

Beyond Socratism

Introduction to the 2 October 2006 Oslo Seminar on the evolving role of NGOs in international criminal justice

By Gunnar M. Karlsen, Deputy Secretary General

Welcome to this seminar, which is the first in a series of what is intended to be thought provoking encounters with prominent activists and researchers in the field of international criminal justice. The seminar is organised by the newly established Forum for International Criminal Justice and Conflict. Senior Researcher at The Norwegian Peace Research Institute (PRIO), Morten Bergsmo, coordinates its activities. The Forum has a flexible and open-ended relationship with other institutions and NGOs active in the field. Forum seminars may be arranged in co-operation with different partners at different locations, depending on the theme to be debated.

The Norwegian Helsinki Committee is proud of being host to this seminar here at The Norwegian Human Rights House. Under this roof several Norwegian human rights organisations as well as Amnesty International Norway is co-located, making maximum use of limited resources.

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From a human rights perspective, few things are more frustrating than the repeated occurrence of massive killings, torture, rape and deadly neglect of the needs of innocent civilians. The many times expressed phrase „never again“ after situations of massive abuse, seems to have had limited results. Bosnia, Chechnya, Rwanda, Darfur, Northern Uganda, and the Democratic Republic of Congo are but the best-known recent examples of such abuses.

It seems that they give ample support for philosopher pessimists like the British John Gray. According to him the Enlightenment inspired humanist has a somewhat naïve believe in progress both in knowledge and in ethics. “There is progress in knowledge, but not in ethics”, he warns. “The growth of knowledge is real and – barring a worldwide catastrophe – it is now irreversible. Improvements in government and society are no less real, but they are temporary. Not only can they be lost, they are sure to be. History is not progress or decline, but recurring gain and loss”.¹

The human rights community cannot share this pessimism. Human nature may not change for the better, but strategies and safeguards to avoid the worst outbursts of the worst elements of that nature may improve and give lasting results.

During large parts of the Cold War period, human rights abuses were committed by regimes, which for different reasons tried to conceal their wrongdoings. For human rights NGOs, the main focus was on documenting and exposing these abuses. During the 1990s, however, we witnessed situations of massive abuse as part of publicly announced policies like in Bosnia

¹ Johan Gray, *Straw Dogs* (London: Granta Books, 2003), page 155.

and Rwanda. Confronted with these challenges, NGOs started to ask for new international mechanisms, which could do more than document abuses and shame governments. Accountability and justice became the key words of human rights terminology.²

The shift from a focus on truth to a focus on justice was very much linked to the campaigns of ethnic cleansing in Bosnia, which entailed a whole range of international crimes, like systematic killings, torture, rapes, and deportations. Soon organisations like Human Rights Watch started to ask for the establishment of an international war crimes tribunal able to try those responsible for these atrocities. International law experts, politicians, and even some NGOs deemed this initiative to be highly unrealistic. Some argued that problems involved in conducting investigations, arrests, and trials would be so great that failure would be a foreseeable outcome. Instead of advancing rule of law, such efforts were likely to set it back.³

In retrospect there is no doubt that the human rights NGOs made the right choice in continuing to insist on the need for an international war crimes tribunal. To expose the truth about what was happening in Bosnia was of course important, but far from enough. For such blatant disrespect for the law as we witnessed in Bosnia, some measures had to be adopted to restore respect.

Only a year after the U.N. Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) in May 1993, the Rwandan genocide took place. In 100 days around 800 000 tutsis and moderate hutus were slaughtered. Truth was clearly not enough, and again NGOs played important roles in arguing for establishment of an international tribunal. The Security Council did so in November 1994.

Since then, several so-called hybrid courts have been established, combining international and national legislation and staff. However, the most important development might be the establishment of the permanent international criminal court (ICC). Currently 102 states have ratified the Rome Statute of the ICC. Broader ratification, in particular of powerful states such as the United States, China, India, and the Russian Federation, remains a major challenge in order for the ICC to become a truly universal institution. But already the ICC has become important, promising justice related to some of the worst situations of abuses like in Darfur, Northern Uganda and the Democratic Republic of Congo.

NGOs played multifaceted roles in the complex process of establishing the ICC. To summarise these efforts I will portray them as *Socratic*. As you know, Socrates' ambition was not to teach his fellow Athenians what they did not know or what to do, but to help them realise what they already knew. In a similar way, NGOs fought for the ICC to be a court, as we know a court should be: strong and independent, not subject to undue political influence. Their successful lobbying also included important novelties, like making it possible for victims to be heard in the courtroom and giving reparations.

NGOs have continued to play crucial roles related both to the ICC and the other international or semi-international jurisdictions.

- They have been giving the institutions support in the form of assistance in administrative and budgetary processes

² Cf. Aryeh Neier, "Rethinking Truth, Justice, and Guilt after Bosnia and Rwanda", in Carla Hesse and Robert Post (eds.), *Human Rights in Political Transitions: Gettysburg to Bosnia* (New York: Zone Books, 1999).

³ See for instance, Professor Herman Schwartz op-ed in *New York Times* April 10, 1993.

- Highlighting state obligations to co-operate related to investigations, arrest, transfers etc.
- Generating media interest, disseminating information, etc.
- Assisting states with implementation legislation and contributing to the universalisation of the ICC

Setting the tone for today's seminar, maybe human rights NGO relationship with international criminal jurisdictions could be compared with NGO relationship with newly established democratic regimes. These regimes may need some time to establish themselves, sort out priorities, etc. before it's fair for NGOs to shift from birth and life support into criticism and demands for changes.

ICC and the other international jurisdictions came into being with the strong support of NGOs. They might still be seen as vulnerable, still needing NGO support. But has the time come for NGOs also to play other, maybe more critical roles?

Or put in other words, is there a need for them to step beyond the boundaries of *Socratic* help to self-help.

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At the seminar we will hear distinguished NGO representatives present viewpoints on current and future roles of NGOs related to the international jurisdictions. The program has been carefully planned to give a logical sequence of the presentations, which will deal with different aspects of NGO involvement.

After each presentation, we'll have a few minutes for questions of clarification. Substantive discussion we'll have in the end of the seminar.

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First I give the floor to Richard Dicker, Director of the International Justice Program of Human Rights Watch, who will discuss the relationship between NGOs and internationalised investigation and prosecution services.

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I then give the floor to Christopher K. Hall, Senior Legal Adviser, International Justice Project of Amnesty International. He'll focus on the role of NGOs related to the rights of the defendant.

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Our next speaker, Carla Ferstman, Director of Redress, will focus on NGOs and the role of victims.

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Gilbert Bitti, Senior Legal Adviser of the Pre-Trial Division of the ICC, ask the critical question: "Do the NGOs watch internationalised criminal jurisdictions?"

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Jeanne Sulzer, a lawyer working with the Federation International de Droits de l'Homme (FIDH) to prepare international criminal cases, will sum up some of the challenges related to the role of NGOs in international criminal justice. Are we on the way to a strategic reorientation?