INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS AND COUNTER-TERRORISM: A COMPARATIVE STUDY OF THE AMNESTY INTERNATIONAL AND THE INTERNATIONAL COMMITTEE OF THE RED CROSS

Dissertation submitted to Jawaharlal Nehru University in partial fulfilment of requirements for award of the degree of

MASTER OF PHILOSOPHY

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DECLARATION

I declare that the dissertation entitled **"International Non-Governmental Organisations and Counter-Terrorism: A Comparative Study of the Amnesty International and the International Committee of the Red Cross"** submitted by me for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this university or any other university.

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CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

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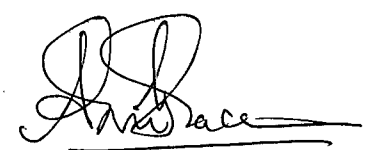
I acknowledge that any shortcomings of this dissertation lay solely with me.



Y. Aswin Grace

New Delhi
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ABBREVIATIONS

AGM	Annual General Meeting
AI	Amnesty International
ATSCA	Anti-terrorism, Crime and Security Act
CAT	Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CoE	Council of Europe
CSO	Civil Society Organisations
CTITF	Counter-Terrorism Implementation Task Force
CTM	Counter-Terrorism Measures
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU	European Union
FIDH	La Federation internationale des ligues droits de l'Homme
GDP	Gross Domestic Product
HRW	Human Rights Watch
IC	International Council
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
ICM	International Council Meeting
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IEC	International Executive Committee
IGO	Intergovernmental Organisation
IHF	International Helsinki Federation for Human Rights
IHL	International Humanitarian Law
INGO	International Nongovernmental Organisation
IS	International Secretariat

LTTE	Liberation Tigers of Tamil Elam
NGO	Nongovernmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organisation for Security and Cooperation in Europe
POW	Prisoner-of-War
SIAC	Special Immigration Appeals Commission
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
USA	United States of America

Chapter 1

Introduction - INGOs and Counter-Terrorism

1.1. Significance of the Study

Terrorism being a leading non traditional security threat needs to be countered on all fronts, not by states alone. A spate of other actors has become useful such as non-governmental organisations (NGOs), intergovernmental organisations (IGOs), spiritual groups, media, educational institutions etc. All these actors not only aim to deny sources of strength, sustenance to terrorism but induce legitimacy to the fight against terrorism. The study aims to examine the relevance and role of NGOs in containing one of the most dangerous, widespread threats to global security namely terrorism. It specifically focuses on the two international non-governmental organisations (INGOs) – International Committee of the Red Cross (hereafter ICRC) and Amnesty International (hereafter AI), chosen by virtue of their standing and significance in the area of counterterrorism efforts. The study compares the strategies of these two important INGOs. The study aims to offer a greater understanding about the promises and problems INGOs have as counterterrorism institutions.

NGOs are not just a late-twentieth-century phenomenon. The earliest NGO initiated activity was the antislavery campaign carried out through the establishment of societies in 1787-88 in Pennsylvania, England and France. NGOs have proliferated since then so as to perform a variety of roles and functions in the issue areas such as human rights, peace, environment, humanitarian aid and relief, development assistance, community building, advocacy etc. Their accelerated growth has led to their influence in reshaping international and domestic politics. Today NGOs have become very much a part of the international system as can be seen in their consultative or observer status assigned in national governments and intergovernmental organisations especially the United Nations (Karns and Mingst 2004).

The structures of NGOs vary considerably. They can be global hierarchies, with either a relatively strong central authority or a more loose federal arrangement. Alternatively, they may be based in a single country or operate transnationally. With the improvement in communications, more locally-based groups, referred to as grass-roots organizations or community based organizations, have become active at the national or even the global level. Increasingly this occurs through the formation of coalitions. There are international umbrella NGOs, providing an institutional structure for different NGOs that do not share a common identity. There are also looser issue-based networks and ad hoc coalitions, lobbying at UN conferences (Willetts 2002).

NGOs have today become influential players in the global political arena. While initially these civil society organizations (CSOs) remained in the background of world politics they are today seen everywhere and exerting power in every aspect of policy making at national and international levels. Today, their resumes are vast and varied and include humanitarian issues, disaster matters, conflict resolution, alleviation of poverty, protecting human rights and child rights. There is not an area that they do not venture into.

The NGOs today have risen to become mammoth organizations. The big players like World Vision, Save the Children, Oxfam and Care have significant financial backing sometimes exceeding that of smaller nations. World Vision's[1] annual budget as of 2006 was around $2.1billion this is thirty times the annual GDP of countries like Nauru, San Marino ($1 billion), Liechtenstein ($1.7billion) or Andorra ($1.8billion) Nauru's population is 13,000 only while World Vision has global staff of 23,000 (Waduge 2008).

According to the UNDP Human Development Report of 2002, nearly one-fifth of the world's 37,000 INGOs were formed in the 1990s. The total is likely to be much higher today. While it is easy to deduce how many governments exist, it becomes a tiresome quest to derive how many NGOs exist globally and of them how many are in fact

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[1] World Vision, founded in the United States in 1951, is an international Christian relief and development organization whose stated goal is "to follow our Lord and Saviour Jesus Christ in working with the poor and oppressed to promote human transformation, seek justice and bear witness to the good news of the Kingdom of God."

legitimate organizations and this has prompted many to consider the dangers surrounding their existence. Who runs these groups? How are they funded? What are their real agendas? And the most important question being to who are these NGOs accountable for the money credited to their accounts as well as for what they are promoting through their networks?

There has been a growing realization that national governments by themselves can no longer cope with a growing array of global problems such as preserving the integrity of the natural environment, eradicating diseases, controlling narcotics, international crime and many other threats to human security and well-being. Therefore, the INGOs have been asked to take on new responsibilities under UN and national forums. The concept of "global governance" (although certainly not yet "global government") is now widely accepted (Rice and Ritchie 1995).

NGOs serve as useful tools to address global problems by providing expert knowledge and advice, both to the decision-making bodies of intergovernmental organisations (IGOs) and national governments; influencing the agenda of world leaders; monitoring human rights and environmental norms and promoting new norms; implementing development projects; presenting the views of important constituencies whose voices may not be adequately represented at state or global forums, but whose views are important to informed decision-making; serving as major channels for dissemination of information, thus helping to fill the knowledge gap left by the inadequate attention given by the states, IGOs, academicia, media etc and working in close cooperation with UN agencies and other regional bodies in carrying out missions to mitigate global problems.

INGOs are independent actors by themselves in the international arena and competitors of the nation-state (Wolfers 1962). Although they come in all shades, organisational formats, sizes and approaches, they share "the centrality of values or principled ideas, the belief that individuals can make a difference, the creative use of information, and the employment...of sophisticated political strategies in targeting their campaigns" (Keck and Sikkink 1998). The actor capacities of these INGOs are such that they can change the policies and behaviour of both governments and other international organisations. The presence of these international organisations

collectively and individually has an effect on the international system and some of them are more active than some of the weaker sovereign states (Archer 1983).

The rise of international non-governmental organisations (INGOs) has been one of the noticeable developments in international relations since the Second World War. Their potential power in the mobilisation of social forces separate from the agents of government has made INGOs an important political and social factor in international life. (Archer 1983). Since September 11 terrorist attacks, non-governmental organisations have played a critical role in encouraging governments and the United Nations to calibrate their response to terrorism by working to be effective against those who mean harm without eroding human rights and the rule of law (Millar 2008).

Terrorism is an old threat to individual and state that has taken a number of new guises, making its elimination problematic. Terrorist acts occurred in Greek and Roman times, but often as individual acts of violence against ruler. In the Middle Ages, such acts were perpetrated against groups, while during the French Revolution and Nazi rule in Germany, acts of terrorism were sponsored by the state itself. The Middle East Conflict spawned a cycle of terror following the 1967 Arab-Israeli war and Israeli occupation of the West Bank, Gaza and the Golan Heights. Terrorism has been a tool of various European anarchist and Marxist groups, the Irish Republican Army, Basque separatists in Spain, Colombian and other drug traffickers, the LTTE in Sri Lanka, Chechen rebels in Russia, Islamic fundamentalist groups like Al Qaeda and others (Karns and Mingst 2004).

As perpetrators of terrorism have varied over years, terrorist acts have also taken a variety of forms, making them difficult to detect or prevent. Airline hijackings, hostage takings, use of bombs on air planes, trucks, cars, ships, restaurants, landmark buildings, market areas, or suicide bombings are most common terrorist tactics. The possibility that terrorists might acquire biological, nuclear, chemical or other weapons of mass destruction has raised the dangers of terrorism. The sarin attack on the Tokyo

subway in 1995 by Aum Shinrikyo[2] serves as a warning to this effect (Frost 2005). Information and intelligence, however, continues to surface in the public debate that the terrorists harbour greater ambitions, and attacks on targets such as nuclear reactors and chemical plants remain part of their planning process.

Unlike the past, contemporary terrorist acts are organised at a larger scale and involve huge destruction covering wide geographical spread. Terrorist attacks are not just confined to US, the West, the Middle East or South Asia. The September 11, 2001 attack on the World Trade Centre, New York and subsequent attacks on Madrid's Atocha train station and the London underground and luxury hotels attack in India on November 26, 2008 signal that 21st century terrorism is not a problem that could be localized to one particular region. It has spread its tentacles far and wide spreading across continents, covering countries like England, Spain, Israel ,India, Indonesia, Philippines, Morocco, Argentina, Algeria, Egypt, Saudi Arabia, and many other majority-Muslim countries. In that sense terrorism can be considered to be a global threat requiring global efforts to control its spread.

The ease of international travel and telecommunications have made terrorism transnational enabling terrorist groups to form global networks and to move money, weapons, and people easily from one area to another. An implicit link also has come from groups copying each other's tactics- the so called demonstration effect creating havoc to international peace and security (Karns and Mingst 2004) . There is a growing consensus among around the world that terrorism is a more lethal threat than it has ever been in the past, because of growing access of terrorists to technology and materials of mass destruction- nuclear, chemical and biological. The proliferation of modern communications and weapons technologies has placed increasingly destructive capabilities at the disposal of the terrorists worldwide, ensuring that the potential for terrorist attacks capable of killing hundreds or thousands will be an enduring threat to global order at large. The expansion of international media and communications has given terrorists "a much broader stage upon which to perform, to intimidate, and to terrorize" (Millar 2008).

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[2] Aum Shinrikyo, now known as Aleph, is a Japanese new religious movement. The group was founded by Shoko Asahara in 1984. The group gained international notoriety in 1995, when it carried out the sarin gas attack in the Tokyo subways.

Terrorism thus is a global threat with global effects; its methods are murder and mayhem, but its consequences affect every aspect of the world order — from development to peace to human rights and the rule of law. This realisation has set nation-states to form alliances and combined efforts in countering terrorism never like before. However, even as many are rightly praising the unity and resolve of the international community in this crucial struggle, important and urgent questions are being asked about what might be called the "collateral damage" of the war of terrorism: damage to the presumption of innocence, to precious human rights, to the rule of law, and to the very fabric of democratic governance[3].

INGOs and other Civil Society Organizations around the world have been actively engaged in long term efforts to address conditions conducive to the spread of terrorism, such as working to prevent destabilizing conflicts, improving governance and access to education, and reducing poverty. For example, Civil Society Organizations have been working to support sustainable development, realize the UN Millennium Development Goals, provide humanitarian relief, empower marginalized communities, promote dialogue, protect human rights, improve governance, expand political participation, empower women, and prevent and resolve violent conflict (Rosand et al 2008).

Acting as watchdogs of counter-terrorism measures by states and their appropriateness are these nongovernmental organisations especially the ones with greater outreach, influence and network. The ICRC and AI are two international organisations which have been very active in their monitoring role condemning excesses of counter-terrorism measures as and when it happens. Their call to set right wrongs have had serious impact in the way state and other world bodies act to counter terror mainly because of their reputation as institutions promoting human dignity at all costs. Guantánamo[4] has become a symbol of injustice and abuse in the US administration's

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[3] See UN Press release SG/SM/8518, Statement by Secretary-General Kofi Annan during receiving an honorary degree at Tilburg University in the Netherlands.

[4] The Guantánamo Bay Detention Camp is a detainment facility operated by Joint Task Force Guantánamo of the United States government since 2002 in Guantánamo Bay Naval Base, which is on the shore of Guantánamo Bay, Cuba.The detainment areas consists of three camps in the base: Camp Delta (which includes Camp Echo), Camp Iguana, and Camp X-Ray (which has been closed). The facility is often referred to as Guantánamo, or Gitmo.

"war on terror" (Sharma 2007). AI was one of the first international organizations to call for its closure.

Besides the role as watchdogs, the role of these international nongovernmental organisations as independent actors and instruments in working to alleviate the conditions that enable terrorism, such as repressive regimes, foreign occupation, endemic conflict, flagrant inequality, and poverty cannot be ignored. Countering terrorism requires a multi-pronged strategy. Mere military responses to the terrorism threat as adopted by states will not guarantee freedom from the terrorism menace. Non military responses towards development and good governance as aided by these international nongovernmental organisations are effective in the long run to root out the evil of terrorism. Addressing root causes of terrorism is as important as states' focus on preventing still more terrible terrorist acts.

These two INGOs- the ICRC and the AI work along with the UN system – which includes the Security Council, the General Assembly, UN agencies, the UN Secretariat and other regional organisations as well as other IGOs besides nation-states to coordinate and strengthen the fight against terrorism and reaffirming the need to uphold human rights and the rule of law. Examples include, the Counter-Terrorism Implementation Task Force (CTITF) established by the UN Secretary-General in July 2005. The CTITF's work is coordinated through nine Working Groups. The Office of the High Commissioner for Human Rights (OHCHR) leads the Working Group on protecting Human Rights while countering Terrorism. Other Working Groups deal with Addressing Radicalization and Extremism, Financing of Terrorism and Combating Terrorism through use of the Internet. ICRC is part of these UN mechanisms.

The UN General Assembly (UNGA) has played a key role in the fight against terrorism. No less than thirteen international conventions have been drafted by the UN dealing with terrorism, under UNGA auspices, although the UNGA, in its Sixth Committee, continues to struggle with the drafting of a comprehensive convention on

international terrorism (AI 2008)[5]. The UNGA considers annual reports from the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism ("the Special Rapporteur on human rights and counterterrorism") - a post which it helped create.

The UN Human Rights Council, a subsidiary organ of the UNGA and successor to the Commission on Human Rights, is the UN's principal human rights body. It has addressed human rights and terrorism when considering the reports of the Special Rapporteur on human rights and counterterrorism and when adopting its omnibus resolution on the protection of human rights and fundamental freedoms while countering terrorism. UN Security Council reacted with vigour after the 11 September 2001 attacks, obliging states to take wide-ranging measures to prevent terrorism. Unfortunately, the Security Council's record in ensuring that human rights are upheld in the process is poor (AI 2008). The adoption of the Global Strategy by the UNGA is particularly important because it asserts a key role for human rights in security measures and also envisages a substantial role for Civil Society Organisations in counterterrorism initiatives.

Speaking on 20 January, 2003 before the Security Council's ministerial meeting on terrorism, then UN Secretary-General Kofi Annan expressed his concerns about terrorism, counter-terrorism and human rights:

> Terrorism is a global threat with global effects; its methods are murder and mayhem, but its consequences affect every aspect of the world order — from development to peace to human rights and the rule of law. This realisation has set nation-states to form alliances and combined efforts in countering terrorism never like before. However, even as many are rightly praising the unity and resolve of the international community in this crucial struggle, important and urgent questions are being asked about what might be called the "collateral damage" of the war of terrorism: damage to the presumption of innocence, to precious human rights, to the rule of law, and to the very fabric of democratic governance.

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[5] For more details, refer to " Security and Human Rights: Counter-Terrorism and the United Nations", Index: IOR 40/019/2008, September 3, 2008 at http://www.amnestyusa.org/document.php?lang=e&id=ENGIOR400192008, Accessed on 15 December, 2008.

1.2. Scope of the Study

The substantive, temporal, and geographic scope of the "war on terrorism" and counter-terrorism measures are unclear and unpredictable. The continuing detention of alleged "terrorists" without fair trial at various detention centres is becoming the most visible symbol of the threat to the human rights framework posed by the "war on terrorism." In the post–September 11 environment, the absolute prohibition against torture has been questioned, resulting in human rights violations well-documented by AI, ICRC and other human rights groups. These NGOs have been in the forefront as watchdogs of the legality and fruitfulness of these measures.

Despite the fairly objective and time-tested standards of the law of armed conflict, state adversaries of terrorists have ignored or declared irrelevant the laws prohibiting torture, indiscriminate, disproportionate and unnecessary attacks. NGOs attempting to monitor these standards, including the ICRC have been ignored by states which is guaranteed the right to monitor conditions facing prisoners of war (Carey 2006). This study examines the strategies that these NGOs – AI and ICRC have adopted in order to promote these legally binding rules with respect to political detainees, the variance in their strategies in dealing with the treatment and release of political prisoners and their effectiveness and desirability.

AI and ICRC are critically important NGOs in the realm of human rights with an overlap in the mandate but a variance in the mode of functioning style. The survey of literature reveals that an attempt to exclusively compare these two organisations was not done yet. With sufficient similarities and differences present these INGOs became a fitting case for a comparative study. The objective of this study was to discover the similarities and differences between these two international NGOs in their responses and activities for the cause of political prisoners detained as part of counter-terrorism measures as well as state counter-terrorism activities.

1.3. Organisation of the Study

The study attempted to find answers to a set of research questions with the aim of establishing the similarities and differences between ICRC and AI responses and

impact in the issue area of counter-terrorism. The following questions gave direction and focus to the study undertaken.

1. What is the role played by the NGOs in the fight against terrorism?
2. What impact have the INGOs especially AI and ICRC made in the a) international efforts on counter-terrorism b) State counter-terrorism activities?
3. How and why the interests shown by INGOs like AI and ICRC in the area of counterterrorism can become a continuation or departure from their traditional interest area?
4. What are the similarities and differences in their responses to terrorism and counter-terrorism?

The whole discussion is structured in such a manner that the pre-formulated hypotheses are subjected to a detailed analysis helping to arrive at a conclusion if they are to be held true or not. The two hypotheses that were tested are as follows:

1. There exists striking difference in the AI and the ICRC in approaches towards counter-terrorism measures.
2. The AI is more outspoken than ICRC in their appraisals against counter-terrorism initiatives.

1.4. Review of Literature

With the September 11, 2001 attack by the Al- Qaeda group, United States responded by declaring the so called "war on terror" and invaded Afghanistan to root out the terrorist training camps and the Al- Qaeda leadership. Years have passed but the "war on terror" still continues. The primary military manifestation of America's global war on terrorism, mainly the campaigns in Iraq and Afghanistan seems interminable till date. Many have been apprehended, tortured or killed while few have been found guilty of committing terrorism. The fall out has been an intense debate on Counter-Terrorism Strategies and Human Rights.

While counter-terrorism policies in numerous countries have led to human rights violations well before 2001, the "war on terror" launched by the United States of America (USA) in the wake of the 11 September 2001 attacks has had a world-wide repercussion. It has undermined the rule of law and international standards and poses significant challenges to the protection of human rights worldwide in numerous countries of the world today (AI 2008). Following the 11September 2001 attacks on the United States, the Security Council adopted resolution 1373 (2001)[6] requiring all States to take a wide range of legislative, procedural, economic, and other measures to prevent, prohibit, and criminalize terrorist acts. In subsequent resolutions, the Security Council, as well as the General Assembly, while recognizing the importance of the fight against terrorism, called for all states to ensure that any measure taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law[7].

