

The Ethical Dilemmas of International Human Rights and Humanitarian NGOs: Reflections on a Dialogue Between Practitioners and Theorists¹

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ABSTRACT

In an imperfect and unpredictable world, international human rights and humanitarian nongovernmental associations (INGOs) often face ethical dilemmas that constrain their efforts to do good in foreign lands. In this paper, we draw upon a recent dialogue between human rights practitioners and academics in order to identify some of the typical ethical dilemmas encountered by INGOs during the course of their work and to discuss

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1. This paper draws on discussions and papers presented at Ethics in Action: The Successes, Compromises, and Setbacks of Transnational Human Rights and Humanitarian NGOs, Workshop I, held at the Carnegie Council on Ethics and International Affairs in New York (February 2002) [hereinafter *New York Workshop*]. The overall project takes the form of systematic dialogues between representatives of INGOs and academics of different backgrounds and disciplines who work on the subject of human rights. The project is co-administered and funded by the City University of Hong Kong and the United Nations University (Tokyo) and is also supported by a generous grant from the Open Society

some of the advantages and disadvantages associated with different ways of dealing with those dilemmas. We identify four kinds of ethical dilemmas frequently faced by INGOs: (1) conflicts between human rights principles and local cultural norms; (2) the tension between expanding and restricting the organization's mandate; (3) whether and how to collaborate with less-than-democratic governments; and (4) the ethical limits of fund-raising.

I. INTRODUCTION

International human rights and humanitarian nongovernmental organizations² (INGOs) are major players on the world stage. They fund human rights projects, actively participate in human rights and humanitarian work, and criticize human rights violations in foreign lands. They work in cooperative networks with each other, with local NGOs, and with international organizations. They consult and lobby governments and international

Institute. The book that will emerge at the end of this project will be published by the United Nations Press, co-edited by Daniel A. Bell and Jean-Marc Coicaud.

The first workshop consisted of papers by high-level representatives of different types of human rights and humanitarian INGOs (three types of INGOs were labeled "funders," "critics," and "actors," though these functions often overlap in practice and these labels were seldom used by the INGOs themselves), with comments by academics and practitioners. An earlier version of this paper was distributed to all workshop participants: Michael Barnhart, Neera Chandhoke, Larry Cox, Eric Dachy, Michael Dowdle, Michael Edwards, Basil Fernando, Curt Goering, Jennifer Green, Bonny Ibhawoh, Tatsuo Inoue, Brian Joseph, Stephanie Kleine-Ahlbrandt, Will Kymlicka, Ram Mannikalingam, Julie Mertus, Ravi Nair, Ndubisi Obiorah, Thomas Pogge, Ken Roth, Edward Rubin, Hans Otto-Sano, Rieky Stuart, Pisawat Sukonthapan, Frank Upham, Alex de Waal, Steven Weir, Mona Younis, and Zhang Qianfan and presented at the 2002 annual meeting of the Hong Kong Political Science Association. The authors are particularly grateful to Genevieve Souillac, Jean-Marc Coicaud, and Ramesh Thakur of the United Nations University and to Joanne Bauer, Christian Barry, Joe Saunders, and Jess Messer of the Carnegie Council on Ethics and International Affairs who helped to conceptualize and operationalize this project (Souillac and Saunders have since left their respective organizations). We are also grateful for the detailed comments of the following individuals: Michael Barnhart, Joanne Bauer, Neera Chandhok, Mike Dowdle, Michael Edwards, Andre Frankovits, Curt Goering, Ian Holliday, Brian Joseph, Ndubisi Obiorah, Ken Roth, Genevieve Souillac, Rieky Stuart, Hatla Thelle, Steve Weir, and Mona Younis. While it would not have been possible to write this paper without the help of the above individuals and institutions, it is important to note that some of this material has been contested and the authors assume sole responsibility for the viewpoints presented and defended in this paper.

2. An INGO is defined here as an organization with substantial autonomy to decide upon and carry out human rights and/or humanitarian projects in different regions around the world. According to this definition, the Danish Centre for Human Rights, for example, is an INGO because it has substantial autonomy to decide upon and carry out projects in Asia, Africa, and elsewhere (though its funds come largely from the Danish Ministry of Foreign Affairs and most of its staff is Danish). The distinction (or lack thereof) between human rights and humanitarianism will be addressed below (see Section III(B)).

organizations, sometimes participating in high level negotiations and diplomacy for global policy development. They cooperate and negotiate with the same economic and political organizations in the field for the implementation of their projects, whether this be monitoring or assistance. In short, they are generating a new type of political power, the purpose of which is to secure the vital interests of human beings on an international scale, regardless of state boundaries.

Needless to say, good intentions are not always sufficient to produce desirable results. In an imperfect and unpredictable world, INGOs often face ethical dilemmas that constrain their efforts to do good in foreign lands. This paper draws upon a recent dialogue between leading representatives of different kinds of human rights and humanitarian INGOs and academics of different backgrounds and disciplines who work on the subject of human rights in order to identify some of the typical ethical dilemmas encountered by INGOs during the course of their work, and to discuss some of the advantages and disadvantages associated with different ways of dealing with those dilemmas.³ We identify four kinds of ethical dilemmas frequently faced by INGOs: conflicts between human rights principles and local cultural norms; the tension between expanding the organization's mandate to address more fundamental problems and restricting it for the sake of providing immediate help or for the sake of feasibility; whether and how to collaborate with governments, including ones who are themselves responsible for human rights violations; and how to raise the money required for the organization's work without compromising or subverting the organization's mission in the process.⁴

Our goal here is primarily descriptive and analytical rather than prescriptive. Different approaches have different advantages and disadvantages that vary in importance from context to context, and any satisfactory solution must bear this in mind. Our aim is to refine thinking on the relative merits and demerits of typical approaches for dealing with ethical dilemmas adopted by INGOs. For practitioners, this exercise will shed light on the experience of other INGOs. Careful weighing of the pros and cons associated with different approaches may enable those working in INGOs to avoid the repetition of mistakes and counter-productive actions and may lead them to reflect upon new problems and principles that challenge their existing policies. For theorists, this exercise will challenge theorizing that abstracts from the problems of engagement. If one of the goals of moral and

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3. Findings from the workshop are occasionally supplemented with examples and arguments from other sources.
 4. Our list of dilemmas only covers the main dilemmas that were discussed at *New York Workshop*, *supra* note 1. There may be, of course, other dilemmas not discussed here.

political theory is to guide action, then theorists have an obligation to come to grips with the hard choices, compromises, and prioritizing that those involved in human rights work confront as daily aspects of their moral world.⁵ For students, this paper may generate interesting discussion material for seminars and classrooms.

II. DILEMMA ONE: THE CONFLICT BETWEEN HUMAN RIGHTS AND LOCAL CULTURAL NORMS

Most human rights and humanitarian INGOs are based in the West. With their executives and offices centralized in key Western cities, program officers and coordinators are then sent to the field. As Alex de Waal notes, "[i]n its basic structure, the ethics business is like many global businesses [with] its headquarters in a handful of Western centers, notably New York, Washington and London."⁶ From a practical point of view, this may pose a special challenge in foreign lands where detailed knowledge of different linguistic, social, cultural, and economic circumstances is more likely to ensure success.⁷ INGO workers are not always familiar with these, or

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5. It is interesting to note that none of the papers presented by INGO representatives referred to works by human rights theorists. Nor did any refer to the general principles or treatises of human rights law: Mona Younis, Program Officer for the Joyce Mertz-Gilmore Foundation, notes that, "At no point in the deliberations [within her Foundation, regarding funding of human rights projects] were there references to the actual texts, terms or rights in the Universal Declaration of Human Rights or the human rights treaties it has generated. Instead, not unlike the majority of human rights funders today, JM-GF's Board members were moved by an abstract notion of 'human rights' principles that had very little to do with treaties and states' obligations. Indeed, although the power of human rights lies in the obligation of governments, including the US, to respect, protect and fulfill rights enumerated in the treaties, human rights funders generally make little use of these as reference points in their funding. Mona Younis, *An Imperfect Process: Funding the Human Rights Movement—A Case Study* 5–6 (Feb. 2002) (unpublished manuscript presented at the *New York Workshop*, on file with the authors).
 6. Alex de Waal, *The Moral Solipsism of Global Ethics Inc.*, Vol. 23 LONDON REV. BOOKS No. 16, 23 Aug. 2001, at 15. On "human rights imperialism," see also Alex de Waal, *Human Rights Organizations and the Political Imagination in the West and Africa* 22–23 (Feb. 2002) (unpublished manuscript presented at the *New York Workshop*, on file with the authors); Ravi Nair, *Exploring New Relationships—The Need for Devolution in the International Rights Movement* (Feb. 2002) (unpublished manuscript presented at the *New York Workshop*, on file with the authors). Rieky Stuart, Executive Director of Oxfam Canada, however, notes that one should be careful about assuming that most people who work globally are from the Northern center because most large international development NGOs today have people from the country in question as the vast majority of their staff and/or their work may be primarily funding local NGOs, and that this is increasingly true for human rights INGOs as well. E-mail from Rieky Stuart to Daniel A. Bell (Sept. 23, 2002, 17:35:16) (on file with the authors).
 7. The history of aid projects in the developing world is littered with blunders that could have been avoided with more detailed local knowledge. See, e.g., MICHAEL EDWARDS,

trained beforehand to face unexpected complications,⁸ or to deal with subtle behavioral nuances of people who have different social and political customs. It is not merely a strategic matter of understanding “the other” for the purpose of promoting one’s views, however. INGO representatives also experience ethical conflicts where they must decide between promoting their versions of human rights norms and respecting local cultural norms that may differ from these. There are different ways of dealing with this conflict, and below we list some of the possible responses along with their associated advantages and disadvantages.⁹

