural and operational collaboration’, unpublished discussion paper, December 2001. In the end, Foday Sankoh eluded justice. He died while awaiting trial in the custody of the Special Court in July 2003.

³⁹ Increasingly, some in the international human rights movement seem to argue that *no* peace is worth having unless it is accompanied by judicial action. Surely, the possibility must remain that some kinds of peace are worth having even if unaccompanied by judicial action? Mozambique is a potential example of this. A human rights audit might still come out in favour of a flawed peace if the alternative is a return to violence in which many civilians are once again targeted by armed groups.

whose staff had been a key consultant for OHCHR during the process of drawing up legislation, was awarded a contract to coordinate public sensitisation work. The IHRLG prioritised opening an office in Sierra Leone and appointed one of UNAMSIL's human rights officers to run it during its inception phase. There was little sign of money given to the IHRLG by the OHCHR (originally donated by the British Government in 2000) finding its way through to Sierra Leonean organisations that might have been able to undertake effective sensitisation work, including in parts of the country where internationals might have been reluctant to travel.⁴⁰ The IHRLG claimed to be acting independently of the OHCHR, but it appeared clear that it was the latter that retained control over the agenda. As has so often been the case, international actors seemed willing to work with local partners only on a patron-client basis. Conditions for genuine partnership were never created.

The TRC process limped forward during 2001-2002. An Interim Secretariat was established in early 2002 before giving way to the Permanent Secretariat in 2003. Commissioners were appointed but the TRC's operational budget was reduced at the behest of donors from \$10m. to \$6m. Levels of public sensitisation remained inadequate. As the TRC began public hearings in 2003, popular attitudes towards it appeared to be one of confusion or indifference.⁴¹ Attitudes did improve significantly while the hearings were taking place but the TRC's relationship with the Special Court was never adequately clarified. Many Sierra Leoneans did not come forward to testify, fearing either that alleged perpetrators would exact revenge if they did so or that they themselves might be referred to the Special Court if they confessed to playing a part in human rights abuses. Many also believed that the national commissioners were not impartial. Several did indeed have well-known connections to the GOSL. The TRC's report was presented to President Kabbah in October 2004 but it was not until August 2005 that copies were made available to the general public. By the time it surfaced, the GOSL had given clear indications that it would ignore many of its recommendations. The prospects for an effective 'follow-up phase' appear poor.⁴² All in all, the TRC looks like a missed opportunity.

The Special Court initially fared better, but questions about its credibility and effectiveness have steadily grown. It became operational in 2003 and is due to complete its work by the end of 2006. Donor governments, led by the US, have been keener to provide financial support to it than the TRC. US motives are mixed. It wants to see the development of a more streamlined and cost-effective model for *ad hoc* international tribunals as a ballast in its campaign against the alternative model of the standing International Criminal Court, which the US has refused to support. The staff of the Special Court has had a strongly North American and European flavouring. Many within the Sierra Leone human rights and legal communities have felt excluded and underutilised. If anything, public sensitisation work about the Special Court was initially even more cursory than that witnessed for the TRC, although its outreach work has gradually improved. It is difficult to tell, but public opinion appears to be predominantly hostile to the Special Court. Its legalistic approach alienates many local people. Its gravest

⁴⁰ There has still been no public accounting by the OHCHR for exactly how the money donated by the British Government has been spent.

⁴¹ For a recent assessment of the problems faced by the TRC which addresses some of the issues I have discussed, see International Crisis Group, *Sierra Leone's Truth and Reconciliation Commission: A fresh start?* (December 2004), at <http://www.icg.org>.

⁴² For an initial study of the overall performance and impact of the TRC, see 'Searching for truth and reconciliation in Sierra Leone', a report due to be published in the near future by the SLWG and the Network Movement for Justice and Development. It will be available from johncaulkerfoc@yahoo.com and abubrima@yahoo.com.

problem has been that it has been unable to bring before it many of the most senior leadership figures of the RUF. The death of the leader, Foday Sankoh and the disappearance of Jonny Paul Koroma (believed to be in Ghana) means that its most important indictee is the former Defence Minister Hinga Norman, who was also in charge of the pro-government *Kamajor* militia during the conflict. Finally, Charles Taylor, ex-President of Liberia and the RUF's godfather, continues to elude the Special Court. He is being protected by Nigeria, despite the fact that the country is also on the management board of the Court.