Nevertheless, numerous States have adopted legislation, policies and practices that are incompatible with international law in the pretext of securing national interest against terrorism. The much publicised example being the United States of America which has been accused for systematically torturing and ill-treating detainees in the context of interrogations and detaining indefinitely, without trial, hundreds of persons captured in the war on terror (OMCT 2005)[8]. Not disputing the fact that one of the primary duties of the government is to ensure the security of its citizens, INGOs like AI and ICRC posits that security should not be used as a pretext to undermine the fundamental rights and guarantees enshrined in international human rights and humanitarian law.

The United States is wary of giving prisoners of war status to its detainees in the "war on terror". It dubs them as "unlawful enemy combatants". The critical distinction is

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[6] For the full text of the Security Council 1373 resolution, See United Nations S/RES/1373 (2001) at http://daccessdds.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement, Accessed 14 April 2009.

[7] See United Nations S/RES/1566 (2004), A/RES/58/174 (2004)

[8] See OMCT (Organisation Mondiale Contre la Torture (French) for World Organisation Against Torture, Geneva, Switzerland)) position paper, 2005 at http://www.omct.org/pdf/general/2005/position_paper_2005.pdf, Accessed on 15 Feb, 2009.

that a prisoner of war is entitled to the protections set forth in the 1949 Geneva Conventions. In contrast, an unlawful combatant is a fighter who does not act in accordance with the accepted rules of war, and therefore does not qualify for the Convention's protections. The ICRC, the guardian of International Humanitarian Law (IHL), a legal mandate given by the States themselves views this development contradictory to the spirit of the international law. The International Red Cross has interpreted the Third and Fourth Geneva Conventions to embrace all persons who fall into enemy custody during an armed conflict, and does not recognize an exception for "unlawful combatants." AI contend that these laws apply even to individuals suspected of the worst possible crimes—genocide, crimes against humanity, and war crimes (von Ness 2003).

The wide ranging debate on the counter-terrorism strategies with protection of human rights as one of the pillars has gained legitimacy at the behest of non-governmental organisations working on the field especially the ICRC (through their confidential reports to the respective state authorities) and AI (through their publicity campaigns), besides other institutional arrangements like Office of United Nations High Commissioner for Human Rights. Both organisations have involved themselves in the cause of political detainees of "war on terror" besides their traditional activities in the aim of promoting human dignity. These impartial NGOs are playing a critical role in raising awareness; ensuring that counterterrorism measures respect human rights and the rule of law; monitoring the actions of the military, law enforcement, and other security services; laying down guidelines; conducting investigations into alleged abuses; scrutinizing counterterrorism legislation; and generating awareness of unlawful practices and other human rights (Rosand et al 2008).

The ICRC established in 1863 began as a humanitarian war time relief organisation but gradually involved itself in the cause of political prisoners. After the wounded and the sick, detainees are, historically, the third category of vulnerable persons with whom the ICRC has been concerned (Aeschlimann 2005). That is not the case with AI. Since its inception in 1961 it is well recognised as a NGO working for the release and cause of political prisoners. These two organisations have been active in their documentation of the counter-terrorism measures adopted by States since 2001 and responded to the situation as per their strengths and limitations. They share a common

objective which is the promotion of human dignity at all costs. ICRC enjoys a unique status as legal guardian of International Humanitarian law and has access to the detainees unlike AI.

The major difference in their mode of functioning lies in the fact that ICRC does not go public with its reports as a bargain for its access to the prisoners. It is this "rule of silence" that makes ICRC acceptable to its interlocutors. Unlike ICRC which seeks a co-operative relationship with States AI maintains an adversarial relationship indulging in "naming and shaming" tactics against States when found flouting the rule of law. Despite their differences, their work bears resemblances in drafting rules and regulations upholding human rights in world forum like UN (ICRC's work on the Ottawa convention banning land mines and AI's work on the Convention against Torture are examples) and calling the attention of law makers and law implementers to uphold human rights at all costs. This is consistent with NGOs role as instigators and enforcers of international law as behind-the-scenes treaty drafters and promoters of many contemporary global treaties.

The "war on terror" is making states, as states are making the "war on terror". The efforts taken by states to do what they must do in order to counter terrorism at multilateral, regional, sub-regional and bilateral level is a "state building exercise". The initiatives in this process range from "hard power" (military, intelligence, police and law enforcement actions) to "soft power" (i.e. governance measures recast as "counter-terrorism" initiatives, including border security, arms control and counter-terrorist financing initiatives, etc. (Romaniuk 2004).

Unlike other forms of violence mobilized by non-state actors, terrorism has drawn a response from states that is remarkable in its scope. The targeting of innocent civilians is at the heart of current concerns about terrorism and the current massive efforts to deter and destroy terrorist capabilities. The deliberate targeting of civilians constitutes a serious abuse of fundamental human rights and runs counter to basic principles of humanity. AI calls for those who commit such atrocities to be brought to justice. Also urges all armed groups and individuals to stop using violence against civilians in pursuit of their aims. Crucially, AI urges all governments not to respond to terror with

terror. Torture does not stop terror. Torture is terror. Violence and terror only breed more violence and terror (AI 2006).[9]

The manner in which the "war on terrorism" is waged threatens to undermine the international human rights framework so painstakingly built since World War II. A "war on terrorism" waged without respect for the rule of law undermines the very values that it presumes to protect. The impulse to abandon human rights norms in times of fear and crisis is short-sighted and self-defeating (Hoffman 2004). In the context of the "war on terror", the absolute ban on torture and other cruel, inhuman or degrading treatment has been flouted by governments around the world. States have inflicted unspeakable mental and physical suffering on detainees using methods so abhorrent and brutal that they have long been prohibited by international law (AI 2005).[10]

Democratic governments are perfectly entitled to take extraordinary measures if faced with a threat of atrocities on a scale like those which occurred on 11 September. But since it is unarguable that counter-terrorist measures such as detention without trial are opposed to democratic ideals, they should be subjected to the most rigorous tests for proportionality: an immediate and very serious threat should be evident; the measures adopted should be effective in combating it and should go no further than necessary to meet it (Fenwick 2002).

Various human rights NGOs mainly the AI and ICRC have been in the limelight for their analysis and criticism of the counter-terrorism measures taken by states and for their contribution in upholding human rights standards. AI's nongovernmental nature gives it greater objectivity and freedom in its reports on state practices in human rights and its role as a watch dog against human rights violations. Also the AI's financial independence from states guarantees its political independence too (Thakur 1994).

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[9] See AI Index: ACT 40/009/2006, Terror and Counter-Terror: Defending our Human Rights, Available at http://www.amnesty.org/en/library/asset/ACT40/009/2006/en/dom-ACT400092006en.pdf. , Accessed 15 Dec, 2008.

[10] See AI Index: ACT 40/010/2005, "Cruel. Inhuman. Degrades us all. Stop torture and ill-treatment in the 'War on terror'", Available at http://www.amnesty.org/en/library/asset/ACT40/010/2005/en/dom-ACT400102005en.pdf, Accessed 15 Dec, 2008.

But ICRC's focus on the victims of conflict and the need to maintain confidentiality with the parties to the conflict limit the degree to which it can publicize breaches of the Geneva Conventions. Though ICRC is cooperative and acts discreetly while dealing with states it also circumscribes the state behaviour in the name of fundamental human rights by promoting the law of armed conflicts. There is enough justification for ICRC's refusal to engage in publicity and its quiet diplomacy as a tactic with states to pursue its objectives (Forsythe 2005).

This confidential working method has in fact been used as an argument to avail testimonial immunity to ICRC personnel in cases dealing with human rights atrocities. ICRC's case was supported by most of the major international NGOs. It seemed to reflect the realisation that the role they have to play is different from that of the ICRC (Stephane 2001). Human rights NGOs play an increasingly important and effective part in pressuring for compliance with international humanitarian law and human rights law. However, they may find that their effect is limited if they maintain traditional human rights focus directed solely at the actions of the state. In a positive development, NGOs are devoting more and more attention in their reports to the actions of all groups involved in a conflict (Watkin 2004).

The discreet approach of the ICRC is complementary to the activity of other human rights organizations in that the ICRC generally avoids publicity and thus preserves its access to prisoners. Most other human rights organizations publicize violations but such publicity may prevent these organizations from having much access to prisoners (Weissbrodt 1987). What cannot be denied is that ICRC has had far greater success in attaining its objectives- however limited- than other human rights NGOs have in achieving their ambitious goals.

AI's efforts to strengthen both popular human rights awareness and international law against torture, disappearances and political killings through a combination of popular pressure and expert knowledge have advanced global human rights in every way (Clark 2001). Its strenuously cultivated objectivity gave the group political independence and allowed it to be critical of all governments violating human rights. Its capacity to investigate abuses and interpret them according to international standards helped it foster consistency and coherence in human rights law. Clark

(2001) builds a theory of the autonomous role of non-governmental actors in the emergence of international norms pitting moral imperatives against state sovereignty through the study of AI.

Peter Benenson's[11] idea of bombarding offending governments with letters, post cards and telegrams was ridiculed initially however today it is considered one among the extraordinary strategies to reduce human rights abuses. Nevertheless difficult questions about AI's strategies are raised such as if AI's campaigns lead repressive governments to murder rather than jail prisoners (Power 2001). The targets of AI are both public and private, but they tend to be elites in either case. A major target is thus the attentive public that is, approximately the top fifteen percent of any electorate which tends to be continuously attentive, interested and involved in, and informed about, political affairs-but not the general public, even in Britain, Western Europe or the United States (Scoble and Wiseberg 1974).

Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilize governments, undermine civil society, jeopardize peace and security, and threaten social and economic development (OHCHR 2008). The end of the cold war era and the increasing threat of international terrorism have led to a new vision in international relations to achieve global security. This new vision include simultaneous respect for human rights while confronting the asymmetric threat of terrorism, and draw, as never before, upon the resources and legitimacy of multilateral cooperation.

The dissertation is divided into five chapters. The following is the brief outline of the study. The first (current) chapter is introductory in nature. It discusses NGOs in a broader context, highlighting their role in today's world, their indispensability in global governance and relevance in combating global social, economic and political challenges mainly terrorism. The next chapter examines AI and ICRC as INGOs. This chapter briefly traces the origin and evolution of AI and ICRC, their organisational structure, style of functioning and their expanding mandate with special focus on their

[11] Founder of Amnesty International

human rights orientation and objectives. The third chapter explores the perspectives and activities undertaken by the AI and the ICRC with regard to terrorism and counter-terrorism and the subsequent impact these INGOs have made in the multilateral efforts on counter-terrorism and state counter-terrorism initiatives. The next chapter examines the human rights abuses that occur during counter-terrorism operations, the responses of AI and ICRC to them, the initiatives and the impact made by these INGOs in intensifying the debate between human rights and terrorism. The fifth and final embodies the overall assessment of the study.

1.5. Methodology

Data was collected from both primary and secondary sources. Archival research involving official documents was carried out to gain a thorough understanding of the origin, evolution and expanding mandate of these organisations. The study is a qualitative one in the lines of exploratory research. A careful and systematic scrutiny of literature has been undertaken to understand the issues concerning counterterrorism and the two INGOs. The varied sources for the study include books, journals, publications, research papers and internet sources. Internet searches generated information on AI, ICRC, UN and other international organisations that offered press releases or publications relating to terrorism and counter-terrorism. Other online journals related to the topic were also reviewed for useful data.

A qualitative analysis followed after gathering all relevant materials. Common and recurrent themes that were in tune with the scope and objective of the study were eked out from the vast amount of information gathered. The research design involved a comparative method wherein the similarities and differences between the two INGOs (the ICRC and the AI) were analysed. The analysis was focussed on the lines of the research questions and hypotheses earlier formulated.

Chapter 2

AI and ICRC as International Non-Governmental Organisations

2.1. Historical evolution of AI and ICRC

AI came into being in 1961,[1] when a news report about human rights violations in Portugal motivated a British lawyer named Peter Benenson to set up a group to push for release of prisoners locked up solely for exercising their freedom of speech on political matters which he termed "prisoners of conscience".[2] They invited others to join them in calling for the release of people in many countries who were in prison for expressing their beliefs. AI became intimately acquainted with the suffering of individual people killed, tortured, or imprisoned for political reasons, and gradually began to work for better general human rights protection through laws and public pressure at the international level.[3]

AI is a pioneer of the establishment of international standards, or norms, of human rights. Through its reporting on human rights violations, the organization is exceptionally placed to recognize and identify the need for stronger human rights guarantees. Despite Benenson's legal background, he placed little faith in international legal remedies for human rights violations. He hoped, instead, that international condemnation of the injustice suffered by the prisoners because of their non-violently held beliefs would pressure their governments to release them. Benenson therefore decided to appeal straight to the public (Clark 2001).

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[1] Even before Peter Benenson's birth in 1922, some direct precursors of AI were operating. In 1907, British and American anarchists founded the Anarchist Red Cross (ARC) to send funds and letters to anarchist political prisoners in Russia. They arranged for lawyers to defend the prisoners in court and even sent them false identity papers.

[2] Peter Benenson launched a worldwide campaign, 'Appeal for Amnesty 1961' with the publication of a prominent article, 'The Forgotten Prisoners', in The Observer newspaper on the imprisonment of two Portuguese students, who had raised their wine glasses in a toast to freedom. His appeal was reprinted in other papers across the world and turned out to be the genesis of AI.

[3] Diana Redhouse, a British artist who also founded what may be the first AI local group, was asked by Benenson to design AI's logo, a candle surrounded by barbed wire. Benenson said the image was inspired by an ancient proverb: "Better to light a candle than curse the darkness." The organisation was awarded the 1977 Nobel Peace Prize for its "campaign against torture" for its reporting on the dirty war in Argentina and the United Nations Prize in the Field of Human Rights in 1978.

Staff and volunteers in AI's central office at first gleaned information about political arrests from newspapers. Benenson came up with the "Threes" idea: each local group would be given three names of prisoners from the three different political blocs (Communist, West, and Developing World), and the group would be responsible for the campaign to release these prisoners and assist their families. They would assign verified prisoner of conscience cases to adoption groups. Group members met regularly to write letters to authorities, seeking humane conditions for and release of the prisoners. On the basis of information provided by AI headquarters, groups also undertook other steps to generate publicity and raise money in aid of their adopted prisoners. Often, they established contact with prisoners' families offering moral and sometimes material support. When it would not put the prisoner or the prisoner's family at risk, they also wrote directly to the adopted prisoner (Clark 2001).

In the early days the organization's mandate was very simple, focusing only on Articles 18 and 19 of the Universal Declaration of Human Rights[4] and the release of prisoners of conscience. There apparently was no "own-country" rule to keep members from working on cases in their own countries; that came later, in the mid-1970s. But in practice, most Threes groups were working on cases of unknown people in faraway countries. AI members were much quieter, eschewing polemics, writing polite personal letters about unknown people to government officials thousands of miles away. The pressure they exerted was more subtle and cumulative. They wrote as individuals on behalf of individuals, and they exercised their human rights by standing up for the human rights of others. Therein lay the brilliance of Benenson's idea (Rabben 2008).

Idealistic but pragmatic, AI's creators strived for loyalty to the principles of human rights, for political impartiality, and for knowledge of the facts of individual cases. AI was an outsider to international affairs, lacking the resources and diplomatic standing of states, as well as the size and authority, however limited, of an intergovernmental organization like the United Nations. Still, confident determination permeated

[4] Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

the organization's approach. While the International Committee for the Red Cross actively consulted with governments on political imprisonment issues, AI saw itself as a more independent "movement".

While AI has since 1961 done more than the ICRC to publicize what AI came to call prisoners of conscience, the ICRC has been the organization actually to visit security prisoners on a regular basis. In 1935 it created a special commission to deal systematically with the problem of political prisoners. This was almost thirty years before the creation of AI. Although public international law has never recognized the concept of political or security prisoners, this has not prevented the ICRC, starting in Hungary and Russia after the First World War, from trying to provide humanitarian protection to this category of detainee (Forsythe 2007).

The ICRC took the lead, particularly during and after the First World War, in trying to ensure that in international war all combatants placed out of action, and not only sick and wounded ones, were given humane treatment. Visiting the European prisoner-of-war (POW) camps from 1917 to stop reprisals and provide medical relief, and seeing other issues incompatible with basic human respect for captive combatants, the ICRC showed first its moral creativity and then its customary legal follow-up. The 1929 Geneva Convention for Prisoners of War was based largely on its pragmatic, moral and non-legal action during the First World War (Forsythe 2007).

The ICRC[5] owes its origins to the vision and determination of one man: Henry Dunant, a Swiss national who on witnessing the wounded soldiers left to suffer for want of medical care in the Battle of Solferino (1859), established ICRC in 1863 to humanise war. Until then there was no organized and well-established institutional systems for casualties and no safe and protected institutions to accommodate and treat those who were wounded on the battlefield. This was followed by the adoption of a treaty entitled the "Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field", which became the first treaty of humanitarian law

[5] ICRC is one of the most widely recognized organizations in the world, having won three Nobel Peace Prizes in 1917, 1944, and 1963. Its headquarters is in Geneva. Its motto is Inter arma caritas ("In War, Charity"). It likewise acknowledges the motto Per humanitatem ad pacem ("With humanity, towards peace"). The official symbol of the ICRC is the Red Cross on white background with the words "COMITE INTERNATIONAL GENEVE" circling the cross.

and the forerunner of the four Geneva Conventions of 1949 and the three Additional Protocols, adopted in 1977 and in 2005 which became the principal instruments of international humanitarian law. ICRC's active role in this context was acknowledged and states conferred on ICRC the mandate as the promoter and custodian of international humanitarian law thus giving its unique legal status, distinguishing it from other international nongovernmental organisations.

While the initial efforts were decidedly limited in impact, the work in particular of Marcel Junod[6] in the Spanish Civil War did much to induce official thinking to devote more attention to the horrors of brutal civil wars. Both Article 3 common to the four 1949 Geneva Conventions and Additional Protocol II thereto of 1977 – the first mini-treaty on non-international armed conflict – largely owe their existence to earlier field work by the ICRC and its subsequent drafting and other efforts to promote the adoption of modern international humanitarian law for civil wars. The ICRC has played a major part in broadening the scope of humanitarian concern from international to internal war (Forsythe 2007).

Perhaps the organization could have limited its focus to victims, declaring that means and methods were beyond its mandate. But the ICRC had taken a stand on poison gas in the First World War, and then helped to promote the 1925 treaty prohibiting poisonous and asphyxiating gases. In any event, in modern times the ICRC has clearly agreed to address various weapons issues and then did not shy away from opposing some major states, including its main financial donor, the United States, on the issue of a total ban on anti-personnel mines or landmines. In 2006 the ICRC drew renewed attention to the problem of cluster bombs and their use in heavily populated areas, even though once again its biggest donor – the United States – was not enthusiastic about further restrictions on that weapon (Forsythe 2007).

[6] He was a Swiss doctor and one of the most accomplished field delegates in the history of the ICRC.

2.2. Organisational Aspects

2.2.1. Mission and Mandate

The ICRC's official website proclaims that the organisation's mission is to protect the lives and dignity of victims of war[7] and other situations of violence and to provide them with assistance in addition to preventing suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

The ICRC has a legal mandate from the international community. That mandate has two sources:[8]

1. the 1949 Geneva Conventions, which task the ICRC with visiting prisoners, organizing relief operations, reuniting separated families and similar humanitarian activities during armed conflicts;
2. the Statutes of the International Red Cross and Red Crescent Movement which encourage it to undertake similar work in situations of internal violence, where the Geneva Conventions do not apply.

ICRC's mission is to protect and assist the civilian and military victims of armed conflicts and internal disturbances on a strictly neutral and impartial basis. Its tasks include: visits to prisoners of war and civilian detainees; searching for missing persons; transmission of messages between family members separated by conflict; reunification of dispersed families; provision of food, water and medical assistance to civilians without access to these basic necessities; spreading knowledge of humanitarian law; monitoring compliance with that law; drawing attention to violations, and contributing to the development of humanitarian law (ICRC 2005).