A. Tolerating Clashing Beliefs

Ndubisi Obiorah, Senior Legal Officer of Hurilaws in Lagos, Nigeria, noted that many Nigerian NGOs work with INGOs but pointed out that, in relation to the subject of advocacy activities undertaken by INGOs in Nigeria, it would be very difficult, given local cultural and religious beliefs widely prevalent at the present time in Nigeria, to press vigorously for gay and lesbian rights in Nigeria.¹⁰ In such cases, representatives of human

FUTURE POSITIVE: INTERNATIONAL COOPERATION IN THE 21ST CENTURY (1999); Michael Dowdle, *Preserving Indigenous Paradigms in an Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Aid in China*, 24 *FORDHAM INT’L L.J.* 56 (2000). According to Ram Mannikalingam of the Rockefeller Foundation, the greatest challenge in terms of learning local knowledge is not so much acquiring basic familiarity with the language, history, and political context for one’s projects, as the need to figure out and establish ties with the intricate social networks and local power holders that allow for projects to be successfully implemented (what he calls “Small Politics,” as opposed to “Big Politics”). Ram Mannikalingam, comment made at *New York Workshop*, *supra* note 1.

8. See, e.g., Basil Fernando, *Ethics in Action: Defending the Rights to Life and Article 2 of the ICCPR* (Feb. 2002) (unpublished manuscript presented at the *New York Workshop*, on file with the authors). Fernando argues that Westerners often fail to understand that promoting the right to life may require different tactics in contexts without developed judicial systems. *Id.*
9. Note that we are focusing on hard cases, where there are arguments to be made on both sides of the question. Thus, we leave aside the (all-too-common) cases of blatant cultural arrogance, where the Western-based INGO is clearly in the wrong. World Vision used to be accused of making aid conditional on conversions in the Philippines and elsewhere, but they have since disavowed such practices. One funder noted the increase in recent years in Palestinian grantees spending scarce resources on the auditing services of Western auditors, particularly Arthur Andersen. She noted the irony of grantees turning to Arthur Andersen, rather than reputable locals, to demonstrate their trustworthiness to US funders.
10. In the long-term, however, Obiorah argues that an educational approach that aims to secure over time a greater degree of acceptance of diverse sexual orientations in Nigeria can and should challenge current views in this respect. He adds that “the few gay and lesbian advocacy groups in Nigeria critically need support from INGOs in their efforts to bring about a change in popular attitudes.” Ndubisi Obiorah, comment made at *New York Workshop*, *supra* note 1; E-mail from Ndubisi Obiorah to Daniel A. Bell (Sept. 26, 2002, 12:16:17) (on file with the authors).

rights INGOs that would otherwise try to promote gay and lesbian rights need, in the immediate to medium term, to refrain from a high-decibel “naming and shaming” approach in acting upon (or speaking about) this aspect of their mandate. They would need to tolerate, without respecting, the negative views of many people in Nigeria on gay and lesbian rights.¹¹ This approach carries the advantage that other aspects of their mandate may stand a greater chance of success. The cost, however, is that it sends the message that gay and lesbian rights can be sacrificed on the altar of other values.¹² Strong defenders of these rights may well question why the INGO needs to work in Nigeria as opposed to other places where they needn’t suppress an important part of their ethical mandate.

Another case with more immediate practical implications was described by Rony Brauman, former President of Médecins Sans Frontières (MSF), in a lecture delivered at the Carnegie Council on 14 February 2001.

In a number of cases [during the war in Mogadishu] we had to amputate because of massive infections that could not be treated properly. In our experience, the decision to amputate was a medical, technical diagnosis, which doesn’t incur any criticism because it poses a solution to a life-and-death situation. Thus we were surprised to find that most of the young people we wanted to operate on refused to be amputated. They preferred—and this took us some time to understand—to die with their entire body than to live with a visible mutilation.

It was quite difficult for the surgeons, the anesthesiologists, and the surgical teams to accept this, because it seemed to violate their *raison d’être*—, if you cannot amputate in a war situation, your role is severely diminished. As a result, many of us felt seriously conflicted. And some of the surgeons ironically found themselves in a life-and-death situation. Their lives were threatened because of their attempts to convince the wounded that it was in their best interests to be amputated. From the point of view of the Somali people, their interest was not to be amputated; their interest was *not* to remain alive at any cost.¹³

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11. In the same vein, Birgit Lindsnaes, Hans-Otto Sano, and Hatla Thelle of the Danish Centre for Human Rights note that NGOs in emerging democracies are often hesitant to promote the abolition of the death penalty: “In the early 1990s, a DCHR partner, an NGO in Lithuania, would not campaign for the abolition of the death penalty. The justification was that it would be too risky and that it, as a newly established NGO, would lose credibility because the majority of people, according to public opinion polls, were for the death penalty.” Birgit Lindsnaes et al., *Human Rights in Action: Supporting Human Rights Work in Authoritarian Countries 2* (Feb. 2002) (unpublished manuscript presented at the *New York Workshop*, on file with the authors).
 12. This leads to the question of which rights can be “sacrificed” on the altar of other values. As Brian Joseph of the National Endowment for Democracy puts it, what if an INGO cannot work on women’s rights or religious minorities issues, would we find that acceptable? E-mail from Brian Joseph to Daniel A. Bell (26 Sept. 2002, 15:17:44) (on file with the authors).
 13. Rony Brauman, *Controversies Within Health and Human Rights*, Address at the Carnegie Council on Ethics and International Affairs (Feb. 14, 2001) (edited transcript available at www.carnegiecouncil.org/printerfriendlymedia.php/prmID/93).

Tolerating clashing beliefs in this case would have the benefit of respecting “the point of view of the Somali people,” allowing doctors to care for those who do not require amputations, and to go about their work without feeling threatened. But it carries the cost of violating perhaps the most sacred principle of MSF doctors—the need to save the lives of patients—and letting patients die who could otherwise have survived with treatment.¹⁴

B. Challenging Local Cultural Norms

Habitat for Humanity is an INGO that was founded in the U.S. in 1976 with the goal of helping people to acquire adequate housing, which the organization sees as a basic human right and a prerequisite for the effective enjoyment of many other human rights.¹⁵ According to Steven Weir, the Asia and Pacific Director of Habitat, the organization’s best practice standards require that local boards be diverse and representative of the community at large, including 30 percent representation by women. Moreover, many affiliates require that the women’s names be included on the land title as a condition of the loan. But Weir adds that these requirements can be contrary to cultural norms and legal regulations in some countries. Still, he suggests that challenging these norms can be effective:

In most developing countries, reaching gender equity and full participation is a slow process. A typical local affiliate (governing board) begins with the women serving tea, sitting quietly in the back, and evolves to their participation on the family selection and support subcommittees, finally developing into full participation on all committees, often including chairing the family selection and support committees. Some affiliates in traditionally male-dominated societies even eventually elect women as board presidents.¹⁶

Weir’s account here paints a happy outcome. At the same time, he acknowledges that the organization does make compromises with local communities. It does not simply come into a place and insist that it conform to the organization’s norms in every respect, including its practices with

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14. Another possibility would have been for the MSF doctors to learn from the Somali perspective and modify their own views of the human good as a result. (Perhaps this happened in some cases.) This can be another way of addressing and reducing the tension, but it carries its own difficulties. See Section III(B).
 15. The organization is perhaps best known from the involvement of former President Jimmy Carter in its work. See HABITAT FOR HUMANITY INTERNATIONAL, JIMMY CARTER AND HABITAT, available at www.habitat.org/how/carter.
 16. Steven Weir, Transformational Development as the Key to Housing Rights 6 (Feb. 2002) (unpublished manuscript presented at the *New York Workshop*, on file with the authors).