It is impossible not to feel a sense of unease about where the quest for justice has led us in Sierra Leone. The bill for the Special Court, which is now likely to try no more than ten people, is projected to be at least five times the size of the amount spent on the TRC, which notionally covered the entire population of Sierra Leone. Meanwhile the Special Fund for War Victims, which was also provided for in 1999 peace agreement, is still empty. AI and HRW might argue that their mandates mean that such considerations cannot be their priority – it is for other organisations to take them up. My view is that this prioritisation needs revising; it flows from the process already described above, in which justice has progressively become defined narrowly and legalistically as judicial action. As loci of power, AI and HRW (and the ICTJ too, for that matter) crowd out other voices, including those who have sought to focus more on the TRC and/or Special Fund. In doing so, they have inadvertently played an important role in shaping the problematic approach to justice that we are now confronted with in Sierra Leone.

Further, the crowding out of other voices has had a particularly negative effect with regard to local Sierra Leonean voices. They have been largely silent about the way in which foreign experts have come to dominate processes of truth, justice and reconciliation. During the colonial period, Africans (and other colonised peoples) were often viewed as children who were not ready yet for self-government. In the modern world, a similar characterisation is creeping back in. Locals are seen as lacking the capacity or maturity to govern themselves. The fact of civil war is used to demonstrate this in countries such as Sierra Leone. New forms of trusteeship are justified on the basis that reactionary and opportunistic local political leaders cannot be trusted to rule justly and fairly. AI and HRW have bought into this idea. I am not arguing against international interventions *per se*, so much as the illusions that increasingly seem to surround them. However well-intentioned the present international intervention in Sierra Leone may have been, and despite the undoubted benefits that have accrued, I remain convinced that interventions that are paternalistic, lacking in self-reflection and intolerant of 'non-cosmopolitan' peaceful forms of political expression are unlikely, in the medium- to long-term, to create the foundations for sustainable peace based on respect for human rights.

Conclusion

I have suggested that international humanitarian and human rights organisations should adopt their own versions of a sophisticated and self-reflexive political 'anti-politics'. They should retain (or reclaim at all costs) their substantive independence from the governmental and intergovernmental agencies of the emerging imperial project. I believe that these steps are essential preconditions for the long-term credibility and legitimacy of the international human rights movement. But this is all very abstract and complex to operationalise in everyday life and work. How can it be understood and put into practice at this level? For my own purposes, I have developed the paradoxical operational concept of 'strategic naivety'. I have found this

concept very useful on an individual basis in making the greatest sense possible of my own human rights activities over the past decade.

My paradoxical operational concept of 'strategic naivety' requires the following:

- Even if you act publicly as if moral condemnation and immediate political action will be enough to bring about the change you are calling for, recognise that the realisation of moral imperatives requires effective strategies that are based on how the world *is*, rather than simply how it 'ought' to be. On this basis, you can avoid becoming an adjunct to other actor's agendas;
- While recognising the importance of good historical and political analysis in formulating your strategies, understand nonetheless that the full operationalisation of that analysis is not possible in the context of a human rights organisation. Only on the basis of such recognition will it be possible to maximise the impact of such analysis;
- While declaiming your organisation to be utterly principled, recognise that your organisation has bureaucratic and political interests in its successful reproduction (as do all others). Only by doing so can you identify ways of reducing the extent to which your actions are driven by such interests;
- While operating on the basis of impartiality, do everything to support wider social movements that can promote the progressive change to which you are (probably) committed.

The last point is possibly the most contentious. I am not suggesting that the values that being promoted are simply opportunistic camouflage. In fact, I am saying the opposite. If you believe in the liberating potential of human rights, do not view them as representing the only way of seeing the world. Acknowledge that they can ultimately only be realised through a wider mobilisation from below as well as political action from above. As we have seen, the danger of falling for our own myths is that the international human rights movement will become part of the problem for humankind, as expressed in the 'power/justice' nexus, rather than part of the solution. For me, the solution lies in building a global movement for social justice rather than simply an elite-driven movement for global justice – and in reclaiming human rights for that cause.

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The aim of the Crisis States Programme (CSP) at DESTIN's Development Research Centre is to provide new understanding of the causes of crisis and breakdown in the developing world and the processes of avoiding or overcoming them. We want to know why some political systems and communities, in what can be called the "fragile states" found in many of the poor and middle income countries, have broken down even to the point of violent conflict while others have not. Our work asks whether processes of globalisation have precipitated or helped to avoid crisis and social breakdown.

Crisis States Programme collaborators

In India:

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Universidad de los Andes
Universidad del Rosario

Research Objectives

- ❶ We will assess how constellations of power at local, national and global levels drive processes of institutional change, collapse and reconstruction and in doing so will challenge simplistic paradigms about the beneficial effects of economic and political liberalisation.
- ❷ We will examine the effects of international interventions promoting democratic reform, human rights and market competition on the 'conflict management capacity' and production and distributional systems of existing polities.
- ❸ We will analyse how communities have responded to crisis, and the incentives and moral frameworks that have led either toward violent or non-violent outcomes.
- ❹ We will examine what kinds of formal and informal institutional arrangements poor communities have constructed to deal with economic survival and local order.



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