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[7] There has been a persistent criticism about ICRC's role for humanizing war rather than opposing it. ICRC made clear its stand many a time that its activity is linked to *jus in bello* rather than *jus ad bellum*.

[8] The Geneva Conventions are binding instruments of international law, applicable worldwide. The Statutes of the Movement are adopted at the International Conference of the Red Cross and Red Crescent, which takes place every four years, and at which States that are party to the Geneva Conventions take part, thereby conferring a quasi-legal or "soft law" status on the Statutes.

AI's basic objective in its Statute remains to contribute to the observance throughout the world of the Universal Declaration of Human Rights. As one of its very early Annual Reports stated, "Until such time as every government observes every Article of the Universal Declaration it will remain a symbol of our potentialities and an indictment of our failures".[9]

Historically, the main focus of AI's campaigning has been to free all prisoners of conscience,[10] to ensure a prompt and fair trial for all political prisoners, to abolish the death penalty, torture and other cruel, inhuman or degrading treatment or punishment, to end extrajudicial executions and "disappearances", to fight impunity by working to ensure perpetrators of such abuses are brought to justice in accordance with international standards. Over the years AI has expanded this mandate to encompass human rights abuses committed by non governmental bodies and private individuals (non state actors). It opposes abuses by armed political groups (in control of territory or operating in opposition to governments), such as hostage taking, torture and unlawful killings. It opposes human rights abuses against civilians and non-combatants by both sides during armed conflict. AI has also targeted abuses in the home or community where governments have been complicit or have failed to take effective action. It is also taking efforts to ensure prison conditions meet international human rights standards protect human rights defenders, promote religious tolerance, end the recruitment and use of child soldiers, stop unlawful killings in armed conflict and to uphold the rights of refugees, migrants and asylum seekers (Kelly et al 2005: 177-178). The core of AI's activities, however, is still concentrated on its 'limited mandate' related to the 'prisoners of conscience'[11] (Baehr 1994). The ICRC makes a contribution of paramount importance to the promotion of human rights by ensuring the application of existing humanitarian conventions and their development and by taking independently of those Conventions, appropriate measures for the protection of all persons affected by armed conflicts or internal troubles (Schindler 1979).

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[9] AI, Annual Report (1 June 1966- 31 May 1967), p.2.

[10] These are people who are detained for their political, religious or other conscientiously held beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status –who have not used or advocated the use of violence.

[11] For discussion of AI's decision not to adopt Nelson Mandela as a prisoner of conscience, see Edy Kaufman, "Prisoners of Conscience: The Shaping of a New Human Rights Concept," Human rights Quarterly 13 (1991), pp.339-67, esp.pp. 350-54.

2.2.2. Structures

The decision-making bodies of the ICRC are:

(a) *The Assembly*: It is the supreme governing body of the ICRC overseeing all its activities, formulating policies, defining general objectives and institutional strategies, and approving the budget and accounts.

(b) *The Assembly Council*: It is a body of the Assembly which acts on the authority of it. It prepares the Assembly's activities, takes decisions on matters within its area of competence, and serves as a link between the Directorate and the Assembly, to which it shall report regularly.

(c) *The Presidency*: The President assumes the primary responsibility for the external relations of the institution and is assisted in the performance of his duties by a permanent Vice-President and a non-permanent Vice-President.

(d) *The Directorate*: Chaired by the Director-General it is the executive body of the ICRC responsible for the smooth running and the efficiency of the Administration, which comprises ICRC staff as a whole.

(e) *Management Control*: It proceeds through internal operational and financial audits independent of the Directorate.

The president represents the ICRC on the international scene and, in close cooperation with the directorate general, handles the ICRC's humanitarian diplomacy. At the internal level, he works for the cohesion, smooth running and development of the organization.

Amnesty is able to pursue its goals as a giant grassroots organisation with currently about 1.3 million members, subscribers and regular donors spanning about 160 countries. Its international headquarters in London (International Secretariat) is staffed with more than 320 permanent posts and 95 volunteers from more than 50 countries. It is divided into sections, affiliated groups and individual members. At present 56 countries have nationally organised sections. Its activists participate in more than

5,300 local, youth, student, and professional AI groups registered at the International Secretariat. In addition, there are a number of specialist groups and networks around the globe to monitor human rights abuses in every country of the world. For instance, there are 23 Regional Action Networks (RAN) involving around 1,800 groups and a number of specialist networks – groups of medical professionals, lawyers and others – who use their expertise to campaign for victims of human rights violations. The Legal Network, for instance, is made up of 50 groups distributed among AI Sections around the world.

The central decision-making body is a nine-member International Executive Committee (IEC). It comprises eight volunteer members, elected every two years by an International Council comprising representatives of the global movement, and an elected member of the International Secretariat. The authority for the conduct of AI's affairs is vested in the Council. The International Executive Committee is responsible for the planning and implementation of the Council's decisions which are taken in the council meetings. The operational affairs of AI are conducted by the International Secretariat headed by a Secretary General under the direction of the International Executive Committee. AI is often seen as a model organisation for its combination of components of grassroots participation and professional management. (Cook 1996).

2.2.3. Membership

While ICRC is expert oriented with a rather limited membership AI is more of a movement in the sense that it is a grass-roots association supported by a large active membership. It has local groups in almost all countries in the world (Weissbrodt 1984). Its membership is unrestricted and voluntary. It includes members from the grassroots and elites, and often works across such boundaries (Clark and McCann 1991). AI's combination of a public international membership and transnational activism is unique among nongovernmental organizations concerned with human rights (Clark 2001).

Unlike AI which has a contributing membership base and affiliates from throughout the world, the ICRC is a special case because its membership is wholly Swiss. (Hutchinson 1997). The ICRC has no public membership but has a membership of a

maximum of 25 Swiss citizens. Article 7 of the Statute of the ICRC[12] delineates that it shall co-opt its Members from among Swiss citizens and it shall comprise fifteen to twenty-five Members. Members are subject to re-election every four years. After three terms of four years they must obtain a three-fourths majority of the full membership of the ICRC in order to serve any additional term. There is also provision for ICRC to elect honorary members.

2.2.4. Budget and finance

As a matter of policy, AI and its national branches do not accept government funding. Membership dues provide the great majority of the budgets of national sections in developed countries; subventions are given to sections in poorer developing countries. The central secretariat of AI does not accept foundation grants either, although individual national sections may do so. As former secretary-general Martin Ennals (1982: 69-70) explained,

> There has been a long and continuing argument as to whether AI should accept- at any level within the organisation- funds from well known public foundations such as Ford, Rockfeller, Volkswagen, etc. This is not because there is fear that such public foundations would seek to influence AI, but because in other parts of the world their reputation as being government-linked would be prejudicial to the work of AI for prisoners of conscience and would influence the attitude of AI of either government or their victims. There was some doubt as to whether AI should have accepted the Nobel Peace Prize in 1977 for this specific reason.

ICRC, with its limited mandate is tied to states and the state system of international relations. About 85 percent of ICRC expenditures are provided by voluntary state contributions. The United States is the leading donor providing just under 30 percent of ICRC income (Forsythe and Rieffer-Flanagan 2007). There is a widespread prejudice that government funding leads to government control. In the field of human rights, it would damage an NGO for such a perception to arise, so AI has strict rules that it will not accept direct government funding for normal activities (Willetts 2002).

[12] Statute of the ICRC available at http://www.hck.hr/doc/Medunarodni_odbor_statuteENG.pdf, Accessed 12 Feb, 2009.

But the bulk of the ICRC's regular and special budgets is derived from government contributions rather than from private fund-raising.

2.2.5. Principles and procedures

AI developed from a conviction that public awareness of human rights violations and the pressure of public opinion are powerful and essential weapons against government repression. It focussed on the lives of real people rather than on horrific statistics and enabled ordinary citizens all over the world to speak out on behalf of other individuals. One of its special characteristics is the close cooperation between enthusiastic and dedicated volunteer members and full-time professionals and experts. It relies on a combination of both simple techniques, such as letter-writing and urgent appeals to governments, and specialised professional and technical work. The organisation has always placed a high value on the quality and accuracy of its information (Cook 1996:182).

Since AI is based on the activities of its members, it is expected that members actively engage in the work of local groups beyond making mere financial contributions. A significant portion of AI's work is carried out by the local groups, which are in most cases small collections of members with a range of different activities and supporting prisoners of conscience. For instance, AI volunteers write letters to governments, staff tables at public events, convey information to the public, organise demonstrations, and write press releases etc.

With this solid base of volunteer groups, the organisation is able to provide the comprehensive and detailed monitoring and is also able to collect information on human rights violations in any corner of the world. In order to increase 'response time' and to provide for rapid reaction, AI has established an 'Urgent Action Network' covering more than 60 countries and including more than 100,000 people (religious and political leaders, legal and health professionals, artists, students of all ages, educators, etc.). One of the key resources of AI is the credibility of its information. Other tried-and-true tactics that AI has helped to develop on a global scale are publicity, marshalling citizen support from around the world, musical

concerts, and celebrity appearances, all directed toward changing official government policies and international law (Clark 2001).

A good reputation as a reliable producer and collector of credible information on human rights violations is no accident, but the result of a conscious and disciplined management strategy to preserve strict neutrality in its actions, and total independence from any government and from any political, religious or economic interests. AI had the foresight to refuse any financial support from all governmental authorities. In addition, its impartiality has been upheld by the deliberate tactic of precluding local groups and national sections from investigation on their home countries. This is one of the strictest rules in AI's work (Ennals 1982). These principles together with the quality of its information on human rights violations have enabled AI to build up a high level of credibility over time. This solid reputation is one of AI's most critical resources and it would be a great fallacy to underestimate it (Thakur 1994).

Keck and Sikkink (1998: 16) provide a useful typology of the specific kinds of tactics that transnational advocacy networks such as AI use in their efforts to persuade, socialise, and pressurise other political actors: 1) informtion politics, or the ability to quickly and credibly generate politically usable information and move it to where it will have the most impact; 2) symbolic politics, or the ability to call upon symbols, actions, stories that make sense of a situation for an audience that is frequently far away; 3) leverage politics, or the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence; and 4) accountability politics, or the effort to hold powerful actors to their previously stated policies or principles.

Likewise, there are few fundamental principles constituting the guiding force of the ICRC's activity chiefly humanity, impartiality, neutrality, independence, voluntary service, unity and universality. Over time, the Red Cross principles have come to guide and position other humanitarian agencies in their roles of assisting and protecting those outside the limits of war in practical yet ethical ways. A brief explanation of each item is useful for the present study.

Humanity: The principle of humanity - from which all other principles flow - means that mankind "shall be treated humanely under all circumstances." The principle, in turn, has three elements: prevent and alleviate suffering, protect life and health and assure respect for the individual.

Impartiality: It means no discrimination on the basis of nationality, race, religious beliefs, class or political opinions and efforts to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality: In order to continue to enjoy the confidence of all, the organisation may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence: It means that it must be sovereign in its decisions, acts and words to show the way towards humanity and justice. It emphasises its independence with regard to outside forces, governments and intergovernmental organisations.

Voluntary service: It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity: There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality: The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

In its activities to protect people in situations of armed conflict or violence, the ICRC's mission is to obtain full respect for the letter and spirit of international humanitarian law. It seeks to minimize the dangers to which these people are exposed; prevent and put a stop to the abuses to which they are subjected; draw attention to their rights and make their voices heard; bring them assistance. The ICRC does this by remaining close to the victims of conflict and violence and by maintaining a confidential dialogue with both State and non-State actors.

The first formal step taken by the ICRC when a conflict breaks out is to remind the authorities of their responsibilities and obligations towards the civilian population, prisoners, and wounded and sick combatants, giving priority to respect for their physical integrity and dignity. After carrying out independent surveys, the ICRC puts

forward recommendations to the authorities for tangible measures – preventive and corrective so as to improve the situation of the affected population. At the same time, the ICRC takes action of its own accord to respond to the most urgent needs, notably by providing food and other basic necessities; evacuating and/or transferring people at risk; restoring and preserving contact between dispersed family members and tracing missing persons.

Where places of detention are concerned, the ICRC also undertakes programmes with a longer-term, structural perspective, providing technical and material assistance to the detaining authorities. ICRC's humanitarian protection generally means three things: development of a legal framework (humanitarian law and human rights law) that protects the minimal standards required for human dignity in conflicts; supervising the conditions of detention in war and exceptional natural instability; and providing for the basic needs of the civilian population in these same situations- including during an occupation after war. This latter role of helping civilians means not only helping to provide food, water, shelter and health care; but also tracing of missing persons, restoration of family contacts, and other help for civilians in various conditions of distress (e.g. reintegrating child soldiers into civil society).

2.2.6. Organisational culture

There are divergent views about the organizational culture of the ICRC. The more positive view sees the organization as constantly striving to make the changes necessary to adjust to new realities, so as to ensure minimal standards of humanitarian protection. The more critical view sees the ICRC as ultra-slow to change, still controlled at the top by excessively cautious traditionalists who are much affected by Swiss society and political culture, including some of its negative manifestations like being risk-averse, unilateralist and slow to recognize gender and racial equality (Forsythe 2007).

Because of its all-Swiss nature in the past one study of ICRC's organisational culture sees the organisation in the following terms: it shows a commitment to liberalism, collective policymaking, emphasis on personal integrity and honesty, managerial expertise, transparent accounting, attention to detail, delay in accepting feminism,

aloofness, secrecy, legalism, aversion to public judgements, and "stolid public demeanor". Furthermore, as Peter Hoffman and Thomas Weiss note, "[p]erhaps the ICRC best illustrates an institution's willingness to fundamentally examine its basic premises. Instead of a rigid commitment to a basic set of principles, the ICRC has been flexible in its own self-analysis, and, hence, more apt to make changes when necessary- albeit very slowly" (2006: 190).

As a membership organisation, AI has a strongly democratic organisational culture. This is one of the great strengths of the organisation, and also one of its greatest weaknesses. One can see this clearly in its internal governance structure. AI is governed by a biannual congress, the International Council Meeting (ICM). Delegates to the ICM are elected by each national section of AI, usually by the section board, or directly by members at the Annual General Meeting (AGM) of the section. Section boards' own members are usually elected at AGMs, but are sometime elected by a mail ballot sent to all registered members. The ICM is similar to a mini-UN General Assembly. The delegates to ICMs debate and vote upon resolutions presented to the ICM by national sections dealing with various issues, such as the scope of AI's mission or mandate, policies concerning research, campaigns and membership actions, organisational and financial matters. ICM delegates also elect members to an international governing board, the International Executive Committee (IEC), whose nine members steer the organisation between ICMs, and are responsible for supervising the secretary-general of AI, who, in turn, is both the chief international spokesperson for AI and the top senior manager of the International Secretariat (IS) and its staff. AI thus has a structure similar to that of a transnational corporation with quasi-independent national subsidiaries, with the important exception that the national boards and the international executive board are elected by the members of the organisation in their own countries rather than appointed by headquarters.

Other international human rights NGOs, for instance Human Rights Watch (HRW), have self-perpetuating boards of directors and function more like privately owned non-for-profit corporations run by small groups of individuals belonging to the human rights elite. This gives their boards decision-making agility as compared to AI's IEC, which must seek the approval of its worldwide membership before making any significant changes in the organisations policies or priorities. This contrast between

elitist and populist or grassroots organisational structures is key to any understanding of AI's effectiveness as a human rights advocacy organisation.

In addition to its democratic character, AI has a distinctive ethical side to its organisational culture. Perhaps the most important feature of AI's ethical culture is its commitment to international solidarity. AI members learn that they can and should work to advance the human rights of persons in distant lands. For most of its history AI has maintained something called the "Work on Own Country Rule", which prohibits AI members from taking up efforts on individual prisoner appeal cases in their own countries, and which also prohibits AI national sections from undertaking research on their own governments' human rights practices. There have been various justifications offered for this policy: that it is needed to maintain political impartiality, that it helps to protect AI members from government harassment and repression, and that it helps to ensure AI's reputation for objectivity. But the basic reason for it is that it prevents AI members from doing nothing but a certain kind of "identity politics" around human rights concerns in their own countries and reinforces the core ethic of international solidarity. (Winston 2001: 31-32). The aim is to maintain AI's impartial and non-political image as well as to protect the safety of its members (Larsen 1979)

2.2.7. Legal status

The recognition of organizations in international law generally stems from their association with State structures. Thus the United Nations and its agencies, and other intergovernmental organizations such as the Organization of American States, are deemed to possess international legal personality. On the other hand, organizations that are not composed of States or that have no constituent State participation, i.e., international non-governmental organizations (INGOs) such as AI, do not possess international legal personality despite their international scope of operations.

But unlike other organizations with no State component, the ICRC does have international legal personality. NGOs are not legal entities under international law, like states are. An exception is the ICRC which is considered a legal entity under international law, because it is based on the Geneva Convention. ICRC, which legally speaking, is a private, self-governing association. Its top policy-making body is an

Assembly of Swiss citizen numbering not more than 25. Thus ICRC is a unique organization, whose governing body remains all-Swiss, but which is recognized in international law and in other legal arrangements as if it were an inter-governmental organization.

The ICRC has a hybrid nature. As a private association formed under the Swiss Civil Code, its existence is not in itself mandated by governments. And yet its functions and activities - to provide protection and assistance to victims of conflict – are mandated by the international community of States and are founded on international law, specifically the Geneva Conventions, which are among the most widely ratified treaties in the world. Because of this the ICRC, like any intergovernmental organization, is recognized as having an "international legal personality" or status of its own. It enjoys working facilities (privileges and immunities) comparable to those of the United Nations, its agencies, and other intergovernmental organizations. Examples of these facilities include exemption from taxes and customs duties, inviolability of premises and documents, and immunity from judicial process. Rule 73 of the ICC Rules of Procedure and Evidence is a cornerstone of the ICRC's testimonial immunity for the future.

2.4. Operational Strategies

2.4.1. Purist Vs Revisionist

In the 1993, when the International Campaign to Ban Landmines was launched by a coalition of six NGOs, AI did not join the campaign saying they fell outside of AI's mandate because the killings were not "deliberate" or "targeted" in the way that extrajudicial executions and disappearances are. However, in the December 1997 International Council Meeting the council finally decided to amend AI's policies to allow AI to oppose the deployment of "indiscriminate weapons," including antipersonnel landmines. This decision came less than a month after Vietnam Veterans of America Foundation's Jody Williams and the International Campaign to Ban Landmines were awarded the 1997 Nobel Prize for Peace.

This case illustrates the problem with AI's culture of democratic decision making. While the more elitely governed human rights NGOs can seize opportunities and challenges that can serve to break new ground for the global human rights movement, AI, because of its cumbersome democratic decision-making processes, must wait, study the issue, and build consensus within its far-flung and diverse membership before it can make any major move. The organizational dialectic in these debates generally swings between "traditionalists" who want AI to stick with its original "focused prisoner-oriented mandate" and to utilise its resources to oppose the traditional categories of human rights violations against which the organisation has worked in the past, versus the movement "progressives" who want AI to respond effectively to new issues and to the emerging concerns of the global human rights movement.

But all parts of the movement value the fact that AI is so big, so international, so membership-based, and so democratic, and thus there is a strong tendency to avoid or finesse issues that would seriously divide the organisation. The motto has long been " One movement, one message, many voices," This commitment forces AI to adopt a slow-moving process of consensus-based internal decision making before the organisation makes any major changes in its policies or strategies.

AI did, in 1991, change its statute to allow its members to work on behalf of gay men and lesbians who have been imprisoned, tortured, or executed because of their sexual orientation. AI's coming around to this position took too long. AI came around quickly on women's rights issues such as female genital mutilation and on working against other abuses directed against women both by governments and nonstate actors. As mentioned above, AI also changed its policy on indiscriminate weapons, including antipersonnel landmines, and has now joined the landmines campaign (Winston2001: 34-35).