regard to gender, not only because such a demand would be impractical but also because it would conflict with the organization's commitment to local participation and control over the process.¹⁷ Trying to challenge local cultural norms so that they can meet the requirements of the human rights INGO has the advantage of improving the lives of vulnerable and marginalized members of the community. The fact that "success" seems to be eventually endorsed by both the beneficiaries and other members of the community lends legitimacy to this approach. However, there may also be some resistance given the developing world's history of experience with "cultural imperialism." It may also be the case that challenging some undesirable community norms may have the effect of unintentionally undermining other valued community norms.¹⁸

C. Revising the Principles and Practices of the Human Rights INGO

Amnesty International has had to question whether its concern for universal solidarity leaves adequate space for legitimate manifestations of the particular and the partial. According to Morton Winston, "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 who are suffering violations or abuses."¹⁹ In practice, this took the form of the [No] "Work on Own Country Rule," which prohibited AI members from taking up efforts on individual prisoner appeal cases in their own countries and prohibited AI national sections from undertaking specific kinds of research on their own governments' human rights practices. There were various practical justifications for this policy,²⁰ but the most important moral justification was that "it

17. Steven Weir, comment made at *New York Workshop*, *supra* note 1.

18. This kind of trade-off was well depicted in Zhang Yimou's film, *The Story of Qiu Ju* (Columbia/Tristar Studios 1995). The female protagonist, a rural Chinese farmer played by Gong Li, was shown resolutely seeking justice for her husband, who had been physically harmed by a patriarchal village chief. She ultimately "won" her case, but the film ends with serious doubts about the benefits of recourse to legal remedies as opposed to informal mechanisms of conflict resolution. More generally, Zhang seems to be suggesting that the pursuit of liberal ideas about freedom and equality backed by the rule of law comes at the cost of damaging valuable local ties and deeply rooted ways of life.

19. Morton E. Winston, *Assessing the Effectiveness of International Human Rights NGOs: Amnesty International*, in *NGOs and Human Rights: Promise and Performance* 31 (Claude E. Welch, Jr. ed., 2001).

20. *Id.* at 31–32. For example, that "local sympathies" may bias one's judgment and that this policy helps protect AI members and their families and friends from government harassment and retaliation. According to Andre Frankovits, Executive Director of the Human Rights Council of Australia (formerly of AI, Australia), the "own country rule"

prevent[ed] AI members from doing nothing but a certain kind of 'identity politics' around human rights concerns in their own countries, and reinforc[ed] the core ethic of international solidarity."²¹

This policy, however, created problems. In terms of AI's organizational development, it "led to the centralization of the research function in a single headquarters, the International Secretariat (IS) in London, and the specialization of national sections into primarily campaigning, fund-raising and membership development organizations."²² It also meant that some potential members lost their motivation to join once they found out they could not do research on their own country.²³ Finally, the policy may have carried the disadvantage that lack of local knowledge impeded accurate diagnosis of the main human rights problems and ways of dealing with them.

In response to such practical problems, AI has recently softened its [No]"Work on Own Country Rule."²⁴ But there may also be the recognition that the ethic of international solidarity needs to come to grips with manifestations of the particular. Securing people's vital human interests may require special attention to their particular circumstances and needs that locals are best able to understand (and research). Moreover, there may not be any reason to foreclose claims on behalf of "critical patriotism"—one characteristic of the true patriot may be the special concern to criticize one's own country when things go wrong. If special concern for the human rights abuses of one's country need not preclude concern for human rights abuses in other countries, and may sometimes be the stepping stone for such concerns, then there may be a case for relaxing the blanket ban on investigating abuses of rights in one's own country.

This example suggests that one INGO response to conflicts with local norms might be to revise the moral principles underpinning the INGO's work, along with the practices that flow therefrom. This response has the advantage of allowing for institutional learning in response to moral input from non-Western cultures, but it may also lead to demoralization and a

arose from the Cold War emphasis on impartiality and the security of prisoners of conscience for which AI worked. Groups had to work on three prisoners of conscience, one from the Communist bloc, one from the Western and one from neither, and the own country rule was designed to demonstrate that AI members were not partial. E-mail from Andre Frankovits to Daniel A. Bell (Sept. 11, 2002, 09:04:14) (on file with the authors). This distinction made progressively less sense, as did (presumably) one of the justifications for the own country rule.

21. Winston, *supra* note 19, at 32.

22. *Id.*

23. A close Chinese friend of one of the authors who joined AI as an Oxford graduate student was disappointed when she was told she could not do research on China, and she let her membership lapse after the 4 June 1989 massacre in Beijing since her main reason for joining AI was her concern for the rights situation in her own country.

24. Winston, *supra* note 19, at 32.

sense of betrayal among founding members and defenders of the old faith (not to mention fund-raising problems in Western countries).

III. DILEMMA TWO: THE TENSION BETWEEN EXPANDING AND LIMITING THE ORGANIZATION'S MANDATE

Many humanitarian and human rights INGOs begin with a particular focus and then feel pressure to expand their concerns so as to deal with the broader, underlying forces that give rise to the particular problem they are addressing. For example, Oxfam, as the name suggests, began as a famine relief organization. The organization gradually came to believe, however, that it was *not enough to relieve the immediate suffering of those caught up in a famine situation*. It was equally or more important to address the underlying conditions that gave rise to situations where people found themselves in desperate need for food. Consequently, much of Oxfam's work today deals with problems of economic and social development. Yet, no organization can do everything, and if an organization fails to focus on concrete tasks where it can actually make a difference, its activities may be scattered and ineffective. Moreover, if one focuses only on the big picture, one risks losing sight of real human beings in need. In this section we look at the ways in which these dilemmas have emerged in two different contexts. First we review debates within and between human rights organizations, particularly Amnesty International and Human Rights Watch, over the extent to which social, economic, and cultural rights should be a focus of concern in their work. Second, we look at the conflicting pressures within organizations, especially Médecins Sans Frontières, to concentrate on providing humanitarian assistance on the one hand and, on the other hand, to address the political and economic factors that give rise to these problems in the first place.

A. Amnesty International and Human Rights Watch

Amnesty International is the oldest and largest human rights INGO. AI had traditionally concentrated exclusively on violations of civil and political (CP) rights.²⁵ In 2001, it officially expanded its mission to include economic,

25. Indeed, it traditionally was concerned only with human rights violations by states, but in the 1990s it expanded to include violations by non-state actors. For a useful report on the extent to which international law creates obligations on companies to respect human rights, see *BEYOND VOLUNTARISM: HUMAN RIGHTS AND THE DEVELOPING INTERNATIONAL LEGAL OBLIGATIONS OF COMPANIES* (International Council on Human Rights Policy ed., 2002).

social, and cultural (ESC) rights within its ambit of concern. This was not a simple decision for the organization. It followed lengthy internal discussions, in which members raised a number of objections to the change.

According to Curt Goering, Deputy Executive Director of Amnesty International USA, and others, the objections included a number of overlapping concerns, many of which were tied to the impact of the change on the effectiveness of the organization.²⁶ Some feared that expanding the mandate to include ESC rights would cause the organization to lose its clear focus and make its work too diffuse. They pointed out that there was still a lot of work to be done in existing areas of concern. Some worried that the inclusion of ESC rights in AI's mandate would blur what had been a clear organizational identity, and jeopardize AI's hard won reputation for consistency, credibility, and impartiality. Also, there was worry it could undermine the unity and cohesion of the movement because they felt that there was not the same degree of consensus within the membership of AI and within the wider public about the moral status of ESC rights as there was about the moral status of CP rights, in part because it is often much harder to establish standards for ESC rights or to determine what constitutes a violation of them. Still another concern was that the organization did not have the expertise to address issues of ESC rights and that, if AI attempted to acquire the necessary expertise, it would lead to an undesirable shift in power away from the membership toward the professional staff.

Despite these powerful objections, AI did decide to expand its mission to include ESC rights. Why? According to Goering, three lines of argument played a particularly important role in identifying the advantages of an expanded mandate and in overcoming the objections to change.

First, the focus on civil and political rights had sometimes led to misguided priorities that implicitly downplayed or ignored the sometimes more serious areas of human suffering. Goering mentions two cases: One example frequently cited in internal debates was Sudan, where in 1994 the government engaged in massive displacement of local populations and destruction of their crops and food reserves. It was difficult to explain why AI treated the shooting and torture of a few victims as human rights violations and the manufactured starvation of thousands as background. Another example was Afghanistan. The warring factions opposed to the government imposed a total road blockade on Kabul in 1996. AI denounced the indiscriminate killings from daily bombings, but said little about the starvation resulting from the blockade. Goering says:

26. Curt Goering, Amnesty International and Economic, Social, and Cultural Rights (adapted from remarks of Curt Goering, Deputy Executive Director, Amnesty International USA at the *New York Workshop*) 8-11 (Feb. 2002) (unpublished manuscript presented at the *New York Workshop*, on file with the authors).