ICRC is committed to discreet and incremental change over time. Historically the ICRC has been slow to embrace change. The Tansley Big Study of the 1970s told the ICRC of the need to "open the windows" and not be such a secretive organisation. The organisation finally opened its archives to the public from 1990, even if under the forty-year non-access rule. Forsythe (2005:309) sees some similarities between ICRC

and UNHCR organisational cultures; particularly in terms of conservatism and reluctance to take outsiders fully seriously. Its internal workings are mysterious and often secretive. Expansion and development, not basic reformulation, has marked ICRC's history.

2.4.2. Confidentiality Vs Publicity

The ICRC's neutrality has a very specific purpose, namely to enable the organisation to gain the trust of all the parties to a conflict, whatever their stance, and thus to come to the aid of all the victims. Neutrality is simply a means to this end. If it were not neutral, the ICRC would be unable to evacuate the wounded or repatriate prisoners across front lines. This is not the same thing as silence, or cowardice, or compromise. It is more difficult to say to a security minister that a country's prisons are unsanitary, overcrowded and run by staff that torture inmates than to publish an article denouncing these facts in the press (Harroff-Tavel 2003).

Yet while activist humanitarian organizations such as AI or SaveDarfur.org mount media campaigns to denounce atrocities or to advocate intervention, the ICRC rarely strays from its trademark neutrality and discretion. Reliant on government donors and dependent upon access to detainees and victims that can be withdrawn by states or belligerents, the ICRC is reluctant to confront abusers openly. Its stock-in-trade is discreet cooperation with public authorities—including those actively engaged in war crimes and human rights abuses. When the ICRC does go public with its concerns it does so in a style designed to minimize the public shaming of the offender (Smith 2008).

Wherever the ICRC visits places of detention, its findings and observations about the conditions of detention and the treatment of detainees are discussed directly and confidentially with the authorities in charge. Bagram, Kandahar and Guantanamo Bay are no exceptions. The ICRC's lack of public comment on the conditions of detention and the treatment of detainees must therefore not be interpreted to mean that it has no concerns. Confidentiality is an important working tool for the ICRC in order to preserve the exclusively humanitarian and neutral nature of its work. The purpose of the policy is to ensure that the ICRC obtain and, importantly maintains, access to tens

and of thousands of detainees around the world held in highly sensitive situations of armed conflict or other situations of violence (ICRC 2005).

The ICRC is also concerned that any information it divulges about its findings could easily be exploited for political gain. If the ICRC observes a violation of the rules of war, it makes a confidential approach to the authorities responsible for the incident. Where violations are serious, repeated and established with certainty, and when confidential representations to the authorities have failed to improve the situation, it reserves the right to take a public stance by denouncing such failure to respect humanitarian law, provided that it deems such publicity to be in the interests of those affected or threatened by the violations. Such a step is exceptional (ICRC 2005: 17).

In other words, the ICRC is fully aware that there are limits to persuasion and that public denunciation – the means of action favoured by organisations like Human Rights Watch or AI – can sometimes, albeit not always, be more effective. When the ICRC decides to take a public stand on violations of humanitarian law because its efforts at persuasion have been to no avail, it is not departing from the principle of neutrality but from the practice of confidentiality. The ICRC can object publicly to attacks against civilians, the destruction of homes and summary executions, for example, without taking sides in the conflict that has brought on such tragedies, as long as it does so objectively and on the basis of principles that apply equally to all (Harroff-Tavel 2003).

In other words, it should be understood that those who criticise the ICRC for failing to publicly condemn violations of humanitarian law are calling into question not its neutrality but its judgement in relying too long, in a given conflict, on persuasion as an effective means of putting an end to violations. The ICRC cannot take a position on the grounds for a conflict or the legality of a war under the UN Charter, for example; it can only determine what is right and wrong in relation to behaviour in combat, on the basis of humanitarian law and considerations of humanity.

ICRC has developed a long-standing practice of confidentiality. As a result, states cannot ask the ICRC to testify or serve as a witness before their domestic courts. This testimonial immunity has been confirmed by a number of domestic and international

tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone. More than 80 countries have also specifically recognised this immunity by treaties or legislation. In addition, the Rules of Procedure and Evidence for the International Criminal Court (ICC) stipulate that the "ICRC retains the final say on the release of its information". No other organizations were granted this privilege and the ICRC feels that its testimonial immunity underscores the importance of confidentiality as the cornerstone of the organisation's work.

While the other NGOs such as AI, are not entirely averse to the attractions of quiet diplomacy where it holds some prospect for ameliorating a particular human rights situation. None have made this approach so central to their mission as has the ICRC. The ICRC uses publicity as a very selective tool in its work, both to promote respect for international humanitarian law during armed conflicts and in its prison-visit and tracing activities. Ironically, one key bit of leverage the ICRC uses against recalcitrant governments is to threaten publicly to withdraw its operations in the country, an action that carries the implicit suggestion that the government is committing and seeking to conceal gross abuses of detainees or others.[13]In contrast, the lifeblood of other major NGOs is high profile publicity for their detailed reports on human rights abuse, and their offering to go away would be warmly welcomed by many governments (Fitzpatrick 1994:220-221).

Exercise of discreetness creates a risk that the government may manipulate its cooperation with the ICRC to bolster its internal or external legitimacy or to justify non-cooperation with IGOs and NGOs using more public methods of inquiry. The ICRC's policy is to continue its visits as long as it is satisfied that its presence may provide benefits to the detainees. As Armstrong (1985: 642) writes:

> If the ICRC were the only voice to be heard on the issue of political prisoners, the morality of its refusal to criticize governments or reveal its findings might be more tenuous. It is because other NGOs (and governments) are actively involved in trying to bring about the release of political prisoners and condemning the detaining governments that the ICRC is able to play its more restricted role without serious qualms of conscience.

[13] Forsythe cites as examples South Vietnam, Portuguese, Mozambique, South Africa, and El Salvador.

AI has increasingly emphasized advocacy. Careful investigation remains the bedrock. AI concentrates on advocacy; direct action on behalf of victims is found more with development-oriented or humanitarian assistance NGOs like ICRC. But the distinction between research- and advocacy-oriented NGOs and assistance-oriented NGOs is not a hard and fast one. (Welch 2001:10). One of its traditional – but most effective tactics in the realm of direct strategy is to influence the behaviour of target authorities either through 'shaming' (i.e. appeal to internalised norms by virtually unopposable symbols) or by damaging their reputation in the eyes of other relevant institutions (e.g. the domestic public, politico-military allies, trading partners, international investors, the IMF or the World Bank) (Scoble and Wiseberg 1974:14). For a nation state or government this amounts to be put in the 'pillory', getting the image of a pariah state. In addition to such direct reputation effects, widespread international condemnation also may increase domestic pressures upon an oppressive government by providing greater leverage to domestic opposition groups. An extremely effective tactic in this context has been 'tree-topping', i.e. to use other social or political elites controlling the relevant media to which governmental elites are attentive (Cook 1996).

AI has been called the "conscience of the world for its tireless work in documentation and publicizing human rights violations such as unfair trials for political prisoners, the imprisonment of prisoners of conscience (a term that AI coined), executions (extrajudicial and judicial), disappearances, the practice of torture, judicial harassment of journalists and trade unionists, massacres of innocents, and instances of genocide, among others. AI was one of the main nongovernmental organisations that pushed for the establishment of the International Criminal Court (ICC) at the Rome Conference in 1998, and AI has consistently opposed granting blanket amnesties to members of former governments who may have been the perpetrators of human rights violations while they held office. AI had undoubtedly had some significant influence in the creation of the office of the UN High Commissioner for Human Rights in 1995 or the ICC in 1998 (Winston 2001).

2.5. Relations with governments

The need for executing its traditional functions during war times makes it imperative that ICRC maintain a co-operative relationship with states unlike AI which maintains an adversarial relationship (Thakur 1994). Pierre Boissier (1985) wrote that the organization was conscious of its need for cooperation from public authorities and therefore was careful not to proceed beyond the realm of their consent. Yet victims of war and of power politics are victimized precisely because of the policies of these same public authorities. That is why advocacy groups like AI and Human Rights Watch, that also do not run service programmes inside states, believe in a more adversarial relationship with states that features attempted public pressure – the naming and shaming game. They believe in the necessity of uncomfortable conflict, while the ICRC's neutral protection is based on hope for quiet co-operation (Forsythe 2007).

Yet states did not tell the ICRC to start supervising prisoners of war, or to get involved in civil wars, or to start visiting detainees beyond situations of war, or to lobby for the Ottawa treaty banning anti-personnel mines. The ICRC could not have become what it is today without state approval, but it also has a rich tradition of initiative and creativity as a private player. In reality, the ICRC has a foot in two worlds – the world of state approval and the world of civil society initiative. Because of the organization's dual nature, there is a tension in ICRC actions between deferring to state views on military and political necessity, and pressing states in a timely fashion to do more for human dignity. Managing that tension wisely is the crux of humanitarian politics and diplomacy by the ICRC (Forsythe 2007).

2.5. Relations with UN

The United Nations has given recognition to the concept of non-governmental organizations under Article 71 of the UN Charter, which states:

> The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with

international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

AI's work within intergovernmental organisations, such as the United Nations, is a core element of its efforts to secure universal observance of the 1948 Declaration of Human Rights and the organisation devotes considerable time, expertise and resources to these activities. This work extends to a wide range of organisations, including the Organisation of American States, the Organisation of African Unity, the Council of Europe, the European Union, the Conference on Security and Cooperation in Europe, the Commonwealth and the League of Arab States.

Peter Benenson first secured Category B consultative status for the organisation in 1964. That same year AI convened meetings of interested NGOs to review the further development of the international protection of human rights and promoted resolutions at the UN in favour of a High Commissioner for Human Rights and for a moratorium on the use of death penalty. From its earliest days AI has been an active member of the Conference of Non-Governmental Organisations in Consultative Status with ECOSOC and was a member of its Bureau for many years. In recent years AI has increasingly participated in joint NGO initiatives at the UN, which can carry great weight (Cook 1996).

With respect to ICRC, both in the field and at headquarters level the cooperation between the UN system and the organisation has grown and intensified while wanting to retain its independence. Cooperation and dialogue took a leap forward when the ICRC obtained observer status with the UN in 1990: this status made it possible for the ICRC to entertain regular contacts with the Security Council, to be active in the General Assembly and other meetings and as well as to take part in the elaboration of treaties and other instruments (Kellenberger 2005)[14]. The ICRC is widely considered to be one of the best performing humanitarian agencies. One of the challenges it faces is how best to co-operate with the reform of the international humanitarian system, which places an emphasis on UN leadership and co-ordination, while retaining its

[14] Statement by Dr. Jakob Kellenberger, ICRC President, at San Remo on 8 September 2005, "Relations of the ICRC with the humanitarian system of the UN" at International Conference: "Application of International Humanitarian Law, Human Rights and Refugee Law: UN Security Council, Peacekeeping Forces, Protection of Human Beings in Disaster Situations", Available at URL: http://www.icrc.org/web/eng/siteeng0.nsf/html/6G7AHC , Accessed 18 May 2009.

impartiality, neutrality and independence. The need for confidentiality can present challenges in reporting on impact to donors.

2.6. Problems of legitimacy: Limitations as INGOs

INGOs or Civil Society Organizations (CSOs) have moved from backstage to centre stage in world politics, and are exerting their power and influence in every aspect of international relations and policymaking. Organizations such as AI, Greenpeace, and the International Campaign to Ban Landmines have helped bring non-governmental organizations the international recognition that has made "NGO" a household word (McGann and Johnstone 2006)[15]. However critics of NGOs argue that NGOs as an international community lack the transparency and accountability in terms of finances, agenda, and governance necessary to effectively perform their crucial role in democratic civil society. In analysing INGO legitimacy, it is important to look at specific practices and organisations (Collingwood and Logister 2005)

Legitimacy is understandably a heavily contested term. It usually implies that an organisation is authentic and is justified in its actions. Legitimacy could be derived from many sources, including membership or constituency, legal recognition, experience, or relevant knowledge of the issues at stake. Civil society organisations face a critical challenge in their justifications for voicing their opinions or speaking on behalf of others, especially vulnerable or marginalised communities (Naidoo 2004).

Human Rights INGOs have been criticised on account of selection bias. Critics point out that INGOs such as AI report extensively on human rights violations in relatively democratic and open countries – for example, there are likely to be more reports on

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[15] Milestones in this largely non-violent NGO revolution include the Solidarity Movement's role in the 1980's political transformation in Poland; the influence of environmental activists on the outcome of the 1992 Earth Summit in Rio de Janeiro; the international coalition of groups led by the South Council that developed the 1994 "Fifty Years is Enough" campaign directed at the World Bank and International Monetary Fund; and the labour, anti-globalization, and environmental groups that derailed the 1999 Seattle WTO meeting. The effectiveness of these efforts stunned the major multilateral institutions and governments worldwide and forced them to develop ways to engage and involve NGOs in their deliberations and decision making. With their place in world politics now firmly established, the majority of NGOs have moved from protesting on the streets to contributing to policymaking in the boardrooms of the United Nations, World Bank, World Trade Organization, and the International Monetary Fund (McGann and Johnstone 2006).

human rights violations in Israel as opposed to those in Cambodia. AI defends its position by stating that its mandate is to document any available information and pressurize governments on the basis of this information. However, sometimes the information ultimately presented by such INGOs is distorted and often biased against governments where information is easier to obtain.

AI has to admit from time to time that some of its reports or testimonies are mistaken; it got caught up, for example, in Kuwaiti propaganda and erroneously said that invading Iraqi forces had taken premature babies from incubators in 1991.Likewise an ICRC delegate here or there has referred to a "fact" in public without sufficient checking, or someone in the Geneva office has picked up a figure from a UN agency or some other source and circulated it without proper care. On balance, however, over the years the ICRC has been extremely careful about facts, even if this meant that it did not, for instance, join Western networks in reporting very high numbers of rapes in the Balkan wars. Its delegates could not verify those numbers, so the organization marched to its own drummer on that issue. The ICRC's care with facts has contributed to an excellent reputation for integrity and veracity. (Forsythe 2007)

In the matter of ideological bias, many governments, including those of the Democratic Republic of Congo, the People's Republic of China[16], Vietnam, Russia and the United States[17], have attacked AI for what they assert is one-sided reporting or a failure to treat threats to security as a mitigating factor. The actions of these governments — and of other governments critical of AI — have been the subject of human rights concerns voiced by Amnesty.

Still, the ICRC often agonizes over the compromises it makes. Forsythe (2005) describes ICRC as an organization haunted by its irresponsibility during the Holocaust. The ICRC never achieved meaningful access to the Nazi camps. But it also remained silent during the extermination of the Jews, apparently not wanting to jeopardize its access to Allied prisoners of war by publicly condemning the genocide. The ICRC's reticence reflected official Swiss neutrality. The ICRC seeks to curb state

[16] The U.S.-China Policy Foundation (2001), "The U.S. and China this Week", URL: http://www.uscpf.org/news/2001/02/021601.htm, Accessed on 20 May 2009.

[17] The White House, Press Briefing by Scott McClellan, on May 25, 2005; URL: http://georgewbush-whitehouse.archives.gov/news/releases/2005/05/20050525-3.html#1, Accessed on 20 May, 2009.

abuses on the basis of state consent, and its observance of neutrality and confidentiality is laced with compromise. During the Iran-Iraq War, the ICRC was silent about Saddam Hussein's gassing of Kurds at Halabja out of fear that Saddam might withdraw access to Iranian prisoners of war. However the ICRC's institutional caution and almost innate deference to state authority does not render the group simply stodgy or ineffective according to Forsythe (2005).

Chapter 3

AI and ICRC: Approaches to Terrorism and Counter-Terrorism

Terrorism and counter-terrorism[1] is a topic that is much debated today. Though the problem of terrorism is not a new one, for some years now the terrorist threat has increased and spread throughout the world. Although the terrorist attacks of 11 September 2001 against the United States in Pennsylvania, the World Trade Centre in New York and the Pentagon in Virginia are striking because of the horrifying number of their victims (3,000 people), they are however all the more remarkable on account of the unprecedented series of anti-terrorist measures they unleashed.

While the efforts by states to eliminate terrorism as a threat have been welcomed by human rights NGOs they have been not too pleased about the ways and means adopted by states to pursue the goal. The need for holistic approach in addressing the issue is emphasised in place of narrow military based approaches. While condemnation of terrorist activities by the international community has been unanimous and unequivocal, efforts to regulate this phenomenon have been marred by differences of approach and competing concerns.[2]

In the fight against terrorism, human rights standards have been set aside too often in favour or illegal arrests, renditions, torture or inhuman treatment, discrimination and other human rights violations. Rights have been further undermined by populist attempts to portray human rights activists or critics of government policies as terrorist sympathizers; the willingness of some decision makers to include diluted human rights standards into policies to make the policies appear acceptable; and an effort to justify some policies as human rights compliant when in fact they are not (OSCE 2007).

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[1] This is a term used to describe a range of measures and operations aimed at preventing and combating further terrorist attacks. These measures could include armed conflict.

[2]Statement by Jovan Patrnogic, President of the International Institute of Humanitarian Law, at the *"Meeting of Independent Experts on Terrorism and International Law: Challenges and Responses. Complementary Nature of Human Rights Law, International Humanitarian Law and Refugee Law,"* organized by the International Institute of Humanitarian Law in Sanremo, 30 May – 1 June 2002.

The EU categorically condemns all acts of terrorism as criminal and unjustifiable, irrespective of their motivation, forms and manifestation. It firmly believes that those who perpetrate, organise and sponsor terrorist acts must be brought to justice and duly punished. The Union believes, however, that the battle against this scourge must be carried out in accordance with international law, including human rights conventions and, in case of an armed conflict, established humanitarian precepts.

In the aftermath of the criminal terrorist attacks of 11 September, Mary Robinson, the then UN High Commissioner of Human Rights characterized what had occurred as a crime against humanity. In her opinion, terrorism should not only be combated with legislative and security measures but also with an armoury of common values, common standards and common commitments on universal rights that define us as one global community and which enable us to reach beyond our differences[3]. The former Secretary-General of the UN Kofi Annan has stated that:

> ... [There] is no trade-off between effective action against terrorism and the protection of human rights ... [While] we certainly need vigilance to prevent acts of terrorism, and firmness in condemning and punishing them, it will be self-defeating if we sacrifice other key priorities – such as human rights – in the process.[4]

3.1. International Humanitarian Law, Terrorism and ICRC

There is a special relationship between the ICRC and international humanitarian law (IHL), which expressly recognizes the mission of the ICRC and provides a legal basis for the mandate conferred on it by the international community. The ICRC has been at the origin of or involved in the codification of most of international humanitarian law as it stands today (Kellenberger 2006)[5].

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[3] Statement by Mary Robinson, United Nations High Commissioner for Human Rights (1997-2002) , at the opening of the 58th Session of the Commission on Human Rights, Geneva, 18 March 2002 at http://www.nhri.net/pdf/58CHR-HCStatement18%20March.pdf, Accessed 13 April, 2009.

[4] Statement made by UN Secretary-General Kofi Annan to the Security Council on 18 January 2002, UN Document S/PV.4453, p. 3.

[5] 19-10-2006 Official Statement Challenges faced by ICRC and international humanitarian law (IHL) Speech delivered by Dr. Jakob Kellenberger, President of the ICRC, at Georgetown University, Washington, URL: http://www.icrc.org/web/eng/siteeng0.nsf/html/kellenberger-statement-191006, Accessed 14 November 2008.

The current visibility of IHL is in large measure due to what is known as the "war against terrorism". The horrific attacks of 11 September 2001 and the response thereto brought about a fairly widespread questioning of the adequacy of international humanitarian law to deal with current forms of violence. The main question asked was whether the existing body of IHL rules is indeed capable of addressing "terrorism". ICRC clarified that terrorism, and by necessary implication, counter-terrorism, is subject to humanitarian law when, and only when, those activities rise to the level of armed conflict. Otherwise, the standard bodies of domestic and international criminal and human rights laws will apply.