As one of my colleagues wrote, "We were seen to be suddenly irrelevant and our inaction at a time when everyone else was shouting left a scar on our work in Afghanistan and on AI's credibility for that matter, for a very long time. We still hear echoes of AI having no interest in the real suffering of the people."²⁷

Second, there was strong support for an expansion of AI's mandate among its branches in the "South."²⁸ As Goering notes,

As an international human rights organization, AI has taken important steps over the past several years to become a truly multicultural organization. Yet, the focus of its work—the selection of which categories of human rights violations to actively research and campaign against reflected, some felt, a "Northern" bias or preference for work civil and political rights, instead of ESC rights. Many people and NGOs in the "Global South" and a growing number in the "North" felt that AI's narrow mandate with its limited serious work on violations of ESC rights was a barrier to inclusion of people whose views on this issue differed from the prevailing "Northern consensus." And importantly to an organization that strived to be truly international, the civil and political focus was also seen as a barrier to development of AI's structure and membership in the South. This was seen to undermine AI's credibility in general with important audiences.²⁹

One might add that AI's use of rights language to understand and address problems of poverty and ill-health in the South may increase the likelihood that international organizations, Northern governments, and Northern-based foundations will take action to remedy these problems. As Michael Ignatieff put it, "the rights argument is a way to leverage money to fulfil this obligation."³⁰

Third, AI responded to the argument that its CP focus was biased towards male concerns. To quote Goering once again: "Some noted that women's experience of human rights is often different to men's: property rights and reproductive rights, and the rights to health, education and nutrition were some of these areas. In addition, by maintaining the distinction, AI limited its opportunities for cooperation with other civil

27. *Id.*, at 6. Another example illustrating the misguided set of priorities resulting from AI's (previously) limited mandate was AI's refusal to condemn or oppose apartheid per se on the grounds that AI should remain neutral with respect to political ideologies, and its refusal to support the sanctions and divestment movement on the grounds that AI should remain neutral on these questions. See Winston, *supra* note 19, at 33.

28. Interestingly, the US branch of AI—its biggest in terms of resources and members—generally supported the expansion of AI's mandate. This reflects the large normative gap between human rights activists in the US and their government (supported perhaps by the dominant view of human rights as equivalent to CP rights in US society at large).

29. Goering, *supra* note 26, at 7. AI's response to this concern is another example of "Revising the principles and practices of the human rights INGO" described in Section III(C).

30. Michael Ignatieff, *quoted in Righting Wrongs*, *ECONOMIST*, 18 Aug. 2001, at 19.

society and human rights groups at a time when coalition work was becoming ever more critical in advancing a human rights agenda."³¹

In the end, the vast majority of AI members found the arguments for expanding the formal mission of the organization to include ESC rights more persuasive than the arguments for the status quo. But expanding the formal mission does not eliminate the tensions reflected in this debate; it simply moves them to another forum, namely, the question of how best to promote ESC rights. This was illustrated by the contribution to the conference from Ken Roth, the Executive Director of Human Rights Watch, the second largest human rights organization.

Like AI, HRW had traditionally focused exclusively on civil and political rights, and like AI it expanded its concerns to include ESC rights, but made this change earlier (in the early 1990s) and without the same amount of internal debate. As Roth presents it, Aryeh Neier, the previous director of HRW, had been opposed to ESC rights on philosophical grounds. When he left, Roth, as new director, put forward the view that HRW should rest its basic conception of human rights on the international covenants (that clearly include ESC rights) and should gradually expand its concerns to include work in the area of ESC rights when the organization could be effective in doing so. The board of HRW agreed to this proposal.³²

Effectiveness is the key here. In Roth's view, international human rights organizations like HRW (as distinct from national and local ones) tend to be most effective when they employ the methodology that he calls "shaming": investigating, documenting, and publicizing behavior by states (and some non-state actors) that conflicts with widely accepted public moral expectations. As Roth puts it,

In my view, the most productive way for international human rights organizations like Human Rights Watch to address ESC rights is by building on the power of our methodology. The essence of that methodology . . . is not the ability to mobilize people in the streets, to engage in litigation, to press for broad national plans to realize ESC rights, or to provide technical assistance. Rather, the core of our methodology is our ability to investigate, expose, and shame. We are at our most effective when we can hold governmental (or, in some cases, nongovernmental) conduct up to a disapproving public.³³

For the shaming methodology to work, Roth says, "clarity is needed around three issues: violation, violator, and remedy. That is, we must be able to

31. Goering, *supra* note 26, at 7.

32. E-mail from Kenneth Roth to Daniel A. Bell (Sept. 29, 2002, 21:58:43) (on file with the authors).

33. Kenneth Roth, *International Human Rights Organizations and Economic, Social, and Cultural Rights: A Practical Defense 3* (Feb. 2002) (revised version of paper presented at the *New York Workshop*, unpublished manuscript on file with the authors).

show persuasively that a particular state of affairs amounts to a violation of human rights standards, that a particular violator is principally responsible, and that there is a widely accepted remedy for the violation."³⁴ Roth argues that these requirements can often be met, even when dealing with ESC rights. He cites a number of examples from HRW's own work in the area and states explicitly that cases such as those in Sudan and Afghanistan, which Goering cited as reasons for AI to expand its focus of concern, could be addressed with this shaming methodology and that HRW has often done so.

In some circumstances in which ESC rights are involved, however, Roth thinks that the three preconditions of effective shaming cannot be met, and in those circumstances international human rights organizations should cede the field to local and national NGOs, because the INGOs will not be able to have any significant impact on the problem. If people lack adequate food or health care, for example, one can say that their human rights are not being respected, but unless one can trace these lacks to the arbitrary or discriminatory actions of a government, intergovernmental organization, or organized nongovernmental actor such as a corporation or a rebel group, it will not be possible to use the shaming methodology to bring about change. Roth puts it this way:

[G]iven that respect for ESC rights often requires the reallocation of resources, the people who have the clearest standing to insist on a particular allocation are usually the residents of the country in question. Outsiders such as international human rights organizations are certainly free to have a say in such matters, but in an imperfect world in which the fulfillment of one ESC right is often at the expense of another, their voice has less legitimacy in insisting on a particular tradeoff than does that of the country's residents. Why should outsiders be listened to when they counsel, for example, that less be spent on health care and more on education—or even that less be spent on roads, bridges or other infrastructure deemed important for long-term economic development, and more on immediate needs?³⁵

Roth is careful to point out that his argument applies only to international human rights organizations working in countries away from their organizational base, not to local and national NGOs which often employ other methodologies besides shaming (such as political mobilization) and have clearer standing to speak out about the proper direction of politically contested national policies in their own states. Roth specifies that his argument does not apply to INGOs addressing the domestic or foreign

34. *Id.* at 4.

35. *Id.* at 2.

policy of their “home” governments, where they have standing comparable to that of a local human rights group.³⁶

It is striking how many of the concerns that appeared in the internal AI debate as reasons not to expand AI’s concerns to include ESC rights reappear here as reasons to limit the scope of the activities of international human rights organizations. In both cases we find a concern about the effectiveness of the organizations work being undermined by overreaching. There are the same worries about a lack of normative consensus on principles, a lack of clarity about standards, the absence of expertise, the depletion of moral capital, the loss of focus, and the same sense that the organization will waste scarce resources unless it sticks to what it is good at and leaves certain problems and issues to others.

In many ways, the reactions to Roth’s line of argument at the conference mirrored the reactions to the arguments in favor of limiting Amnesty’s concerns to civil and political rights. The critics at the conference did not accept Roth’s view that there is such a tight link between the effectiveness of international human rights organizations and the methodology of shaming. What Roth saw as pragmatic, they saw as unduly cautious and conservative. They feared that restricting the activities of international human rights organizations in the way Roth recommended might impede rather than contribute to the development of the international human rights movement and might fail to address the most important human rights issues of our times.

One set of objections, advanced by Larry Cox, Senior Program Officer of Ford Foundation’s Human Rights and International Cooperation Unit, among others, focused on the implications of Roth’s approach for relationships between international human rights organizations based in the North and local and national NGOs based in the South. The main concern was that giving the shaming methodology the strong priority that Roth advocated would make it more difficult for international human rights organizations to establish cooperative links with Southern human rights organizations.³⁷ Amnesty International, for one, does not see itself as (exclusively) a “shaming” organization. As Goering put the point,

It is true, of course, that a substantial portion of our work is documenting abuses and campaigning to stop them, and public exposure plays an important role in such situations. But AI is more than that. Our members around the world are active from within, helping to build a domestic human rights constituency and to strengthen civil society. Much energy at the local, regional, and national

36. *Id.* at 4–5; E-mail from Kenneth Roth to Daniel A. Bell and Joseph Carens (5 Oct. 2002, 23:33:04) (on file with the authors).