In ICRC's view, international humanitarian law and human rights law must both be respected in the fight against terrorism: IHL when the violence has reached armed conflict level, in addition to human rights law, and human rights law when it has not. IHL and human rights law are distinct, but complementary bodies of law whose application, along with refugee law where appropriate, provides a framework for the comprehensive protection of persons in situations of violence. It is of some concern, therefore, that IHL and human rights are sometimes claimed to be mutually exclusive.[6] After the Second World War, the idea that human rights should be guaranteed worldwide gathered momentum and not only led to the conclusion of conventions on human rights but also gave a vigorous impulse to humanitarian law. Without the impetus of human rights, the adoption of the two Protocols of 1977 additional to the Geneva Conventions would not have been possible. It is therefore right to say that there is a close relationship between human rights and humanitarian law (Schindler 1979).

IHL - sometimes also called the Law of Armed Conflict or the Law of War - does not provide a definition of terrorism, but prohibits most acts committed in armed conflict that would commonly be considered "terrorist" if they were committed in peacetime. IHL specifically mentions and in fact prohibits "measures of terrorism" and "acts of terrorism". The Fourth Geneva Convention (Article 33) states that "Collective penalties and likewise all measures of intimidation or of terrorism are prohibited",

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[6] 14-09-2004 Official Statement The relevance of international humanitarian law in contemporary armed conflicts Committee of legal advisers on public international law (CADHI), 28th meeting Lausanne, 13-14 September 2004 - Intervention by Dr. Jakob Kellenberger, President of the ICRC http://www.icrc.org/Web/eng/siteeng0.nsf/html/66EMA9, Accessed 22 Dec 2008.

while Additional Protocol II (Article 4) prohibits "acts of terrorism" against persons not or no longer taking part in hostilities. The main aim is to emphasise that neither individuals, nor the civilian population may be subject to collective punishments, which, among other things, obviously induce a state of terror. Both Additional Protocols to the Geneva Conventions also prohibit acts aimed at spreading terror among the civilian population. "The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited" (AP I, Article 51(2) and AP II, Article 13(2)).

Whether or not an international or non-international armed conflict is part of the "global war on terror" is not a legal, but a political question. The designation "global war on terror" does not extend the applicability of humanitarian law to all events included in this notion, but only to those which involve armed conflict. Terrorist acts may occur during armed conflicts or in time of peace. As international humanitarian law applies only in situations of armed conflict, it does not regulate terrorist acts committed in peacetime as per the stand taken by ICRC.

The requirement to distinguish between civilians and combatants, and the prohibition of attacks on civilians or indiscriminate attacks, lies at the heart of humanitarian law. In addition to an express prohibition of all acts aimed at spreading terror among the civilian population (Art. 51, para. 2, Protocol I; and Art. 13, para. 2, Protocol II), IHL also proscribes the following acts, which could be considered as terrorist attacks:

- attacks on civilians and civilian objects (Arts. 51, para. 2, and 52, Protocol I; and Art. 13, Protocol II);
- indiscriminate attacks (Art. 51, para. 4, Protocol I); attacks on places of worship (Art. 53, Protocol I; and Art. 16, Protocol II);
- attacks on works and installations containing dangerous forces (Art. 56, Protocol I; and Art. 15, Protocol II);
- the taking of hostages (Art. 75, Protocol I; Art. 3 common to the four Conventions; and Art. 4, para. 2b, Protocol II);
- murder of persons not or no longer taking part in hostilities (Art. 75, Protocol I; Art. 3 common to the four Conventions; and Art. 4, para. 2a, Protocol II).

Apart from prohibiting the above acts, humanitarian law contains stipulations to repress violations of these prohibitions and mechanisms for implementing these obligations, which are much more developed than any obligation that currently exists under international conventions for the prevention and punishment of terrorism.[7] Humanitarian law is quite at home with the War on Terror when it amounts to armed conflict. When the War on Terror does not meet the criteria for armed conflict, it is not that humanitarian law is inadequate, but rather that its application is inappropriate (Rona 2003).

3.2. ICRC's position on Terrorism and Counter-Terrorism

ICRC strongly condemns acts of violence which are indiscriminate and spread terror among the civilian population. It has voiced its condemnation of such acts on many occasions, including after the attacks in the USA on 11 September 2001. Jakob Kellenberger, ICRC president, says the organization condemns indiscriminate terrorist attacks unreservedly, but insists that the response to them must remain within the framework of the law in an article published in the *Financial Times* (UK) on 19 May 2004.

However, much of the ongoing violence taking place in other parts of the world that is usually described as "terrorist" is perpetrated by loosely organized groups (networks), or individuals that, at best, share a common ideology. On the basis of currently available factual evidence ICRC is doubtful whether these groups and networks can be characterised as a "party" to a conflict within the meaning of IHL. Even if IHL does not apply to such acts they are still subject to law. Irrespective of the motives of their perpetrators, terrorist acts committed outside of armed conflict should be addressed by means of domestic or international law enforcement, but not by application of the laws of war according to ICRC.

On the "War Against Terrorism" which include armed conflict, ICRC is of the stand that countries that engage in military operations against their enemies - such as in Afghanistan from October 2001 - are bound by international humanitarian law (IHL): they must spare anyone who does not take part in the hostilities or who no longer does so. This includes civilians as well as wounded and detained enemy combatants. ICRC

[7] See http://www.icrc.co.za/Web/eng/siteeng0.nsf/html/5L2BUR.

believes that adherence to IHL in times of war will prevent the loss of innocent lives, curb unnecessary suffering and ensure that people are treated justly.

The ICRC has carried out over 30 visits to Guantanamo since January 2002 and regularly visited detainees held by the US in Iraq and in Afghanistan. It is determined to continue its visits to Guantanamo until the facility is closed. The ICRC welcomed the various detention-related decisions taken by the United States and formalized in several Executive Orders issued by President Obama on 22 January 2009. It particularly welcomed the decision to provide the ICRC with notification of all detainees held by the United States in any armed conflict and timely access to them. With regards to the closure of the detention facility at Guantanamo Bay and the suspension of the Military Commissions held there, the ICRC believes these initiatives will offer the opportunity for a thorough review of the status of all persons interned at Guantanamo and of the conditions and procedures governing their fate.

The ICRC has long maintained that it is possible to fight terrorism effectively while treating those in one's power, such as detainees, with respect for their humanity and dignity, as stipulated by international humanitarian law and other relevant legal frameworks. There is no contradiction between State security and the protection of the rights and liberties of individuals[8].

Tomorrow's conflicts are likely to be accompanied by increasing acts of sabotage and terrorism, which will no doubt lead to mounting pressure for public condemnation. While it is legitimate to condemn acts aimed at spreading terror, such criticism makes it all the more difficult to maintain the trust of the local population who may view the perpetrators as heroes. On the other hand, endeavouring to uphold the law that confers protection on people suspected of having committed such crimes is sometimes viewed with suspicion by those who support the fight against terrorism.

It is imperative that terrorism be fought, but it would be self-defeating for that fight to lead to lower international standards of protection for the rights and liberties of

[8] Statement by the ICRC President Jakob Kellenberger, in his address at the 60th Annual Session of the UN Commission on Human Rights, Geneva, on 17 March 2004, URL: http://www.icrc.org/Web/eng/siteeng0.nsf/html/5X6MY5

individuals. Simply put, one of the important moral and legal challenges currently facing the international community is to fight this form of violence effectively while maintaining the safeguards for human dignity and life laid down in international humanitarian and human rights law (Kellenberger 2004).

3.3. ICRC's position on the "war on terrorism"

Since the September 11 terrorist attacks on America in 2001, acts intended to spread terror among civilians and the measures taken to stop them have taken on a new dimension. Terrorist acts that indiscriminately target and massacre civilians are a direct negation of the fundamental values at the heart of international law. The ICRC condemns such crimes without reservation. It also insists that the response to them must be carried out within the limits set by international law. When the fight against terror amounts to an armed conflict, states are obliged to observe the principles of international humanitarian law even when their security is at stake. This means that people deprived of their liberty cannot be detained and interrogated outside of an appropriate legal framework (Kellenberger 2004).

The struggle against terrorism can only be legitimate as long as it does not undermine basic values shared by humanity. The right to life and to protection against murder, torture and degrading treatment must be at the heart of the actions of all those involved in this struggle. This fight will lose credibility if it is used to justify acts otherwise considered unacceptable, such as the killing of people not participating in hostilities. The world should not need any photographs of torture and ill treatment of prisoners to remember that the protection of human life and dignity is everyone's concern and requires action.[9]

Specific aspects of the so-called "war on terrorism" launched after the attacks against the United States on 11 September 2001 amount to an armed conflict as defined under IHL. The war waged by the US-led coalition in Afghanistan that started in October 2001 is an example. The 1949 Geneva Conventions and the rules of customary

[9] See 19-05-2004, Press article by Jakob Kellenberger: Protecting life and dignity: "No war is above international law", URL: http://www.icrc.org/Web/eng/siteeng0.nsf/html/5Z5DKQ.

international law were fully applicable to that international armed conflict, which involved the US-led coalition, on the one side, and Afghanistan, on the other side.

Most of the measures taken by states to prevent or suppress terrorist acts do not amount to armed conflict. Measures such as intelligence gathering, police and judicial cooperation, extradition, criminal sanctions, financial investigations, the freezing of assets or diplomatic and economic pressure on states accused of aiding suspected terrorists are not commonly considered acts of war. "Terrorism" is a phenomenon. Both practically and legally, war cannot be waged against a phenomenon, but only against an identifiable party to an armed conflict. For these reasons, it would be more appropriate to speak of a multifaceted "fight against terrorism" rather than a "war on terrorism".

3.4. ICRC's approach towards persons detained in the fight against terrorism

In the context of the "war on terror" some countries have adopted legislation allowing the indefinite detention of terrorism suspects. Particularly worrisome are certain pieces of legislation adopted in countries that are bound by the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms, and the American Convention on Human Rights. Since January 2002 more than 700 persons have been held as terrorism suspects at the United States naval base in Guantánamo Bay, Cuba, pursuant to a Military Order issued by President George W. Bush: "Detention, Treatment and Trial of Certain Non-Citizens in the War against Terrorism." They did not even have the right to habeas corpus and were deemed to be in a "legal black hole" [10](Zayas 2005).

ICRC takes a case-by-case approach to the legal qualification of situations of violence arising in the fight against terrorism. ICRC does not believe that IHL is the overarching legal framework. It is applicable only to armed conflicts. Where the situation does not meet the threshold of armed conflict, it is other bodies of law that regulate the lawfulness of detention of persons without criminal charge.

[10] On 28 June 2004, by a six to three judgment, the Supreme Court of the United States rejected the fiction of the legal black hole and held that the persons being held in Guantánamo Bay are entitled to counsel and to challenge the legality of their detention.

Under the Geneva Conventions, the ICRC must be granted access to persons detained in an international armed conflict, whether they are POWs or persons protected by the Fourth Geneva Convention. It is in this context that the ICRC has been visiting a number of persons detained, for example, as a result of the international armed conflict in Afghanistan, both in Afghanistan and at the US naval base in Guantanamo Bay, Cuba. The ICRC has repeatedly called for a determination of the precise legal status of each individual held at Guantanamo Bay, as well as for a determination of the legal framework applicable to all persons held in the fight against terrorism by the US authorities.

If the fight against terrorism takes the form of a non-international armed conflict, the ICRC can offer its humanitarian services to the parties to the conflict and gain access to persons detained with the agreement of the authorities involved. Outside of armed conflict situations, the ICRC has a right of humanitarian initiative under the Statutes of the International Red Cross and Red Crescent Movement. Thus, many persons detained for security reasons in peacetime are regularly visited by the ICRC.

Some of the existing international conventions on terrorism include specific provisions providing that states may allow ICRC access to persons detained on suspicion of terrorist activities. These provisions, as well as the ones included in IHL treaties and in the Statutes of the International Red Cross and Red Crescent Movement are in recognition of the unique role played by the ICRC, based on its principles of neutrality and impartiality.

ICRC holds that states have the obligation and right to defend their citizens against terrorist attacks. This may include the arrest and detention of persons suspected of terrorist crimes. However, this must always be done according to a clearly defined national and/or international legal framework. The indefinite detention in the "War on Terror" has been criticized by the ICRC, which has access to the detainees at Guantánamo Bay and has observed their deteriorating psychological condition, leading to a high number of suicide attempts.[11](Zayas 2005)

[11] For more details see Neil A. Lewis, "Red Cross criticises indefinite detention in Guantánamo Bay", New York Times, 10 October 2003, page 1; "Red Cross blasts Guantánamo" BBC News, 10 October 2003.

Persons detained in relation to an international armed conflict involving two or more states as part of the fight against terrorism – the case with Afghanistan until the establishment of the new government in June 2002 - are protected by IHL applicable to international armed conflicts. Captured combatants must be granted prisoner of war status (POW) and may be held until the end of active hostilities in that international armed conflict. POWs cannot be tried for mere participation in hostilities, but may be tried for any war crimes they may have committed. In this case they may be held until any sentence imposed has been served. If the POW status of a prisoner is in doubt the Third Geneva Convention stipulates that a competent tribunal should be established to rule on the issue.

Civilians detained for security reasons must be accorded the protections provided for in the Fourth Geneva Convention. Combatants who do not fulfil the requisite criteria for POW status (who, for example, do not carry arms openly) or civilians who have taken a direct part in hostilities in an international armed conflict (so-called "unprivileged" or "unlawful" belligerents) are protected by the Fourth Geneva Convention provided they are enemy nationals. Contrary to POWs such persons may, however, be tried under the domestic law of the detaining state for taking up arms, as well as for any criminal acts they may have committed. They may be imprisoned until any sentence imposed has been served.

Persons detained in relation to a non-international armed conflict waged as part of the fight against terrorism – as is the case with Afghanistan since June 2002 - are protected by Article 3[12] common to the Geneva Conventions and the relevant rules of customary international humanitarian law. The rules of international human rights and domestic law also apply to them. If tried for any crimes they may have committed they are entitled to the fair trial guarantees of international humanitarian and human rights law.

[12] The rules protect persons not or no longer taking an active part in hostilities by prohibiting murder, mutilation, torture, cruel treatment, the taking of hostages, and outrages upon personal dignity, in particular humiliating and degrading treatment. The passing of sentences without the observance of "all the judicial guarantees which are recognized as indispensable by civilized peoples" is also prohibited. The Article states that the obligations listed constitute a "minimum" that the parties are bound to apply.

The ICRC has always asked to be notified of all people detained in relation to the fight against terrorism and to have access to them. The ICRC had repeatedly expressed concern about detainees in undisclosed detention and had requested access to them. The ICRC is concerned about any type of secret detention as such detention is contrary to a range of safeguards provided for under the relevant international standards.

Over time, the protections enunciated in common Article 3 have come to be regarded as so fundamental to preserving humanity in war that its rules are now referred to as "elementary considerations of humanity" that must be observed in any type of armed conflict.[13] Common article 3 has thus become a baseline from which no departure, under any circumstances, is allowed. It applies to the treatment of all persons in enemy hands, regardless of how they may be legally or politically classified or in whose custody they may be.

All persons detained outside of an armed conflict in the fight against terrorism are protected by the domestic law of the detaining state and by international human rights law. If tried for any crimes they may have committed they are protected by the fair trial guarantees of these bodies of law. ICRC holds that no person captured in the fight against terrorism can be considered outside the law. There is no such thing as a "black hole" in terms of legal protection.

People suspected of having committed any criminal offence, including acts of terrorism, should be prosecuted. They must, however, be afforded essential judicial guarantees, including the presumption of innocence, the right to be tried by an impartial and independent court, the right to qualified legal counsel and the exclusion of any evidence obtained as a result of torture or other cruel, inhuman or degrading treatment. ICRC believes the efficient fight against terrorism and the respect of these fundamental rules are fully compatible. [14]

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[13] The rest of the Geneva Conventions, applicable only to inter-State wars, contain more elaborate safeguards enjoyed by specific categories of protected persons.

[14] Kellenberger, Jakob (2006), "Developments in US policy and legislation towards detainees: the ICRC position", an interview for the ICRC website. In the interview the organization's President, talks about the recent developments in US policy and legislation towards those detained in the fight against terrorism, [Online web], URL:.http://www.icrc.co.za/Web/eng/siteeng0.nsf/html/kellenberger interview-191006, Accessed 24 November 2008.

The ICRC has persistently asserted the obligation of the US to invoke procedures required by the Geneva Conventions to determine the status of detainees in Guantanamo and other locations, known or undisclosed. Until September 2006, the US Government said that it was treating its detainees humanely, "consistent with the principles" of international humanitarian law. Since the Supreme Court ruling in Hamdan of June 2006[15], the US government has recognized that Article 3 common to the Geneva Conventions is the minimum legal standard applicable to persons detained in the fight against terrorism. ICRC welcomed this development.

3.5. ICRC on torture

The fight against terrorism has not only led to an examination of the adequacy of IHL, but also to a re-examination of the balance between state security and individual protections, in many cases to the detriment of the latter. The ongoing debate on the permissibility of torture is an example. After decades of improvements in international standards governing the treatment of people deprived of liberty, discussions on whether torture might in some situations should be allowed have resurfaced, despite the fact that this abhorrent practice is a crime under IHL and other bodies of law and is prohibited in all circumstances.

Extra-judicial killings and detention without application of the most basic judicial guarantees have proven to be another consequence of the fight against terrorism. Other examples could be cited as well, such as the recent queries on whether the rules on the questioning of detainees depend on their legal status. ICRC opines: there is only one set of rules for the interrogation of persons detained, whether in international or non-international armed conflict, or, indeed, outside of armed conflict. Neither a prisoner of war, nor any other person protected by humanitarian law can be subjected - it must be stressed - to any form of violence, torture, inhumane treatment or outrages upon personal dignity. These and other acts are strictly prohibited by international law, including humanitarian law. Under the laws of war it is the detaining authority that bears full responsibility for ensuring that no interrogation method crosses the line.

[15] Hamdan v. Rumsfeld, 548 U.S. 557 (2006), is a case in which the Supreme Court of the United States held that military commissions set up by the Bush administration to try detainees at Guantanamo Bay lack "the power to proceed because its structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions signed in 1949." Specifically, the ruling said that Common Article 3 of the Geneva Conventions was violated.

It is a not a naive assumption that the respect for human dignity can be seen and is a long-term security investment.

3.6. AI on Terrorism

Terrorism is an assault on people's fundamental human rights. AI unequivocally condemns deliberate attacks on civilians and other human rights abuses by armed groups. The organization has persistently done so in numerous public statements and called for prompt impartial investigations and for the perpetrators to be brought to justice in accordance with international standards. As examples, AI has strongly condemned attacks in New York, Washington and Pennsylvania (USA) in September 2001, which amounted to crimes against humanity; in Bali, Indonesia in October 2002; in Casablanca, Morocco, in May 2003; in Madrid, Spain, in March 2004; in Saudi Arabia in June 2004, in Beslan, the Russian Federation, in September 2004; in London, the United Kingdom in July 2005; in Amman, Jordan, in November 2005; in Egypt in April 2006; in Mumbai, in India, in July 2006; in Afghanistan in April 2007, in Iraq in February and in Algeria in August 2008. The organization has on numerous occasions condemned such attacks in Afghanistan, Israel and the Occupied Territories, Iraq and Sri Lanka.[16]

AI condemns any deliberate attacks on civilians, whether through planting bombs in restaurants or railway stations or bringing down buildings killing thousands. The deliberate targeting of civilians constitutes a serious abuse of fundamental human rights and runs counter to basic principles of humanity. AI calls for those who commit such atrocities to be brought to justice. Deliberately attacking civilians can never be justified as per AI principles.