37. Larry Cox, comment made at *New York Workshop*, *supra* note 1.

levels is aimed at promoting human rights education among the public, in the school system, working constructively with, training and lobbying home governments to incorporate human rights standards in penal codes and constitutions. There are also many situations where we engage with targets (governments and/or non-state actors) behind the scenes and, as long as progress is being made, are content to conduct "quiet diplomacy."³⁸

The "quiet diplomacy" approach has affinities with the approach of human rights organizations like the Danish Center for Human Rights which we discuss in Section IV(A) of this paper. Such organizations collaborate with governments and semi-official NGOs in areas of common ground (such as women's rights in China) and explicitly refrain from open critique or "shaming" tactics in areas of difference.

One problem with relying on shaming is that people in the South often understandably resent any apparent claim of moral superiority from the North, given the role of the North, past and present, in the South. If international human rights organizations spend their energies in the South on exposing the moral failings of those in the South, this is apt to be experienced as carrying with it a tone of moral superiority, even if the failings are real, there is no intention to claim moral superiority, and the same INGOs also criticize Northern states (as HRW, for example, clearly does). Equally important, as Roth's critics at the conference argued, if human rights NGOs in the South rely primarily on methods other than shaming in their work (and Roth himself says that this may be appropriate for them), they will have less basis for cooperative work with international human rights organizations that focus exclusively on shaming activities in the South than for ones that take a broader approach to their human rights work there. This could undermine the sense that there is a genuinely *international* human rights movement in which participants in both the North and the South share common projects and common agendas.

Roth replied to this line of criticism by pointing to the example of HRW's work on the dalits: "The HRW shaming report on India launched the national coalition for dalit rights: It took HRW's careful, systematic work to establish the credibility of this issue, thus making it far easier for activists to organize around it."³⁹ Such debates point to the need to distinguish between the conditions under which "shaming" facilitates and those under which it impedes cooperation with Southern NGOs.⁴⁰

38. E-mail from Curt Goering to Daniel A. Bell (25 Sept. 2002, 17:10:41) (on file with the authors).

39. E-mail from Kenneth Roth, *supra* note 36.

40. In contexts (such as India) where some local, regional, and national human rights NGOs are themselves openly at odds with their own governments, and allowed to function unimpeded (for political and cultural reasons), NGOs might welcome intervention by

The second set of objections to Roth's approach was concerned with the danger that a focus on what international human rights organizations can do well might draw attention away from what is really important. If the most severe and extensive violations of human rights stem not from the misbehavior of authoritarian rulers but from the global maldistribution of wealth and power and from structural features of the international political and economic systems, then to limit the activities of international human rights organizations to problems where there are clear standards, a clear culprit, and a clear remedy may render the organizations irrelevant to the most important struggles for justice today.⁴¹ Again, Goering indicated that one of the reasons AI expanded its mandate was its sense that its narrower approach was preventing it from confronting the most urgent human rights issues.

We draw attention to the similarities between the debate within AI and the debate around Roth's paper not to challenge Roth's position. For one thing, there are clearly important differences between Roth's position and the position of those who opposed the change in AI, most notably that Roth explicitly includes ESC rights within the ambit of appropriate concerns for international human rights organizations. For another, we are not arguing here that the decision AI made was the right one and that the opponents of the change were wrong. Our purpose is rather to use these debates to illustrate the ways in which tensions between a narrower organizational focus and a more comprehensive agenda are apt to confront human rights INGOs with ongoing challenges, regardless of how they define their mission at a given moment. This is a deep and recurring ethical dilemma. Roth's paper articulates one side of that dilemma and Goering's another, but neither can make the dilemma disappear.

international organizations such as Human Rights Watch (HRW). But in less-than-democratic political contexts (such as China), it is quite likely that shaming tactics would reduce the likelihood of establishing cooperative links with local/regional/national human rights organizations because such organizations may conclude that the disadvantages of links with international "shamers" outweigh the advantages. (The discussion of "collaborators" in Section IV(A) of this paper spells out some of the advantages and disadvantages of confrontational tactics.) Cultural differences may also reduce the likelihood of establishing links with non-Western INGOs. In (relatively democratic) East Asian countries such as Japan and Korea, for example, open confrontation is considered to be in bad taste, even if the "shamer" may be correct in substance, and this may limit possibilities of cooperation with shaming organizations such as HRW. Finally, we should remember Obiorah's concern, discussed earlier in the article, that in Africa a shaming approach by INGOs to some issues (such as gay and lesbian rights) might be ineffective and even counterproductive. See Obiorah, *supra* note 10.

41. It is important not to overstate this. Clearly the genocide in Rwanda was a great evil that could have been stopped without transforming the international system. On the other hand, as Roth notes, the shaming methodology was ineffective in this case despite its obvious relevance.

B. Humanitarian INGOs

To deepen these reflections, we turn now to an exploration of the ways in which comparable dilemmas emerge within humanitarian INGOs. The core mission of humanitarian INGOs is to provide immediate care to the world's worst-off people.⁴² For example, MSF, one of the most celebrated of the humanitarian agencies and (like AI) a winner of the Nobel Peace prize, sends over 2,500 volunteers a year to more than eighty countries in which war, natural disaster, or isolation have limited access to health care.⁴³ This might seem like a fairly straightforward way of doing good: who can object to selfless and disinterested volunteers that provide food and medicine to the needy in the world's most dangerous and inhospitable areas? In practice, however, such efforts are fraught with moral and political controversies.

As Christian Barry of the Carnegie Council observed at the conference, humanitarian INGOs often experience tensions between the aim of doing good by helping in an emergency and the aim of promoting justice by reforming institutions or policies.⁴⁴ MSF presents itself as an organization that does not take sides between different political ideologies and institutional arrangements. Its sole purpose is to alleviate suffering and aid those in need.⁴⁵ This has the apparent advantage of avoiding controversy and appealing to many individuals and groups of different ideologies. In some cases, however, the policy of "neutrality" can carry a high price.

Such neutrality might mean tolerating, or refraining from criticizing, evil actions that contribute to the suffering in the first place. Eric Dachy, Senior Researcher for the Belgium branch of MSF, raised the hypothetical example of a humanitarian INGO that sets up a nutritional center to feed children.⁴⁶ The INGO subsequently finds out that the army only lets members of one ethnic group through a military checkpoint established ten kilometers outside the nutritional center. Should the INGO feed the children, thus

42. Humanitarian organizations may employ the normative framework of human rights, but they are distinguished by what they do, that is, providing immediate assistance to those whose rights (especially the rights to food and decent health care) are being violated.

43. See DOCTORS WITHOUT BORDERS, *WHAT IS Doctors Without Borders/Médecins Sans Frontières (MSF)?*, available at www.doctorswithoutborders.org/about/.

44. Christian Barry, comment made at *New York Workshop*, *supra* note 1.

45. See DOCTORS WITHOUT BORDERS, *THE MSF CHARTER*, available at www.doctorswithoutborders.org/about/charter.

46. Eric Dachy, comment made at *New York Workshop*, *supra* note 1. This example, according to Dachy, is discussed by MSF volunteers during the course of their preparations for service. The Red Cross, which has to have the consent of local authorities, faces similar quandaries—if those same authorities are carrying out atrocities, should it keep the mission going or tell the world about the atrocities. (We are grateful to Kim Beng Phar for this example.)

tolerating ethnic cleansing, or should it let the children starve? Dachy suggested that MSF should feed the children.

In practice, however, MSF acted differently when faced with an actual choice between confronting an evil government and saving lives in the early 1970s:

The Ethiopian famines of the early 1970s resulted from government policies of the Derg under Mengistu, which employed starvation as a means of control. Most of the NGOs working to alleviate this humanitarian crisis refrained from publicly challenging the government's human rights record, policies, cover-up of the cholera epidemic, and conduct of civil war in the northern part of the country based on the precept that they should avoid politics. *Médicins sans frontières* (Doctors Without Borders) expressed opposition to the government in this case, and was expelled. Hence, it seems safe to assume that silence in the face of abuses was necessary if the starving were to be fed.⁴⁷

In other cases, the actions of humanitarian agencies not only tolerate evil deeds, they make things worse. In 1985, Dachy notes, the Ethiopian government used food aid supplied and delivered by international organizations as bait to attract the starving population, which it then forcibly displaced.⁴⁸ Oxfam was confronted with a similar scenario in Liberia in 1996, where its humanitarian "aid" seemed to make things worse. David Bryer, the Executive Officer of Oxfam Great Britain, describes the dilemma:

The Liberian warlords had looted more than four hundred aid vehicles and millions of dollars of equipment and relief goods, and those thefts had directly supported the war, and caused civilian deaths and suffering. The vehicles and radio equipment had been used for military purposes, and sold, along with diamond and gold deposits which the different factions control, to purchase arms. . . . In this case, I do think that more lives are likely to be saved by preventing such looting than by providing humanitarian aid. In this case, protection from violence is more vital than relief.⁴⁹

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47. T. Jeffrey Scott, *Evaluating Development-Oriented NGOs*, in *NGOs AND HUMAN RIGHTS*, *supra* note 19, at 210. More recently, the MSF has been campaigning against the World Food Program (WFP) which is supposed to distribute food and medicine to the most vulnerable North Koreans. MSF says that this aid is being diverted to those loyal to the regime and withheld from those belonging to the "hostile class," who are allowed to die. WFP claims that its food reaches one third of the population, that it averted a major catastrophe, and that it ensured no aid was diverted to the military. Jasper Becker, *Refugees Strike Blow for Truth*, *SOUTH CHINA MORNING POST*, 17 Mar. 2002, at 11.
 48. Eric Dachy, *Médicins Sans Frontières: An Ethical Perspective 2* (Feb. 2002) (unpublished manuscript presented at the *New York Workshop*, on file with the authors).
 49. Quoted in Rieky Stuart, *Ethics in Action: The Oxfam Response 17–18* (Feb. 2002) (unpublished manuscript presented at the *New York Workshop*, on file with the authors).

Oxfam, along with twelve other humanitarian agencies, decided to pull out. No doubt some people died as a result, but arguably more would have died had it not taken sides.

So why not drop the aspiration of political neutrality and devote one's efforts entirely to addressing the political and economic causes of poverty and suffering? This policy would have the advantage of saving many lives (if successful) and offers the possibility of lasting change, often without any apparent trade-offs. For example, MSF launched a successful "Access to Medicines" campaign that forced pharmaceutical companies to reduce prices of antiretroviral medications that are effective in reducing death rates among people with HIV/AIDS.⁵⁰ This campaign was designed to benefit poor countries, where most HIV/AIDS patients could not otherwise afford such medicines.⁵¹

Plunging into the political fray and actively campaigning for institutional reform, however, can carry some costs. It may be more difficult to secure funding from governments and foundations that are keen to avoid political controversy, particularly in areas where, as Roth put it, "respectable arguments" can be marshaled on both sides of the dispute. Such political INGOs may lose their moral authority once they are seen as interested parties. The probability of success is often lower than direct humanitarian relief.

Another disadvantage of the political approach is that INGO representatives themselves can become targets if they are seen to take sides. Rony Brauman, former head of MSF, was critical of food drops by the US military in Afghanistan because they blurred the boundaries between military intervention and humanitarian relief, thus endangering relief workers on the ground: "We are viewed as people coming from abroad, maybe having direct relations with Western powers. If a Western power confirms this impression, then we become really part of the military drive, and we as aid workers can become transformed into war targets."⁵²

Perhaps the most serious moral issue for defenders of the political approach is the possibility that some individuals may be sacrificed on the

50. This includes breaking the law: MSF has defied South African patent law by importing inexpensive generic AIDS drugs manufactured in Brazil for use in a township clinic outside of Capetown. Mark Schoofs, *Doctor Group Defies South African AIDS Policy—Importing Brazilian Generics to Expand Treatment, Physicians Risk Lawsuit*, WALL ST. J., 30 Jan. 2002, at A14.

51. *Id.* Christian Barry and Kate Raworth usefully distinguish between the rhetoric and the substance of the debate concerning the "Access to Medicines" campaign. See Christian Barry & Kate Raworth, *Access to Medicines and the Rhetoric of Responsibility*, 16 ETHICS & INT'L AFF. 57 (2002).

52. Bill Berkeley, *Sending Help; International Agencies Give Aid, While Trying to Avoid the War*, N.Y. TIMES, 12 Nov. 2001, at 6.

altar of the greater political good. Eric Dachy condemns the institutional donors who are making the resumption of humanitarian aid in the Democratic Republic of Congo conditional upon the resumption of peace negotiations on precisely these grounds: "[This aid] is necessary in the short term in order to prevent deaths from epidemics and because of the lack of basic health care. It is therefore criminal to delay the provision of aid in this way and it constitutes a sort of hostage-taking of the population."⁵³

IV. DILEMMA THREE: WHETHER OR NOT TO COLLABORATE WITH GOVERNMENTS

Human rights INGOs grapple with the question of whether or not to collaborate with governments in order to help remedy human rights violations. Different organizations adopt different strategies, but we can distinguish two basic stances: collaboration and criticism.

A. The Collaborators

Some organizations focus on the necessity of working with governments, even less-than-democratic governments, such as that of China, in order to achieve any improvement in human rights or any success in pursuing humanitarian goals. It is obvious that such governments do not welcome critical perspectives from outside forces (not to mention inside forces), which puts human rights and humanitarian INGOs in a difficult position. Nonetheless, organizations such as the Ford Foundation and the Danish Centre for Human Rights (DCHR) are actively involved in human rights projects in China and other countries with less-than-democratic governments.

In China, the Ford Foundation has been establishing and developing grant-making activities in areas such as judicial reforms, legal aid, and

53. Dachy, *Médecins Sans Frontières*, *supra* note 48, at 12. See also Rony Brauman's criticism of the "public health model," which is oriented toward bringing about the best long-term health outcomes but may require denying health care to people who need it now. Brauman argues that the moral obligation of doctors is to deal individually and sensitively with persons who are ill and that they should not sacrifice individual patients in the supposed interests of the long-term good of society. Rony Brauman, *Questioning Health and Human Rights*, Series 2, Number 6, *HUM. RTS. DIALOGUE*, 7, 7-8 (Spring/Summer 2001). Brauman also argues that the public health model is flawed on practical grounds because it falsely presupposes the exactitude and validity of epidemiological predictions, but one wonders about Brauman's position if the practical arguments support the other side.

constitutional law research. Such projects are explicitly designed to promote greater awareness and respect for individual rights and concern for the worst-off groups in society. Effective implementation of these projects is premised upon successful collaboration with government officials and institutions, notwithstanding appearances. One review of Ford Foundation projects observed:

For instance, the Center for the Protection of the Weak at Wuhan University would not have been able to begin its operations without the Foundation's funding. However, the mission of the Center has been largely in line with the official rhetoric of protecting the interests of the weaker members of the society. In addition, all the major government figures are honorary members of the center. Although one may categorize the center as an NGO, it is hardly the kind of NGO which resists or confronts the government that one would see elsewhere.⁵⁴

This analyst argues that collaboration with government officials is necessary given the political context because working with truly autonomous NGOs would incur the government's suspicion and "jeopardize the Foundation's existing relatively good rapport with governmental organizations."⁵⁵ The presupposition is presumably that this is an important way (or perhaps the only feasible way) for the Foundation to advance the causes of human rights and social justice in China.

The Danish Centre for Human Rights adopts a similar cooperative approach. This government-funded agency (its largest funder is the Royal Danish Ministry of Foreign Affairs) has been funding and supporting various human rights projects in China,⁵⁶ including a program concerned with the prevention of the use of torture and ill-treatment by police in the pre-trial phase, another program designed to train Chinese legal scholars and practitioners in European law and practice, a human rights center in a provincial capital, a project providing legal aid to women, and a death penalty study. As with the Ford Foundation, the activities of the DCHR require active collaboration with the government sector: "In authoritarian states, where the local NGOs might be few or non-existent within certain

54. Song Bing, A Review of Selected Judicial-Reform Projects Funded by the Ford Foundation 24 (May 2001) (unpublished manuscript, on file with the authors).

55. *Id.*

56. The choice of country is partly motivated by the practical concerns of the Danish government: "An official Danish goal of opening Chinese markets complements the need to meet concerns raised by human rights activists and NGOs in the South." Birgit Lindsnaes et al., An Assessment of Success Stories, Trade Offs, and Failures 6 (Feb. 2002) (unpublished manuscript presented at the *New York Workshop*, on file with the authors).

sectors, cooperation with governments might be the only option."⁵⁷ It would be a mistake, the DCHR implies, to always view less-than-democratic governments as evil perpetrators of human rights abuses. Sometimes, government officials are sincerely committed to improving the rights situation in selected areas.⁵⁸ Where human rights violations do occur, this may be "due to institutional inertia rather than to active state willed perpetration of violations." It could also be due to lack of technical skills and know-how, and the government might welcome INGO aid in this respect. In sum, "the successful cases demonstrate that it is indeed possible to obtain very good results even in authoritarian regimes."⁵⁹

B. The Critics

There are, of course, also disadvantages linked to this partnership with less-than-democratic governments approach. The most obvious is that human rights organizations working in China often choose to "avoid politically sensitive issues" such as labor rights, press freedom, and the political rights of dissidents⁶⁰ and "avoid politically sensitive places" such as Tibet and Xinjiang.⁶¹

Another potential disadvantage is that human rights INGOs that cooperate with less-than-democratic governments may grant moral legitimacy to those governments, thus postponing the day of reckoning. The authors of a report titled "Promoting Human Rights in China" express their doubts regarding those who favor engaging the Chinese government on human rights issues: "In general the Chinese government has succeeded in taking control of standard setting for engagement programs and has shaped

57. *Id.* at 10.