AI urged all armed groups and individuals to stop using violence against civilians in pursuit of their aims. In the organisation's opinion violence and terror only breed more violence and terror. AI called on leaders of armed groups to denounce human rights abuses – including torture, hostage taking and direct or indiscriminate attacks on civilians – and to take action to prevent perpetrators from repeating such abuses. Wherever possible, AI addresses its concerns directly to the leadership of such groups:

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[16] See for details AI Index: IOR 40/019/2008, [Online web], URL: http://www.amnestyusa.org/document.php?id=ENGIOR400192008

for example, in 2002 AI delegates met representatives of the Liberation Tigers of Tamil Eelam (LTTE); and in 2005 with other organizations it sent an open letter to the leader of the Communist Party of Nepal (CPN) (Maoist)[17]. AI has also met and written directly to Hamas and Hizbullah expressing its concerns.

3.7. AI on Counter-terrorism

Crucially, AI urges all governments not to respond to terror with terror. It has repeatedly exposed and condemned human rights violations committed in the name of security as well as measures that undermine fundamental human rights, such as torture and cruel, inhuman or degrading treatment. As per AI torture does not stop terror. Torture is terror.

AI does not attribute every human rights abuse to the "war on terror", but cites that it has given a new lease of life to repression. It has provided an effective smokescreen for governments to authorize arbitrary detention, torture, unfair trial, suppression of political dissent, and ethnic persecution, knowing that any international criticism will be muted.

In the context of the "war on terror", AI complains that the absolute ban on torture and other cruel, inhuman or degrading treatment has been flouted by governments around the world. States have inflicted unspeakable mental and physical suffering on detainees using methods so abhorrent and brutal that they have long been prohibited by international law.

Evidence of torture and ill-treatment by US forces in Abu Ghraib prison and other detention facilities in Iraq and Afghanistan, as well as in the US naval base at Guantánamo Bay, Cuba, shocked the world. The shock was compounded when secret documents were leaked indicating a US administration far from committed to the international prohibition on torture and other cruel, inhuman or degrading treatment.

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[17]For the letter written to Pushpa Kamal Dahal (also known as Prachanda), Communist Party of Nepal (Maoist), See, (ASA 31/046/2005), URL: http://www.amnesty.org/en/library/asset/ASA31/046/2005/en/c85a677f-d4e5-11dd-8a23-d58a49c0d652/asa310462005en.pdf, Accessed 15 February, 2009.

In the foreword to AI's Report 2005, the Secretary General of AI, Irene Khan[18], referred to the Guantánamo Bay prison as the gulag[19] of our times, entrenching the practice of arbitrary and indefinite detention in violation of international law. In the subsequent press conference, she added, "If Guantanamo evokes images of Soviet repression, "ghost detainees" – or the incommunicado detention of unregistered detainees — brings back the practice of "disappearances" so popular with Latin American dictators in the past" (AI Report 2005:3)[20].

In countries where torture and other ill-treatment were already common, governments have been encouraged by the new climate of tolerance towards such abuses. In others, draconian laws and abusive practices have been introduced. If governments use torture and other ill-treatment, they resort to the tactics of terror. Both torturers and terrorists rely on fear to achieve their aims. Both deny and destroy human dignity. Both assume the end justifies the means. Thus both states and non-state actors are under severe criticism by AI for their anti-humanity actions.

AI believes that countering terror with justice, by bringing cases before the ordinary criminal justice system, observing the requirements of due process, upholding fair trial standards and ensuring the independence of the judiciary, is the only effective response to terror (AI 2008).

3.8. AI and torture and other Human Rights violations

AI believes ill-conceived counter-terrorism strategies have done little to reduce the threat of violence or to ensure justice for victims of attacks, and much to damage human rights and the rule of law. AI's 40-page analysis titled "Human Rights Dissolving at the Borders? Counter-terrorism and EU Criminal Law"(2005) - the first analysis of its type of the overall implications of the EU's recent counter-terrorism

[18] Irene Zubaida Khan, born December 24, 1956 in Dhaka, Bangladesh, is the Secretary General of AI since 2001.

[19] The Gulag was the government agency that administered the penal labour camps of the Soviet Union. Gulag is the Russian acronym for The Chief Administration of Corrective Labour Camps and Colonies

[20] See AI Index: POL 10/014/2005; AI Report 2005 , Speech by Irene Khan at Foreign Press Association, Available at http://www.amnesty.org/en/library/asset/POL10/014/2005/en/43c5c425-fa1e-11dd-999c-47605d4edc46/pol100142005en.pdf, Accessed 3 June, 2009.

initiatives implies it is in the breach, not in the protection of human rights that security is put at risk.

Counter-terrorism policies in numerous countries have led to human rights violations well before 2001. However, the 'war on terror' launched by the USA in the wake of the 11 September 2001 attacks has had world-wide repercussions. It has undermined the rule of law and international standards and poses significant challenges to the protection of human rights worldwide in numerous countries of the world today.[21]

States have a duty to protect all those under their jurisdiction. Likewise, individuals, groups and states have a duty to respect the human rights of others. Attacks by armed groups which are indiscriminate and deliberately target civilians are grave human rights abuses and can also be crimes under international law. Such attacks can never be justified. Their perpetrators must be brought to justice, in fair proceedings that meet international human rights standards and without the imposition of the death penalty is the standpoint of AI on terrorism and counter-terrorism.

[21] See AI (2008), Index: IOR 40/020/2008, "Security and Human Rights: Counter-Terrorism and the United Nations", URL: http://www.amnesty.org/en/library/asset/IOR40/020/2008/en/c404f67f-7a73-11dd-8e5e-43ea85d15a69/ior400202008en.pdf, Accessed 15 Dec, 2008.

Chapter 4

AI and ICRC vis-a-vis Human Rights Abuses During Counter-Terrorism Activities

4.1. Terrorism, counter-terrorism and human rights

Security of the individual is a basic human right and the protection of individuals is, accordingly, a fundamental obligation of government. States therefore have an obligation to ensure the human rights of their nationals and others by taking positive measures to protect them against the threat of terrorist acts and bringing the perpetrators of such acts to justice. In recent years, however, the measures adopted by states to counter terrorism have themselves often posed serious challenges to human rights and the rule of law. Some states have engaged in torture and other kinds of ill-treatment to counter terrorism, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centres have often been disregarded. Other states have returned persons suspected of engaging in terrorist activities to countries where they face a real risk of torture or other serious human rights abuse, thereby violating the international legal obligation of non-refoulement[1] (OHCHR 2008).

The independence of the judiciary has been undermined, in some places, while the use of exceptional courts to try civilians has had an impact on the effectiveness of regular court systems. Repressive measures have been used to stifle the voices of human rights defenders, journalists, minorities, indigenous groups and civil society. Resources normally allocated to social programmes and development assistance have been diverted to the security sector, affecting the economic, social and cultural rights of many. These practices, particularly when taken together, have a corrosive effect on the rule of law, good governance and human rights. They are also counterproductive to national and international efforts to combat terrorism (OHCHR 2008).

[1] Non-refoulement is a principle in international law, specifically refugee law that concerns the protection of refugees from being returned to places where their lives or freedoms could be threatened. The principle of "refoulement" was officially enshrined in the 1951 Convention Relating to the Status of Refugees and is also contained in Art 3 of the 1984 Torture Convention.

One of the primary difficulties of implementing effective counter-terrorist measures is the waning of civil liberties and individual privacy that such measures often entail, both for citizens of, and for those detained by states attempting to combat terror. At times, measures designed by states with the aim to tighten security have been seen as abuses of power or even violations of human rights. Examples of these problems can include prolonged, incommunicado detention without judicial review; risk of subjecting to torture during the transfer, return and extradition of people between or within countries; and the adoption of security measures that restrain the rights or freedoms of citizens and breach principles of non-discrimination (Human Rights News 2004).

The absolute prohibition on torture and cruel, inhuman or degrading treatment or punishment is one of the most fundamental human rights principles and a core element of the international human rights protection system. In the decades after World War II, an ever stronger global consensus about the inviolability of this principle emerged, with even the most abusive states pledging commitment to eradicating torture and denying and concealing the occurrence of any such practices. However, in the post-September 11 period, this consensus has begun to erode and the prohibition on torture and the prohibition on torture and ill-treatment have been openly challenged in ways previously unseen. With reference to national security interests, governments have questioned the absolute nature of the ban on torture, sought to redefine the limits of what constitutes proscribed treatment and justified the use of abusive practices prohibited by international law (IHF 2006).[2]

Respect for human rights and the rule of law must be the bedrock of the global fight against terrorism. This requires the development of national counter-terrorism strategies that seek to prevent acts of terrorism, prosecute those responsible for such criminal acts, and promote and protect human rights and the rule of law. It implies measures to address the conditions conducive to the spread of terrorism, including the lack of rule of law and violations of human rights, ethnic, national and religious

[2] IHF (International Helsinki Federation for Human Rights) is an international, nongovernmental organization constituted by national Helsinki committees and Cooperating Organizations in the participating States of the Organization for Security and Cooperation in Europe (OSCE).

discrimination, political exclusion, and socio-economic marginalization; to foster the active participation and leadership of civil society; to condemn human rights violations, prohibit them in national law, promptly investigate and prosecute them, and prevent them; and to give due attention to the rights of victims of human rights violations, for instance through restitution and compensation(OHCHR 2008).

Governments have rushed through problematic laws formulating new and often vaguely-defined crimes, banning organizations and freezing their or individuals' assets without due process, undermining fair trial standards and suspending safeguards aimed at protecting human rights. Unfortunately, countries which have long claimed to be leaders in promoting human rights have now taken the lead in enacting draconian laws that have eroded human rights protection for everyone. Other states have used the climate of fear created by terrorism to enhance powers to suppress legitimate political dissent, to torture detainees, subject them to enforced disappearances,[3] or hand them over to other states in violation of the principles of non-refoulement and undermining laws governing extradition. The international law of armed conflict has been distorted or misapplied in ways that undermine its legitimacy (AI 2008).

Within three weeks of the 11 September 2001 attack, the Security Council passed resolution 1373 and imposed obligations on all states, for an indefinite period, requiring that they take a range of far-reaching measures to prevent terrorism. Other Security Council resolutions followed. They raised serious human rights concerns because of their broad and vague provisions. The Security Council's push for the criminalization and suppression of terrorism world wide, its lack of emphasis on the need to ensure that human rights must be protected in the process, and the absence of a definition on terrorism in resolution 1373 are likely to have contributed to the passing, by a number of states, of broadly phrased anti-terrorist laws since 2001 which have harmed human rights protection and fall far short of states' obligations under international human rights law. Indeed, AI believes that the Security Council-

[3] Enforced disappearance has been defined in article 2 of the Convention for the Protection of all Persons from Enforced Disappearance (2006): "enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law".

especially its five Permanent Members - has demonstrated a deep reluctance to embrace human rights in its efforts to combat terrorism. It calls for the Security Council to shoulder some responsibility for the adverse consequences for human rights, perpetrated "in the name of security" (AI 2008:6).

AI has persistently and unequivocally condemned acts of terrorism and other deliberate attacks on civilians, underlining that states have a duty to protect those under their jurisdiction from such attacks. The organization has called for prompt impartial investigations and for the perpetrators to be brought to justice in accordance with international standards. It continues to demand that all armed groups and individuals stop using violence against civilians and calls on their leaders to denounce human rights abuses including torture and other ill-treatment, hostage taking, indiscriminate attacks, or direct attacks on civilians. It acknowledges and welcomes the positive steps taken by some states to strengthen -- rather than weaken -- legal safeguards in the fight against terrorism.

Human rights are not an obstacle to security and peace; human rights are key to achieving them. Respect for human rights and the rule of law is vital for policies to halt and prevent terrorism (AI 2008). AI supports the former UN Secretary General Kofi Annan's view that there will be no development without security, no security without development, and that "we will not enjoy either without respect for human rights" (UN Report 2005: 6). Governments already underlined the close connection between these three issues (security, development, human rights) when they adopted the 1993 Vienna Declaration and Programme of Action,[4] and proclaimed that universal respect for and observance of human rights not only contributes to stability but also to improved conditions for peace and security, and social and economic development.

Adopted on 8 September 2006, the UNGA Strategy[5] was the first global attempt to agree on a set of practical action points to combat terrorism. In the Strategy, all states

[4] Adopted in the World Conference on Human Rights, Vienna, 14-25 June 1993; For full text refer to A/CONF.157/23, 12 July 1993, [Online: web] URL: http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument, Accessed 25 May 2009.

[5] See A/RES/60/288

recognize, unequivocally, that human rights are the fundamental basis for the fight against terrorism. However, AI's report, "Security and Human Rights: Counter-terrorism and the United Nations",[6] concludes that there is a huge gap between governmental rhetoric and human rights observance on the ground. Published on 3 September, a day before the UNGA review, the report also says that much more needs to be done to mainstream human rights throughout the UN system and that states must demonstrate the political will to translate stated human rights commitments into action.

AI's brief survey of countries all over the world shows that following the 11 September 2001 attacks on the USA, and attacks in other countries since, a wider range of counter-terrorism laws, policies and practices have eroded human rights protections as governments claim the security of some can only be achieved by violating the rights of others. However AI insists that "Human rights and security go hand in hand. Human rights are key to achieving peace. The only way of countering terrorism is with justice."(AI News 2008). The UN Global Strategy identifies that linkage in the clearest possible terms by "recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing"[7].

Passing anti-terrorist laws is nothing new and long-standing experiences in, for example, Northern Ireland, Israel and Malaysia[8] show that they invariably triggered violations of human rights. However, since 2001 there has been a backlash against human rights. Unfortunately, many states have failed to stand up for human rights in the face of this challenge. Other states have used the climate of fear created by terrorism to enhance powers to suppress legitimate political dissent, to torture detainees, subject them to enforced disappearances, or hand them over to other states in violation of the principles of non-refoulement and undermining laws governing

[6]See AI Index Number: IOR 40/019/2008

[7] See AI Index: IOR 40/019/2008

[8] In November 2003 Malaysia passed new counter-terrorism laws that were widely criticized by local human rights groups for being vague and overbroad. Critics claim that the laws put the basic rights of free expression, association, and assembly at risk. Malaysia persisted in holding around 100 alleged militants without trial, including five Malaysian students detained for alleged terrorist activity while studying in Karachi, Pakistan.

extradition. International law of armed conflict has been distorted or misapplied in ways that undermine its legitimacy. The perpetrators of these human rights violations are virtually never brought to justice, nor do the victims receive justice, truth or reparation (AI 2008).

In a report titled "Terror and counter-terror: Defending our human rights"[9], AI detailed how the widespread backlash against human rights in the "war on terror" has been vigorously challenged by AI and other activists around the world. The report drew attention to the conflicts and other contexts in which human rights abuses are ignored as states concentrate on national security issues. AI analysed a range of counter-terrorism initiatives where the EU has direct responsibility for ensuring adequate protection of human rights including: terrorist blacklists, European Arrest Warrant, the drawing up of minimum standards across the EU on the rights of suspects and defendants in criminal proceedings, admissibility of evidence obtained by torture, extradition and expulsion of terrorist suspects to third countries. In a detailed analysis of the EU's counter-terrorism initiatives in the area of criminal law since 11 September 2001, AI has shown that the absence of concrete human rights safeguards in many of these initiatives is likely to undermine efforts to fight terrorism in Europe (AI 2005).[10]

The 'grave challenge to rule of law and human rights' posed by counter-terrorism measures was clearly stated in the Berlin Declaration of the International Commission of Jurists, August 2004[11].

> Since September 2001 many states have adopted new counter-terrorism measures that are in breach of their international obligations. In some countries the post- September climate of insecurity has been exploited to justify long-standing human rights violations carried out in the name of national security.

[9] See AI Index: ACT 40/009/2006

[10] See AI Index Number: IOR 61/012/2005

[11] On 28 August 2004, 160 lawyers from around the world, meeting at the ICJ biennial conference in Berlin, adopted a Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism. The Declaration highlights the grave challenge to the rule of law brought about by excessive counter-terrorism measures, reaffirms the most fundamental human rights violated by those measures, and delineates methods of action for the worldwide ICJ network to address the challenge. The full text of the declaration can be viewed at http://www.icj.org/news.php3?id_article=3503?=en, Accessed 27 Feb, 2009.

The declaration pointed out that a pervasive security-oriented discourse promotes the sacrifice of fundamental human rights and freedoms in the name of eradicating terrorism (ICJ 2004).

In March 2002, Mary Robinson, the then High Commissioner for Human Rights, stated before the United Nations Human Rights Commission:

> Some have suggested that it is not possible to effectively eliminate terrorism while respecting human rights. This suggestion is fundamentally flawed. The only long-term guarantor of security is through ensuring respect for human rights and humanitarian law.[12]

4.2. AI on torture, disappearances, illegal detention and refoulement

AI included a section on confronting terrorism in the recommendations in the Madrid Agenda arising from the Madrid Summit on Democracy and Terrorism (8-11 March 2005):

> Democratic principles and values are essential tools in the fight against terrorism. Any successful strategy for dealing with terrorism requires terrorists to be isolated. Consequently, the preference must be to treat terrorism as criminal acts to be handled through existing systems of law enforcement and with full respect for human rights and the rule of law. We recommend: (1) taking effective measures to make impunity impossible either for acts of terrorism or for the abuse of human rights in counter-terrorism measures. (2) the incorporation of human rights laws in all anti-terrorism programmes and policies of national governments as well as international bodies.[13]

In a remarkable trend, both established democracies and less democratic states have attacked the prohibition on torture and ill-treatment in the name of enhancing national security, with the former setting example for the latter. While governments of long time democracies have called for a rethinking of old rules in the face of the threat of terrorism, governments of more authoritarian countries have exploited the global "war on terrorism" to reinforce longstanding abusive policies (IHF 2006:5).

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[12] Statement made by Mary Robinson, at 59th session of UNHRC, 20 March 2002, URL: http://www.unhchr.ch/hurricane/hurricane.nsf/NewsRoom?OpenFrameSet. , Accessed 15 June 2009.

[13] See AI (2005), "Human Rights Dissolving at the Borders? Counter-Terrorism and EU Criminal Law", URL: http://www.amnesty- eu.org/static/documents/2005/counterterrorism_report_final.pdf. , Accessed 15 Dec 2008

These developments threaten to erode the integrity of the international human rights protection system. As international human rights bodies repeatedly have emphasized, there is no trade-off to be made between the prohibition on torture and cruel, inhuman or degrading treatment, on the one hand, and national security interests, on the other hand, since the prohibition is without exception in any circumstances. Any admission of torture or other forms of ill-treatment amounts to a fundamental denial of human dignity – the recognition of which is the very foundation of the international protection of human rights. Moreover, any endorsement of abusive practices is, inevitably, the beginning of a slippery slope toward the uncontrollable and systematic use of torture and other inhumane methods. Thus, circumventing the prohibition on torture and ill-treatment in the fight against terrorism is not only illegal and immoral but also, ultimately, endangers the security of all (IHF 2006:5).

Kofi Annan, the former UN Secretary-General has repeatedly expressed his concerns about the human rights impact of some counter-terrorist measures, both at the Security Council and at the Human Rights Commission, saying that there must be no trade-off between human rights and fighting terrorism. The ban on torture and ill-treatment is enshrined in the Universal Declaration of Human Rights (article 5)[14] as well as in numerous international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR)[15] (article 7), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)[16] and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[17] (article 3).

Credible and well-reputed international NGOs like AI and Human Rights Watch have reported widespread and systematic abuse against detainees held in US custody in Iraq, Afghanistan and at Guantánamo Bay and shown that officially approved

[14] Adopted by General Assembly resolution 217 A of 10 December 1948. Available at http://www.unhchr.ch/udhr/index.htm

[15] Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966. Available at http://www.ohchr.org/english/law/ccpr.htm

[16] Adopted by General Assembly resolution 39/46 of 10 December 1984. Available at http://www.ohchr.org/english/law/cat.htm

[17] Adopted by the Council of Europe on 4 November 1950. Available at http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG

procedures and polices have contributed to facilitating such abuse[18](AI 2006). In a 2005 trial related to the September 11 events, the Higher Regional Court of Hamburg admitted evidence possibly obtained through torture. The information consisted of summaries of statements made by three terrorist suspects held by the United States at undisclosed locations. The US refused to allow for questioning of the suspects and also rejected a request to provide details about the circumstances in which they had been interrogated. The German authorities declined to make available information given to them by the US on grounds that this would lead to "the disruption of diplomatic and secret service relations."