58. In the case of China, however, such concerns may not be expressed in terms of the language of human rights: "The Chinese side [wishes] to downplay the human rights discourse and instead speaks of citizen's rights or rights of special groups like suspects, women, retired persons, etc. To speak of someone's legal rights is also non-controversial in China, while human rights for some reason is tinged with power politics, colonial exploitation, and often prompts a very nationalistic response." In such cases, the DCHR avoids "conflict of formalities," as "the problem is more technical than substantial, and we have not had any strong confrontations from either side." Still, the DCHR would in general like to see a strong human rights profile and "the two different interests create a dilemma that could influence choices and strategies in some areas." Lindsnaes et al., *Human Rights in Action*, *supra* note 11, 8–9.

59. Lindsnaes et al., *An Assessment of Success Stories*, *supra* note 56, at 13.

60. It is interesting to note, however, that one organization—John Kamm's *Dui Hua* [Dialogue] Foundation—has had remarkable success in securing the release of dissidents from Chinese jails by engaging and cooperating with Chinese political authorities.

61. Lindsnaes et al., *Human Rights in Action*, *supra* note 11, at 9.

these programs so that their impact on human rights practices is slight. . . . In some cases the dialogue process has become a substitute for more critical approaches that could generate real pressure for change."⁶² One has only to recall how many corporations and governments opposed policies of disinvestment and other economic sanctions against the apartheid regime in South Africa, arguing instead for policies of constructive engagement. In retrospect it seems clear that constructive engagement was far less effective than sanctions in assisting the transition to a new South Africa. This is not to imply that the current Chinese government ranks on the same scale of injustice as the former apartheid regime,⁶³ but similar worries may arise.⁶⁴

Another disadvantage of collaboration was raised by Ken Roth of HRW. The DCHR argues for an international "division of labor," with organizations such as AI and HRW adopting a confrontational approach and documenting violations and lobbying for international criticism while "engagers" such as the DCHR and similar organizations cooperate with the government on long-term rights projects.⁶⁵ Roth pointed out, however, that there are trade-offs because less-than-democratic governments can use their cooperation with the "engagers" as evidence that their policies on human rights are not so bad and are getting better, thus weakening the force of criticisms put forward by other organizations.

It is inevitable, of course, that any human rights reforms or humanitarian efforts will be trumpeted for public relations purposes, and INGOs must always try to determine whether the substantive merits of the changes are worth the public relations advantage that the targets of their efforts will obtain with a particular reform. This problem emerges with non-state actors as well. For example, Morton Winston reports that Shell responded to plans

62. See OPEN SOCIETY INST. AND HUMAN RIGHTS IN PROMOTING HUMAN RIGHTS IN CHINA, REPORT OF THE CHINA HUMAN RIGHTS STRATEGY STUDY GROUP (Nov. 2001), available at http://iso.hrichina.org:8151/iso/about_us.adp.

63. At a certain point of "evilness," collaboration becomes indefensible. Brian Joseph suggests that this can occur when the country in question is entirely non-democratic (as opposed to less-than-democratic) and the rights violations that take place are immediate, gross, and clearly the fault of the government. E-mail from Brian Joseph, *supra* note 12.

64. On the other hand, the authors of the DCHR paper argue that the "partnership approach" may eventually allow for institutional problems of governance to be addressed: "A step-by-step method of implementation where the aim during the first phases is to create a foundation of cooperation and trust within what is sometimes a limited scope of activities, while during the subsequent phases more emphasis is put on broadening the scope of interaction, thus creating a foundation for more far-reaching institutional changes." An example is the Helsinki and OSCE processes that started with dialogue at the political level in 1975, a dialogue that "probably had a decisive influence on Gorbachev's Glasnost policy." Lindsnaes et al., *Human Rights in Action*, *supra* note 11, at 3, 12.

65. Lindsnaes et al., *An Assessment of Success Stories*, *supra* note 56, at 11.

for demonstrations by several groups, including Friends of the Earth and the Nigerian group MOSOP, at the 1997 Shell Annual General Meeting by announcing the day before that it had agreed with AI and Pax Christi to adopt human rights principles in its business code.⁶⁶ Presumably AI and Pax Christi made the judgment that the substantive commitments that Shell was making were significant enough to justify giving Shell the opportunity to use their names to deflect the criticisms of the other groups.

V. DILEMMA FOUR: THE ETHICAL LIMITS OF FUND-RAISING⁶⁷

The need to raise funds has also generated debates within human rights and humanitarian INGOs. The source of funding and the means employed to raise funds both raise ethical questions.

A. Conflicts Over Sources

One important area of controversy is the issue of government funding for INGOs. Many INGOs do accept government funds and the main advantage, of course, is that they can carry out their projects without wasting too much time and money on fund-raising efforts. This raises questions regarding their independence, however: "Many of the largest and most respectable INGOs of today (such as Save the Children and Oxfam) were born and raised in opposition to government policy and vested interests at the time. But can this role continue when Northern NGOs are becoming more and more dependent on government support?"⁶⁸ The contrast between CARE and Oxfam America is instructive. Both organizations provide emergency and development aid in the South, but the comparison ends there. CARE relies

66. Morton Winston, *NGO Strategies for Promoting Corporate Responsibility* 24 (2002) (unpublished manuscript, on file with the authors).

67. Another morally and practically relevant issue is the extent to which local (Southern) NGOs have to compromise in order to obtain funding and support from wealthy Northern INGOs. See Clifford Bob, *Merchants of Morality*, *FOREIGN POL'Y*, Mar.-Apr. 2002, at 36. This topic is beyond the scope of this article, which focuses on the ethical dilemmas of INGOs.

68. David Hulme & Michael Edwards, *Too Close to the Powerful, Too Far from the Powerless*, in *NGOs, STATES AND DONORS: TOO CLOSE FOR COMFORT?* 280 (David Hulme & Michael Edwards eds., 1997). According to Brian Joseph, however, the relevant issue is not government funding per se, because organizations that rely on one or two big private donors are also susceptible to pressure. He argues that the number and diversity of sources is often more important than the original source of the funds. E-mail from Brian Joseph, *supra* note 12.

on large, regular grants from the U.S. government, is not critical of US public efforts, and handles numerous contracts on behalf of the US government.⁶⁹ Oxfam America “neither solicits nor accepts any funding from government.” This policy allows Oxfam America to act with conviction and integrity when encouraging governments, IGOs, and international financial institutions (IFIs) to adopt policies that support long-term development (and criticizing them if they do not).⁷⁰

The recent experience of the Danish Centre for Human Rights further illustrates the disadvantages of dependence on government funds. Governments can force agendas onto reluctant human rights organizations. In one case, the DCHR found it “necessary to refrain from a rather promising cooperation project on the protection of social and economic rights that was based on a Chinese initiative, because the Danish Ministry of Foreign Affairs did not count this as a human rights project.”⁷¹

Similar concerns may arise in the case of funding from international organizations that are composed of national governments. One human rights organization that prefers to remain anonymous works in Nepal as consultants for the United Nations Development Programme (UNDP), but they cannot criticize the Nepalese government to the extent they would like to because the relatively conservative UNDP (dependent on good relations with the Nepalese government, one of its constituent members) might be reluctant to use its services, which would affect the finances of the organization.⁷²

The INGOs that rely more on confrontational approaches have been particularly wary of dependence on government funding. Amnesty’s founder, Peter Benenson, was forced to resign in 1967 following accusations that he had used British government funds to help finance AI’s relief operations in

69. Claude E. Welch, Jr., *Conclusion*, in *NGOs AND HUMAN RIGHTS*, *supra* note 19, at 270.

70. Scott, *supra* note 47, at 209. On the other hand, Oxfam Canada receives about half of its funding from CIDA, an agency of the Canadian government concerned with economic development in poor countries. This may reflect different judgments about the policies and politics of the respective governments.

71. Lindsnaes et al., *An Assessment of Success Stories*, *supra* note 59, at 10. One might not have been surprised if the American government had similarly pressured a government funded human rights organization, but it is interesting to note the governmental bias towards the protection of civil and political rights even in social democratic West European states such as Denmark.