Despite numerous and credible reports by NGOs and media about torture and ill-treatment against terrorist suspects held in US custody, the court concluded that available information did not provide proof that the statements made by the three terrorist suspects had been extracted under duress and therefore accepted them as evidence. Among others, AI seriously criticized this decision, saying that it was in flagrant violation of Germany's obligations under international law to investigate complaints of torture and ill-treatment and to exclude such statements in court .[19]

Establishing an important precedent, the judicial committee of the House of Lords (known as the "Law Lords") ruled in December 2005 that evidence extracted under torture must never be used in UK courts. The case dated back to 2002, when a number of foreign nationals certified as "suspected international terrorists" and subjected to indefinite detention without charge under the Anti-terrorism, Crime and Security Act 2001 (ATSCA) appealed against their detention to the Special Immigration Appeals Commission (SIAC). The men argued, among other things, that the decision to detain them was based on statements obtained through torture of detainees held by the United States. After considering the case, the SIAC confirmed the legality of the men's detention, concluding that the government was entitled to invoke evidence

[18] See, for example, AI, USA - Supplementary Briefing to the UN Committee against Torture, May 2006, Available at http://web.amnesty.org/library/Index/ENGAMR510612006?open&of=ENG-USA; Human Rights Watch, "No Blood, No Foul" - Soldiers' Accounts of Detainee Abuse in Iraq, July 2006, Available at http://www.hrw.org/reports/2006/us0706/.

[19] See AI (2005), "Germany: Hamburg court violates international law by admitting evidence potentially obtained through torture," 18 August 2005, Available at http://web.amnesty.org/library/print/ENGEUR230012005, Accessed 18 April 2009.

extracted under tortured inflicted by foreign officials provided that UK officials have "neither procured nor connived" at the torture. The SIAC decision was subsequently upheld by the Court of Appeal in August 2004 before the Law Lords unanimously overturned it, holding that torture evidence is always inadmissible before UK tribunals, even in terrorism cases. Human rights groups hailed the Law Lords ruling as landmark decision. The AI welcomed the ruling then[20].

In the aftermath of September 11, there have been a growing number of cases in which OSCE (Organization for Security and Co-operation in Europe) governments have violated their international obligations by sending individuals to countries where there are substantial grounds for believing that these individuals may be in danger of being subjected to torture or ill-treatment. In its post-September 11 campaign against terrorism, the US government has repeatedly transferred terrorist suspects to countries with well-established records of torture and ill-treatment for the purpose of detention and interrogation. These transfers have frequently been carried out through so-called extraordinary rendition, whereby suspects have been apprehended and handed over to other countries without any formal legal procedure.

The US government has claimed that it does not send persons to countries where it is "more likely than not" that they will be subjected to torture and, when deemed appropriate, it seeks "assurances" from receiving countries that those transferred will not be tortured. There is, however, ample evidence that such assurances do not provide effective protection against abuse, and in many cases, there are strong indications that US transfers of terrorist suspects have been carried out with the specific aim of facilitating abusive interrogation. As noted by the Human Rights Committee, there are "numerous well-publicized and documented allegations" that persons sent to third countries by the US government have received treatment "grossly violating" the ban on torture and ill-treatment. Among cases that have been disclosed are the renditions of terrorist suspects to abuse in countries such as Egypt, Syria, Morocco, Saudi Arabia and Jordan (AI 2006).

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[20] See AI (2005), "Law Lords confirm that torture 'evidence' is unacceptable," 8 December 2005, Available at http://news.amnesty.org/index/ENGEUR450572005; Human Rights Watch, "Highest Court Rules out Use of Torture Evidence," 8 December 2005, Available at http://hrw.org/english/docs/2005/12/08/uk12171.htm.

In other cases, terrorist suspects have "disappeared" into secret detention facilities operated by the US, where so-called enhanced techniques have been used to interrogate detainees. By holding an unknown number of terrorist suspects in undisclosed detention facilities, in some cases apparently for several years, the United States effectively placed these persons outside the protection of the law. Their treatment was not monitored by court or independent bodies, such as the ICRC, and they were not allowed to be in contact with their lawyers or families. They were in effect "disappeared."

In an article published in November 2005, the *Washington Post* reported that the United States was holding terrorist suspects in numerous secret detention facilities around the world (Dana Priest 2005). These reports were corroborated by research findings of NGOs, which already previously had alerted that the US government was using tactics of "disappearances" and secret detention in its "war on terror." At the time, the allegations were neither confirmed nor denied by the US government. However, in September 2006, then US President Bush eventually acknowledged the existence of a program of secret prisons run by the CIA. Without disclosing the exact locations of any secret detention facilities, he said that those held at these detention facilities had been interrogated through an "alternative set of procedures," which reinforced concerns about the use of interrogation techniques amounting to torture and ill-treatment.

At the heart of the definition of torture in the UN Convention against Torture[21] is the intentional infliction of severe physical or mental pain or suffering for purposes such as obtaining information or a confession, or punishing, intimidating or coercing someone. The prohibition of torture is one of the few norms recognized under international law as an absolute or peremptory right (*jus cogens*) allowing therefore no exception under any circumstance. The Coalition Of International Ngos Against

[21] See A/RES/39/46, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984, Available at http://www.un.org/documents/ga/res/39/a39r046.htm, Accessed 9 March, 2009.

Torture (CINAT)[22] of which AI is a member, has developed a common position on the status of the prohibition of torture and other forms of cruel, inhuman and degrading treatment or punishment under international law.

AI believes everyone has the right to be free from torture and cruel, inhuman or degrading treatment or punishment ('other ill-treatment'), according to Article 5 of the Universal Declaration of Human Rights. The organization has documented torture for decades, including in situations where governments invoked the threat of terrorism to cover up or justify its use. But actions in recent years taken by states in the name of counter-terrorism threaten to weaken respect for the absolute prohibition of torture and show the need to reinforce understanding of its importance. According to AI every act of torture or other ill-treatment is morally repugnant – an offence to human dignity.

Some of the measures that governments have taken in response to the attacks of 11 September 2001, as well as attacks or the threat of attacks in other countries since then, have amounted to a serious assault on the framework of human rights protection. States have used torture and other ill-treatment and have tried to justify this in the name of security, and to confer impunity on the perpetrators. Some have sought to avoid their obligations and responsibility by conceding that "torture" is wrong and illegal, while at the same time trying to introduce definitions of "torture" and "cruel, inhuman or degrading treatment" at the national level that exclude particular techniques or circumstances[23].

The photographs of US soldiers humiliating and terrorizing detainees in Abu Ghraib shocked the world when they were published in 2004 and brought the issue of torture to the centre of the analysis of the 'war on terror'. The pictures followed numerous allegations of torture and other ill-treatment reported from US detention centres in

[22] CINAT is a coalition of the following seven international NGOs: World Organization Against Torture (OMCT), AI (AI), Association for the Prevention of Torture (APT), International Federation of ACAT - Action by Christians for the Abolition of Torture (FIACAT), International Commission of Jurists (ICJ), International Rehabilitation Council for Torture Victims (IRCT), REDRESS: Seeking Reparation for Torture Survivors.

[23] See http://www.amnesty.org/en/campaigns/counter-terror-with-justice/issues/no-justification-for-torture

Afghanistan, Iraq and Guantanamo. The Abu Ghraib scandal and pressures from human rights advocacy groups like AI prompted top US officials to condemn the exposed abuses and to initiate limited investigations into, and reviews of, detention practices.

The US administration has authorised interrogation methods – including stress positions, prolonged isolation, sensory deprivation and simulated drowning – that constitute torture or other ill-treatment under international law. The US government has operated a programme of rendition – transferring individuals suspected of terrorism from one state to another without due process, including to countries where they face a real risk of torture and other ill-treatment – as well as a program of secret detention, in which detainees have become victims of enforced disappearance.

Governments in countries including the United States, Austria, Canada, Germany, Italy, the UK and Sweden have sought and accepted "diplomatic assurances" from receiving states that detainees will not face torture or other serious human rights violations. These "assurances" are essentially unenforceable promises and, in accepting them, the sending state effectively acknowledged the torture of other detainees in the receiving country. In cases where the promise of proper treatment has been broken, the individuals involved have suffered drastic consequences. Rather than asking for exemptions for a few individuals, states must instead work together to ensure that all torture and other ill-treatment end. AI vehemently campaigns that diplomatic assurances should be condemned and abandoned[24].

As the most powerful country in the world, the USA's conduct influences governments everywhere, encouraging the spread of unacceptable practices and giving comfort to those who commit torture routinely. AI's campaign to stop torture and ill-treatment in the "war on terror" calls on the USA to take a lead in reasserting and upholding the values of human dignity that it proclaims. These values have been betrayed by the US government in its pursuit of the "war on terror", and other states have been quick to follow suit.

[24] See http://www.amnesty.org/en/campaigns/counter-terror-with-justice/issues/no-justification-for-torture

"All indicated that they had been horribly treated, particularly in Afghanistan and Pakistan... The stories they told were remarkably similar – terrible beatings, hung from wrists and beaten, removal of clothes, hooding, exposure naked to extreme cold, naked in front of female guards, sexual taunting by both male and female guards/interrogators, some sexual abuse (rectal intrusion), terrible uncomfortable positions for hours. All confirmed that all this treatment was by Americans...
Several mentioned the use of electric shocks – like ping pong paddles put under arms – some had this done; many saw it done." (From the notes of a US lawyer after meeting Kuwaiti detainees in Guantánamo Bay in January 2005)[25]

Some governments have used the rhetoric of the "war on terror" to justify or intensify old patterns of repression. These include China, Egypt, Malaysia, Saudi Arabia, Uzbekistan and Yemen. Other states have introduced or intensified the use of draconian laws and abusive practices. Among these are Australia, Jordan and the UK, as well as countries in the Gulf region. Some countries, including Germany, Turkey and the UK, have been reluctant to take up the cases of their nationals or residents detained and ill-treated by US agents. Still others, such as Egypt, Gambia, Kazakstan, Kyrgyzstan, Morocco, Pakistan and Sweden, have allowed foreign agents from countries including China, Egypt, Syria and the USA, to take people illegally from their territory. In countries where torture and ill-treatment are rife, governments have been encouraged by the new climate of tolerance towards such abuses. Such countries include Pakistan, Russia, Syria and Yemen to name but a few(AI 2005).

The Guantánamo detention facility has been just one part of a wider system of indefinite and secret detentions, enforced disappearance, renditions and torture and other ill-treatment. The detention camp at Guantánamo casts a dark shadow on the USA's human rights record. The camp has become synonymous with violations of human rights and a symbol of government abandoning its international legal obligations.

[25] See http://www.amnesty.org.uk/content.asp?CategoryID=2039, for testimonies of detainees who underwent torture, abuse and ill-treatment.

Nearly 800 people have been held at Guantánamo since 11 January 2002; the majority without charge or prospect of a fair trial, no or limited access to lawyers, and no visits from their families. In January 2009 approximately 250 continue to languish there, most in cruel, inhuman and degrading conditions. About two dozen have been charged for unfair trials by military commissions with at least six of them facing the possibility of a death sentence. Guantánamo has been the visible – though far from transparent - tip of an iceberg of indefinite and secret detentions, rendition and torture and other ill-treatment.[26]

The Abu Ghraib scandal prompted top US officials to condemn the exposed abuses – although maintaining they were the atypical actions of a few soldiers – and to restate US opposition to torture (but not to other ill-treatment). However, more than a year after the photos were published, and despite mounting evidence of continuing torture and other ill-treatment committed by US agents, not one has been prosecuted for torture or other war crimes under US law. Only a handful of low-ranking soldiers have been charged under military law with assault and cruelty to prisoners. No one higher up the chain of command has been charged[27].

Every government has the duty to take steps to protect people from violent attacks. But they may not use methods that flout human rights. The ban on torture and ill-treatment remains absolute, in all circumstances. If governments use torture and ill-treatment, they are resorting to tactics of terror. Both torturers and terrorists rely on fear to achieve their aims. Both negate the very basis of human dignity and decency. Both torture and terrorism should be rejected absolutely, with no exceptions according to AI.

AI is of the opinion that real security can only be achieved through strengthening the human rights framework, not through undermining it by resorting to unlawful practices such as torture. Torture and other ill-treatment:

- ... are always wrong, regardless of what the suspect is thought to know or to have done

[26] See http://www.amnesty.org/en/campaigns/counter-terror-with-justice/issues/illegal-detentions.

[27] See http://www.amnesty.org/en/library/asset/ACT40/010/2005/en/dom-ACT400102005en.pdf

- ... are banned absolutely under international law
- ... are unreliable interrogation techniques
- ... spread and, once authorized, are never limited to "just once"
- ... corrode the rule of law and undermine the criminal justice system
- ... do not make us safer
- ... can never, ever, be justified

4.3. AI's Counter Terror with Justice Campaign

AI launched Counter Terror with Justice Campaign to ensure human rights abuses are investigated and prosecuted. AI responded to the threat to perhaps the most universally accepted human right – the right not to be tortured – by launching an international campaign: Cruel. Inhuman. Degrades Us All. Stop Torture and Ill-treatment in the "War on Terror". It calls on all governments to: stop the abuses by condemning and prohibiting all torture and other ill-treatment; investigate all allegations of such abuses; prosecute any official who condones, acquiesces in or commits torture or ill-treatment.

In its international campaign against abuses in the "war on terror", AI exposed and denounced hundreds of cases of torture and other grave violations of human rights claimed by states to be a necessary response to security threats. AI also strongly condemned deliberate attacks on civilians and indiscriminate attacks by armed groups. AI convened a two-day gathering of human rights organizations from the Middle East in Lebanon in January. The participants concluded that no detainees should be transferred from one country to another on the basis of mere diplomatic assurances that they would not be tortured or otherwise ill-treated after transfer, and that memorandums of understanding to that effect between the UK government and governments in the Middle East and North Africa undermined the absolute prohibition of torture and other ill-treatment.

AI and other human rights groups submitted a brief to the European Court of Human Rights in the case of Ramzy vs. the Netherlands, seeking to uphold the absolute prohibition in law against transferring a person to a state where they risk torture. The US programme of renditions – the secret transfer of individuals from one country to another, bypassing judicial and administrative due process – was analysed in April

2006 report titled" USA: Below the radar – Secret flights to torture and "disappearance"[28]

The active involvement of European states in US rendition flights, or their denial of any knowledge about them, was spotlighted in AI's June report.[29]AI lobbied Council of Europe (CoE) member states to investigate these abuses themselves and to cooperate fully with CoE investigations, and called for CoE guidelines on controls of domestic and foreign secret services and of transiting air traffic. In its report published in August, AI detailed how the widespread backlash against human rights in the "war on terror" has been vigorously challenged by AI and other activists around the world[30]. The report drew attention to the conflicts and other contexts in which human rights abuses are ignored as states concentrate on national security issues.

AI Switzerland and AI Austria asked all their local members of parliament in 2005 to sign a declaration reaffirming the absolute prohibition of torture. AIUSA hosted an online discussion in August 2006 with former army interrogator Peter Bauer. Their collaboration led to other former interrogators telling the US Congress that torture and other ill-treatment are unnecessary to win the "war on terror"[31].

AI Australia organized a national newspaper advertisement listing eminent Australians supporting AI's statement against torture. People at Adelaide airport dressed up as flight attendants and prisoners in orange jumpsuits for the Air Torture campaign, garnering national media coverage. AI Sweden organized activities in 32 cities on human rights day in 2005 with the message "Torture is Never OK". AI France created an online viral campaign to spread the message against renditions, also working closely with rap artist Leeroy Kesiah.

After intensive lobbying by AIUSA and others of members of Congress, US senators voted 90-9 in October 2005 to incorporate the McCain amendment into a defence

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[28] See AI Index: AMR 51/051/2006.

[29] See AI Index: EUR 01/008/2006

[30] See AI Index: ACT 40/009/2006

[31] Read the interrogators' statement at www.amnestyusa.org/denounce_torture/statement_on_interrogation.pdf, Accessed 13 March, 2009.

spending bill, affirming the ban on cruel, inhuman and degrading treatment of detainees. The bill was signed into law in December 2005.

4.4. AI's demands on US government

The "war on terror" does not justify violations of international human rights law. AI accuses the U.S. government that in the name of the "war on terror," has subjected people who have not been charged with or convicted of any crime to:

- Torture and other cruel, inhuman, or degrading treatment or punishment
- Abductions (known as extraordinary rendition), "disappearances," and secret detention
- Illegal and indefinite detention in Guantanamo, Bagram, other U.S. facilities, and secret CIA sites
- Denial of legal rights, including fair trials and habeas corpus--the right to challenge the legality of one's detention

AI has condemned that these practices are wrong. The AI called on the United States government to end these human rights violations immediately and hold accountable all those who authorized and implemented them. In its opinion detainees must be charged and given fair trials, or be released to countries where they will not be at risk of human rights abuse. The AI has urged the U.S. government must respect and protect human rights, and counter terror with justice.

AI is of the opinion that the rules and procedures governing military commission trials at Guantánamo are at odds with international law. The system is deeply flawed and should be abandoned. On 17 October 2006, former US President George W. Bush signed into law the Military Commissions Act. The law, among other things, authorizes the President to convene military commissions to try non-US nationals whom the US government considers to be "unlawful enemy combatants".

Trials under the Military Commissions Act do not meet international standards. For example, this legislation:

- authorizes trials by military commission which are not independent of the branches of government that have authorized and condoned human rights violations against those who will appear as defendants;
- allows military commissions to admit into evidence information obtained under cruel, inhuman or degrading treatment, and other unlawful practices;
- restricts the right of defendants to be represented by counsel of choice;
- discriminates on the basis of national origin. US nationals accused of the same offences would be tried by courts applying higher standards;
- allows the government to pursue and obtain death sentences after unfair trials. Even if a detainee is acquitted by military commission, he can be returned to military detention as an "enemy combatant".

AI wants the US government to repeal or substantially amend the Military Commissions Act; abandon military commission trials; release detainees at Guantánamo unless they are to be charged and tried in ordinary civilian courts in the USA, drop any pursuit of the death penalty; close Guantánamo for good;[32] end secret detention and bring all detentions into full compliance with international law; establish an independent commission of inquiry into all aspects of US detentions in its "war on terror".

The so-called "war on terror" has led to an erosion of a whole host of human rights. States are resorting to practices which have long been prohibited by international law, and have sought to justify them in the name of national security. AI has consistently condemned the acts of terrorism in recent years that have left thousands of civilians dead or injured. AI is clear, however, that real security from such attacks can only be achieved through strengthening the human rights framework, not through undermining it by resorting to unlawful practices. AI is campaigning to challenge counter-terrorism measures that erode respect for human rights.

With the executive order issued by the US President Barack Obama on the closure of Guantánamo, a coalition of human rights organizations is calling on EU foreign ministers to help close the detention facility in Cuba. The ministers were urged to help by offering humanitarian protection to detainees at risk of torture or other serious

[32]See http://www.amnesty.org/en/campaigns/counter-terror-with-justice/issues/military-commissions

human rights violations if returned to their home countries. The letter was signed by AI, the Centre for Constitutional Rights, Human Rights Watch, La Federation internationale des ligues droits de l'Homme (FIDH) and Reprieve[33].