72. Such dilemmas can be partly resolved by collective action by human rights and humanitarian organizations that allows them to speak out and leaves particular organizations less open to retaliation: “A group of around 25 German NGOs, working exclusively for Nepal, have expressed their deep concern over the current political and ‘unresolved arguments’ between the government and the Maoists, further calling for peace and “concentrat[ion] on the well-being of the people” to resolve all existing differences (KOL report, 6 June 2002).

Rhodesia,⁷³ and the organization has since shied away from government funding.⁷⁴ Today, AI shows the heaviest reliance on membership dues and individual contributions among major INGOs. Human Rights Watch, as Widney Brown explains, "has an absolute prohibition on accepting funds either directly or indirectly from governments. This prohibition is aimed at avoiding even the appearance of undue government influence on any choices or investigations made by Human Rights Watch and to avoid the inference that the organization is implicitly endorsing a government as not being a human rights violator."⁷⁵

B. Conflicts Over Means

There have also been vigorous debates over the legitimacy of means employed for raising funds from the public at large. INGOs reliant on public support must choose between dubious but effective fundraising tactics that enhance their capacity to do work on behalf of human rights and "appropriate" methods that limit fundraising success and constrain its ability to do good. Betty Plewes and Rieky Stuart of Oxfam Canada condemn the "pornography of poverty," vivid images of helpless, passive poor, and starving Third World peoples that are used by Northern NGOs to raise money from the public for their development work. Emotional appeals of this sort based on notions of guilt and charity have been relatively effective at raising funds: "Last year in Canada the five largest NGOs (mainly child sponsorship organizations) raised over \$300 million from private donations. [Child sponsorship organizations] tell us that these images of misery and passive victimization generate much more in donations than alternatives they have tested, and that it is vital to raise large amounts of money in order to be able to carry out their relief and development work."⁷⁶ Such images, however, convey other more destructive messages.

73. WILLIAM KOREY, *NGOs AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: "A CURIOUS GRAPEVINE"* 167 (1998). At the same time, the revelation that the International Commission of Jurists, headed by AI co-chair Sean MacBride, had received funding from the CIA early in its history "threatened to torpedo both organizations." Claude Welch Jr., *Amnesty International and Human Rights Watch*, in *NGOs AND HUMAN RIGHTS*, *supra* note 19, at 92.

74. To be precise, AI does not accept money from governments for its research or campaigning work but some of its smaller sections have occasionally accepted very limited amounts for human rights education programs. E-mail from Curt Goering, *supra* note 38.

75. Widney Brown, *Human Rights Watch: An Overview*, in *NGOs AND HUMAN RIGHTS*, *supra* note 19, at 78.

76. Betty Plewes & Rieky Stuart, *Money Talks: Images, Messages and Ethics in NGO Fundraising 1* (Feb. 2003) (unpublished manuscript, on file with the authors). In the long

Messages like these can undermine NGOs efforts to create a broader understanding of the underlying structures causing poverty and injustice. These images portray people as helpless victims, dependent and unable to take action, and convey a sense that development problems can only be solved by Northern charity. They ignore Northern complicity in creating inequality. At the very least they convey a limited picture of life in Southern countries. At their worse they reinforce racist stereotypes.⁷⁷

Neville Gabriel, of the South African Conference of Catholic Bishops, notes the negative impact of such images on the intended beneficiaries of development aid:

What this comes down to is a posture in the North's international relations with Africa that continues to model colonial relations of paternalism on the one hand, and the internalization of second class world citizenship by Africans on the other. We have not yet come to understand and appreciate the ramifications of a mature relationship of partnership between Africa and her former colonial masters. In practice this very often means that North-South development partnerships with African organizations tend towards what we may call an "extractive" approach—African organizations extract finances for their richer Northern counterparts and organizations in the North sustain themselves through extracting stories and information from groups in the South. The unfortunate impact is that this so easily falls into the patten of reinforcing African people's negative self-image.⁷⁸

In view of such critiques of charity-based approaches, Oxfam Canada favors justice-based strategies that "focus on the claiming of rights by marginalized individuals or groups through changes of skills, organizational capacity, control of resources, law, policy, or practice"⁷⁹ and opposes fundraising tactics that conflict with this framework, notwithstanding the costs. It therefore rejects pornography of poverty images and instead uses positive images ("the smiling children, the women smiling as they operate their new village pump, the smiling nurse vaccinating plump healthy children") and clever or ironic images, such as its award winning ad during the OJ Simpson trial that used only text to compare the amount of media coverage of that

term, however, such images may not be as effective. Their impact may diminish with repetition, and more and more graphic images would be needed to generate the same shock effect (just as Hollywood movies and videogames need to become more and more violent to generate the same shock effect), and eventually this whole process may lead to donor fatigue. As David Keen puts it, "If the only thing you get is negative stories, you become inured and people seem less human—they are either emaciated victims or violent and evil. This erodes our ability, willingness or interest in helping [them]." *Id.* at 4.

77. *Id.* at 1.

78. *Id.* at 2.

79. Stuart, *supra* note 49, at 9.

event with the much smaller coverage of the Rwanda genocide taking place at the same time.⁸⁰

Similar debates took place at AI, but with a different outcome. The national office of AI in Australia had heated debates within the organization and with the advertising agency commissioned to assist with fund raising over whether to use pictures of torture victims for fund raising. AI had refused to use such pictures because it was felt they exploit the victims (who probably didn't agree to being used in such images), that it "feels bad," and that AI should appeal to people's better nature. Eventually AI reversed its policy and the ad agency (working pro bono, it should be said) did use such pictures in fund raising activities. This likely had a positive effect on fund raising (though it is difficult to disentangle cause and effect) and increased AI's capacity to do its work on behalf of human rights.⁸¹

VI. CONCLUSION

This article has drawn on an intensive two-day workshop dialogue session between high-level representatives of human rights and humanitarian INGOs and academics with an interest in human rights. Based on these dialogues, we have discussed four ethical dilemmas that are commonly experienced by INGO representatives during the course of their work: (1) the conflict between human rights norms and local cultural norms; (2) the choice between expanding the organization's mandate to address more fundamental problems and restricting it to relatively manageable aims; (3) whether or not to collaborate with less-than-democratic governments; and (4) the ethical limits of fund raising.

These ethical dilemmas often overlap in practice, and we do not claim to have presented an exhaustive list of the ethical dilemmas encountered by human rights and humanitarian INGOs. Nor are there universally right or wrong answers to these dilemmas; there are better or worse ways of dealing with these dilemmas that will depend on the context. However, the purpose of this article has been to distinguish between and thus clarify the advantages and disadvantages associated with various responses to the dilemmas commonly encountered by human rights and humanitarian INGOs. Such an effort will hopefully allow INGOs to learn from each

80. Plewes & Stuart, *supra* note 76, at 8.

81. We owe thanks to Andre Frankovits for this information.

other's experience, avoid past mistakes (e.g., due to insufficient awareness and anticipation of the disadvantages associated with particular responses to ethical dilemmas), and increase the probability that human rights and humanitarian goals can be successfully implemented.⁸²

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82. It is worth noting one point that was raised at the last session of the workshop. There may well be some dilemmas that representatives of human rights and humanitarian INGOs *ought* to experience, but fail to do so due to lack of awareness of, or insufficient emphasis on, relevant moral principles. The philosopher Thomas Pogge argued that human rights and humanitarian INGOs should distribute aid wherever it can most effectively relieve human suffering. If this is the overriding criterion, INGOs such as Oxfam and MSF should focus their efforts in politically stable poor countries such as India where their projects are more likely to succeed at alleviating suffering of many people, as opposed to spreading their projects around the globe and investing time and effort in dangerous countries such as Liberia and Somalia where there is high risk of dangerous leakage or diversion of funds and supplies into the coffers of warring factions. The relevant ethical dilemma, then, would be whether to devote more resources to India or Bangladesh, and INGOs should not worry about leaving people in Liberia or Somalia to their fate. This view was questioned by Bonnie Ibhawoh, who argued that it is difficult to measure success and that human rights and humanitarian INGOs should rely on different methodologies and different perspectives, which could justify a diversity of projects spread in different contexts. Mona Younis argued that aid should be distributed in different countries around the world so that diverse groups experience an alternative to deprivation as possible. Brian Joseph echoed this, arguing that successful projects can have a demonstration effect that many different groups should be exposed to. Joe Saunders raised the point that concentrating one's resources may seem biased or unfair (this raises practical concerns regarding funding). Rieky Stuart argued that "greatest effect" is likely to be where work is "easiest," perhaps in part because we are dealing with those who are most like us. Michael Barnhart noted that aid organizations are not and need not be only concerned with the relief of suffering, as there are other forms of assistance. Finally, one might add that suffering can be measured in different ways, and it could be argued that those exposed to both physical suffering (e.g. hunger) and psychological suffering (e.g., fear in war time) are in fact the worse-off groups, to which aid groups should pay special attention.