AI's Secretary General Irene Khan has called President Barack Obama's executive order to close the Guantánamo detention facility "a major step forward". AI has welcomed the new US administration's moves to suspend military commission proceedings at Guantánamo as a "positive sign". The organization said that it hoped it was a "clear signal of this administration's intention to move away from unlawful practices of the past."[34]

4.5. ICRC's approach towards human rights abuses during counter-terrorism

The ICRC opts for a behind-the-scenes approach because this has helped it achieve results on many occasions. When it comes to addressing possible violations of international humanitarian law, they do it primarily in a confidential manner. When ICRC delegates observe cases of abuse, need or neglect – they take up their concerns directly with the authorities. ICRC's aim is to have a confidential dialogue with those who have the power to improve the situation. The ICRC works in a variety of places and contexts where outside scrutiny and criticism are often unwelcome. Confidentiality is the key that enables the ICRC to open doors that would otherwise remain shut, giving us access to people in need and places that many other organizations cannot reach.

Confidentiality does not equal complacency. Just because ICRC does not speak out publicly on some issues, doesn't mean that they are silent. The ICRC is quite tenacious when it comes to following up on allegations of abuse, and they are ready to take their concerns all the way to the top if necessary, including heads of state or government, in order to put a stop to it. The ICRC does not share confidential information with the media or other third parties, nor does it consent to the publication of such information,

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[33] AI News, EU ministers urged to help close Guantánamo, 26 January 2009, Available at http://www.amnesty.org/en/news-and-updates/news/eu-ministers-urged-help-close-guantanamo-20090126, Accessed 12 May 2009.

[34] See http://www.amnesty.org/en/for-media/press-releases/usa-executive-order-close-guant-namo-major-step-forward-20090122, Accessed 12 May 2009.

because there is always a risk that their observations could be exploited for political gain or instrumentalised by one side or another. In ICRC's view by discussing serious issues, such as abuse or ill-treatment, away from the glare of public attention, governments and non-state actors are often more likely to acknowledge problems and commit to taking action (Stillhart 2008). However critics argue that the organization is too secretive and should share its findings publicly, especially when it comes to conditions of detention and treatment of prisoners.

Nevertheless, the ICRC reserves the right to speak out, publish our findings or stop work in exceptional cases. For example, if a detaining authority issues excerpts from one of their confidential reports – without their consent – ICRC reserves the right to publish the entire report in order to prevent any inaccurate or incomplete interpretations of their observations and recommendations. Similarly, if, after repeated requests, prisoners continue to be mistreated or if ICRC delegates are prevented from working according to the recognised operating procedures, they may suspend detainee visits or their operations and publicly explain the reasons. If it is clear that the confidential approach is not working – for example, because a government or rebel group simply refuses to take their concerns seriously, and that they have exhausted all other avenues of discourse, ICRC could consider action by expressing their concerns publicly. The decision to speak out is never taken lightly but it is important to remember that confidentiality is not unconditional.

To ensure that ICRC's analysis is as complete and unbiased as possible, the ICRC follows a set of rules when visiting detainees[35]. For example, regardless of the circumstances ICRC delegates must be able to speak in total privacy with every detainee held. This is important because ICRC's confidentiality isn't limited to the authorities. If a detainee gives them permission to talk about his or her concerns with the authorities ICRC delegates will do so, but never without the detainee's consent. As part of the rules, ICRC delegates must also be able to inspect all cells and other

[35] On the visits carried out by the ICRC see, in particular, Hans Haug, *Humanity for all – The International Red Cross and Red Crescent Movement*, Berne/Stuttgart/Vienna, 1993, pp. 97-162; Françoise Comtesse, "Activities of the ICRC in respect of visits to persons deprived of their liberty: conditions and methodology", in Association for the Prevention of Torture (Eds), *The implementation of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (ECPT) — Assessment and perspectives after five years of activities of the European Committee for the Prevention of Tortu re and Inhuman or Degrading Treatment or Punishment (CPT)*, Geneva, 1994, pp. 239-248.

facilities. Visits must be allowed to take place as often as the ICRC requests and for as long as people are held in detention. In addition, all detainees must have the opportunity to write to their families using the Red Cross message system and to receive Red Cross messages from their loved ones. Another important element of their criteria is that ICRC delegates are allowed to conduct confidential discussions with the camp authorities before and after each visit to raise concerns and make recommendations where appropriate (ICRC 2004).

The ICRC also individually registers the identities of detainees, which makes it easier to monitor what happens to them and prevent disappearances. Each year, ICRC delegates visits more than half a million detainees in around 75 countries. These standard criteria apply in all of the places where they visit prisoners. If restrictions are put on this way of working, they sometimes have no choice but to suspend their work until these rules are once again respected.

The organisation prefers to adopt a confidential approach even when conditions in places of detention or in conflict areas constitute violations of international humanitarian law. Only when repeated confidential approaches fail to put an end to those violations or at least to improve the situation, does the ICRC consider going public, provided it considers this step as being in the interest of the people concerned (Kellenberger 2004).

The ICRC's relationship with the U.S. (its largest donor) has been extremely rocky during the American "war" on terror. The U.S. reliance on coercive interrogations, the "special renditions" of detainees to countries known to carry out torture, and the establishment of a gulag of secret, CIA-run prisons have all collided with the core mission of the ICRC. The Bush administration has treated the group as little more than a prisoner auditing agency and even then has tried to curtail unannounced visits and has hidden "high-value" detainees ("ghost prisoners") from Red Cross monitors. To a disturbing degree the U.S. government has taken advantage of the ICRC's discretion.

Forsythe (2005) writes that, the Bush administration allowed ICRC site visits to the legal limbo of Guantánamo. Knowing that the inspectors were unlikely to go public with whatever they uncovered, the administration perhaps calculated that the visits

might give the appearance that prisoners at Gitmo were being treated humanely. The ICRC "defers to [the U.S.] policy of coercive interrogation while opposing it." ICRC officials have carried on extended conversations with American diplomats in Geneva about the applicability of IHL in the war on terror. But the organization is very selective – and oblique – in its public statements about U.S. abuses. Using clinical language, the ICRC publicized its concerns about the deleterious mental health effects of indefinite detention without legal charge, and issued a low-key statement regarding the improprieties of coercive interrogations and the harsh conditions at Guantánamo.

In his early meetings with U.S. officials ICRC president Kellenberger threatened to raise more vocal objections if conditions did not improve. But in fact, the organization stuck with its minimalist approach for years as systematic abuses continued. In Iraq, too, the ICRC could have been more robust. While the ICRC usually treats all detaining authorities, no matter how liberal, as a threat to "enemy" prisoners, its delegates in Iraq may have been too trusting. For the ICRC representatives visited Abu Ghraib, at the time the largest U.S.-run detention facility in the country, only every five to six weeks, and apparently missed the notorious abuses there until tipped off by a U.S. intelligence officer.

Forsythe (2005) is clear that an organization of such stature could have done more to stir up public pressure. Even unofficial releases of ICRC information can have a profound media impact. A leaked ICRC report citing Coalition Force estimates that between 70 and 90 percent of the prisoners at Abu Ghraib were innocent carried enormous weights precisely because it was an ICRC report. But ICRC officials have been extremely reluctant to expend the organization's credibility.

In his most critical assessment, Forsythe (2005:139) attributes this failing to the bureaucratic ethos of an organization that

> "seemed to lack passion and a sense of urgency . . . its cautious approach might be interpreted as displaying more concern for an image of perfect neutrality than stopping abuse of prisoners in short order."

Most ICRC officials believe that discretion is still the best way to insure continued access to detainees and therefore that public outcry is best left to the advocacy NGOs such as AI. As one official put it, "We have a very low profile with the press and quite

a high profile with the prisoners, and that's the way it should be." But it is also clear that embarrassing revelations about abuses in Iraq, for example, in which the ICRC was a bit player, almost certainly led to improved detention conditions.

The ICRC has consistently expressed its grave concern over the humanitarian consequences and legal implications of the practice by the US authorities of holding persons in undisclosed detention in the context of the fight against terrorism. In particular, the ICRC underscored the risk of ill-treatment, the lack of contact with the outside world as a result of being held incommunicado, the lack of legal framework, and the direct effect of such treatment and conditions on the persons held in undisclosed detention and on their families[36].

The ICRC made its first interventions to the US authorities in 2002, requesting information on the whereabouts of persons allegedly held under US authority in the context of the fight against terrorism. Since then, it has made regular written and oral interventions to the US authorities on the issue of undisclosed persons. Despite repeated requests at various levels of the US government, the ICRC received no response to most of the written interventions.

On 6 September 2006, President Bush publicly announced that fourteen "high value" detainees had been transferred from the High Value Detention Program run by the CIA to the custody of the Department of Defence in Guantanamo Bay Internment Facility. Prior to the public announcement, the ICRC had never been informed by the US authorities of the existence of the CIA detention program, nor of the presence in US custody of the fourteen. This is despite the fact that thirteen of the fourteen had been included in the ICRC written requests to the US authorities concerning undisclosed detention, the first of which were made in January 2003.

The ICRC was granted access to the fourteen in Guantanamo, and met each of them in private for the first time from 6 to 11 October 2006. The ICRC regarded the confirmation of the present whereabouts of the fourteen by the US authorities, and the subsequent access granted to the ICRC, as positive steps. However, it deplored the

[36] See ICRC press release 03/36, 28 May 2003.

fact that these persons were held in undisclosed detention during a prolonged period by the US authorities and the conditions of detention and treatment to which they were subjected during that time. It is also gravely concerned by the lack of information provided to the ICRC regarding their fate despite regular and repeated requests.

The ICRC recognises the right of the US authorities to take measures to address legitimate security concerns, including the detention and interrogation of individuals suspected of posing a threat to national security. However, the ICRC believed that the US can achieve these objectives while respecting its obligations and historical commitments to respect international law.

The methods of ill-treatment[37] alleged to have been used include the following as per an ICRC report:

1. Suffocation by water poured over a cloth placed over the nose and mouth.
2. Prolonged stress standing position, naked, held with the arms extended and chained above the head, for periods from two or three days continuously, and for up to two or three months intermittently, during which period toilet access was sometimes denied resulting in allegations from the detainees that they had to defecate and urinate over themselves.
3. Beatings by use of a collar held around the detainees' neck and used to forcefully bang the head and body against the wall.
4. Beatings and kicking, including slapping, punching, kicking to the body and face.
5. Confinement in a box to severely restrict movement.
6. Prolonged nudity during detention, interrogation and ill-treatment; this enforced nudity lasted for periods ranging from several weeks to several months.
7. Sleep deprivation through days of interrogation, through use of forced stress positions (standing or sitting), cold water and use of repetitive loud noise or music.

[37] For details of each method of ill-treatment and some excerpts from the interviews conducted with the detainees see "ICRC Report on the treatment of fourteen "High Value Detainees" in CIA custody(2007) ", available at http://www.nybooks.com/icrc-report.pdf, Accessed on 23 May 2009.

8. Exposure to cold temperature via cold cells and interrogation rooms, by the use of cold water poured over the body or held around the body by means of a plastic sheet to create an immersion bath with just the head out of the water.
9. Prolonged shackling of hands and/or feet
10. Threats of ill-treatment to the detainee and/or his family
11. Forced shaving of the head and beard.
12. Deprivation/restricted provision of solid food from three days to one month after arrest.

In July 2004, the ICRC presented a confidential report to the US government saying that its military intentionally used psychological and sometimes physical coercion "tantamount to torture" on prisoners at Guantanamo Bay, Cuba. The inspection team also asserted that some doctors and other medical workers were participating in planning for coercive interrogations, in what the report called "a flagrant violation report of medical ethics." The *New York Times,* which did not say how it received the secret report, noted that the government rejected the charges: " The United States" the government claimed, "operates a safe, humane, and professional detention operation at Guantanamo that is providing valuable information in the war on terrorism"[38](Claude 2006:68). In exchange for exclusive access to the prison camp and meetings with detainees, the committee has agreed to keep its findings confidential. The findings are shared only with the government that is detaining people.

Scott Horton, a New York lawyer, who is familiar with some of the Red Cross's views, said the issue of medical ethics at Guantánamo had produced "a tremendous controversy in the committee." He said that some Red Cross officials believed it was important to maintain confidentiality while others believed the United States government was misrepresenting the inspections and using them to counter criticisms.

It is possible to see the ICRC as complementary to human rights advocacy NGOs. In many ways ICRC is an organization driven by "creative pragmatism" in the field, and which has managed to reform itself when necessary. The ICRC is usually in the vanguard engaging public authorities on behalf of victims. It has pressed doggedly to expand humanitarian aid from international wars to internal conflicts. It has given life

[38] Neil A Lewis, "Red Cross Finds Detainee Abuse in Guantanamo," New York Times, Nov.30, 2004.1. http://www.nytimes.com/2004/11/30/politics/30gitmo.html?pagewanted=3&_r=1

to the idea that all detainees, not just prisoners of war, are worthy of protection. But these extraordinary accomplishments are shadowed by the ICRC's overabundance of prudence, and by an inescapable sense that the organization should have done more, in some cases much more, to bring public pressure to bear on genocidists and torturers (Smith 2008).

Chapter 5

Conclusion

AI and ICRC are important INGOs in the issue area of human rights. Their wide spread and reach has been quite an advantage in addressing human rights concerns besides states, IGOs, spiritual groups, media and educational institutions. A thorough study of these two INGOs reveals the fact that there are some common characteristics in their mission and mandate but significant differences in their functional strategies. Both champion the cause of human dignity, however AI being an advocacy organisation is quite vociferous in challenging human rights abusers- be it states or non-state actors. In contrast it is evident ICRC adopts a subdued approach, dealing with human right violators discreetly. This "behind-the-scene" approach of ICRC has come under severe criticism many a time for its non-aggressive style of conducting international affairs.

These organisational specific differences come into fore in their approaches to terrorism, counter-terrorism as well as the human rights abuses during CTMs. AI initiated a "Counter Terror with Justice" campaign when torture, ill-treatment, renditions, enforced disappearances came to light in the wake of "War on Terror" led by US. ICRC on its part took up the human rights concerns it had as legal guardian of IHL with the US authorities confidentially. Strictly confidential reports between the organisation and the state authorities were the norm with a goal of changes in detainees' conditions though slow and incremental. AI exerted pressure on the states as well as the non-state actors writing letters calling both parties to adhere to human rights norms.

ICRC's leaked report on treatment of prisoners imprisoned during the counter-terrorism initiatives carried a lot of weight despite its careful methods and measures to uphold the principles of confidentiality and discretion. The reports of both AI and ICRC draw attention from states and public because of the thorough research that goes behind it. AI has been releasing reports on CTMs and terrorism quite frequently unlike ICRC whose official statement and press releases on the issue are often bland and

restrained. Nevertheless both the organisations have been strong in their condemnation of violence and torture in the name of terror and counter-terror.

ICRC has been visiting political prisoners long before AI came into existence, providing humanitarian protection to them. ICRC shuns publicity and is weary of media unlike AI which uses mass media effectively in carrying on its human rights initiatives. The membership base of AI is vast and has reach up to grass root level whereas ICRC's membership is limited. AI is more of a social movement with its active membership base exercising their human rights by standing up for the human rights of others. However the impact of ICRC and AI on upholding human rights is difficult to ascertain. Their strategies are different but the goal seems to be the same.

AI as a matter of policy do not accept government funding but the bulk of ICRC's budget is derived from government contributions. Critics of ICRC cite its dependence on government funding as a reason for their cooperative relationship with states while AI thrives on adversarial relationship with states with its financial independence. In the criticism of US in the "War on Terror', ICRC seemed to be careful about dubbed as anti-US but AI did not bother about being identified as anti-american. AI's demands on US were repetitive; specific and outspoken. ICRC's requests were not forthcoming as AI, though ICRC was discreetly dealing with US authorities. Its public condemnations were rare and few. But the accusation that ICRC is shying away from taking on its biggest donor US is not convincing for it went against US in the total ban on anti-landmines and cluster bombs.

Its "rule of silence" said to be a bargain for its access to detainees seemed true in CTMs and human rights abuses by states. ICRC is the only organisation that has access to the Guantanamo Bay detention centres as well as other captive cells in Iraq and Afghanistan. It is widely believed that the visits by ICRC delegates give the prisoners the strength to survive the ordeal they go through in prisons by way of torture, ill-treatment, isolation etc. The ICRC's lack of public comment on the conditions of detention and detainees does not mean that ICRC has no concerns. Confidentiality is an important working tool of ICRC and publicity is the working style of AI.

AI had contributed in enactment of Convention against Torture and is still active in UN forums through their briefings and fact sheets on the human rights abuses in terrorism and counter-terrorism. AI undoubtedly had some significant influence in the creation of the Office of the UN High Commissioner for Human Rights in 1995 or the ICC in 1998. ICRC's cooperation with UN progressed with its observer status granted in 1990. ICRC is the only INGO to be granted the observer status. Also it is the only organisation to be granted to testimonial immunity underscoring its importance of confidentiality as a work ethic.

The study revealed that the distinction between research and advocacy oriented AI and assistance oriented ICRC is not a clear cut one. There is an overlap in the functions and goals of both the INGOs. Therefore it becomes difficult to assess the effectiveness or impact of individual INGOs in changing the course of events in the fight against terrorism and states initiatives. The cumulative effects of the efforts of different NGOs seem to be a major contributing factor in bringing changes and altering events. ICRC and AI have their own strengths and limitations as human rights organisations. ICRC as guardian of IHL clarified that terrorism, and by necessary implication, counter-terrorism, is subject to IHL when and only when those activities rise to the level of armed conflict. Otherwise human right law and domestic laws apply. But IHL and human rights law are not mutually exclusive but complementary. So is ICRC and AI's role in counter-terrorism.

AI and ICRC condemn indiscriminate terrorist attacks; at the same time insist the response to them must remain within the framework of IHL and human rights law. Though US is weary of giving POW status to the detainees captured in the "War on Terror", ICRC is of the view Article 3 of Geneva Convention applies to them entitling the prisoners to fair trial guarantees of international humanitarian and human rights law. There is no such thing as "legal black hole" according to these two human rights organisation. AI Secretary General was upfront in criticising powerful states like US calling Guantanamo Bay prison as the gulag of our times which is a perfect example for AI's outspokenness.

Infact, it is after intensive lobbying by AIUSA and other of members of Congress, US senators voted 90-9 in October 2005 to incorporate the McCain amendment into a defence spending bill, affirming the ban on cruel, inhuman and degrading treatment of detainees. The bill was signed into law in December 2005. AI publishes testimonials of detainees who had wrongly suffered at the hands of State authorities as terror suspects, thus exposing the oppression and terror unleashed by states to counter terror. ICRC has been very selective and oblique in its public statements about US abuses. And US had taken ICRC and its commitment to Geneva Conventions for granted by hiding "high-value" detainees ("ghost prisoners") from ICRC monitors, treating ICRC as just a prisoner auditing agency. The leaked reports of ICRC have however brought changes in states actions in countering terror.

The pre-formulated hypotheses that were tested are as follows:

1. There exists striking difference in the AI and the ICRC in approaches towards counter-terrorism measures.
2. The AI is more outspoken than ICRC in their appraisals against counter-terrorism initiatives.

In the final analysis, it is understood that there exists a striking difference in the AI and ICRC approaches towards counter-terrorism measures. And also that AI is more outspoken than ICRC in their appraisals against counter-terrorism initiatives. But to conclude that one INGOs impact, influence and effectiveness is greater than the other is a difficult and improbable choice. Since the ICRC has traditionally operated in the area of humanitarian law rather than human rights, and has generally eschewed publicizing the abuses it is seeking to have corrected it occupies a different, in fact unique, position among nongovernmental entities concerned with human rights. Amnesty International being human rights advocacy organisation has been relying on "naming and shaming" tactics against countries that violates human rights whereas International Committee of the Red Cross relies on "quiet diplomacy"; taking up issues with the erring authorities directly as well as discreetly. It would be right to say that their cumulative effort in fighting abuses in fight against terrorism is the strength of the human rights movement than their individual efforts.

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