

**Full Spectrum:
Amnesty International and Economic, Social, and Cultural Rights**

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Abstract

In 2001, Amnesty International, the world's largest international human rights non-governmental organization, made the decision to change its narrow mandate into a much broader mission statement that called for the protection and promotion of both civil and political rights *and* economic, social and cultural rights. Although the organization had added to its original mandate core concerning the release of 'prisoners of conscience' before, the addition of economic, social, and cultural rights represented a major shift away from Amnesty International's classic focus on civil and political rights. Amnesty International's decision to promote all of the human rights listed in the United Nations Universal Declaration of Human Rights and become a 'full spectrum' human rights defender was a controversial one within the organization. The debate by the Amnesty membership over whether to accept an expanded form of mandate took place within the organization over a period of a decade before any changes were made. Concerns and fears over accepting economic, social and cultural rights into the mandate ranged from the practical to the theoretical.

This thesis will look at the decision made by Amnesty International to begin actively promoting and defending economic, social and cultural rights. It will examine why a leading human rights organization decided to modify its focus considerably and what the challenges were in doing this. In exploring the issues of contention brought up during the debates by the organization's membership, the larger questions surrounding international political acceptance of economic, social, and cultural rights will be examined.

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Introduction

Civil and political rights have long been the rallying cry for Western democracies to the international political community and, by far, the primary focus of Western-based human rights non-governmental organizations. The concept of a politically entrenched and legally binding set of universal human rights did not, in essence, take hold until the 20th century. It was the 1948 United Nations Universal Declaration of Human Rights (UDHR) that delineated numerous human rights falling into the categories of both civil and political rights as well as economic, social, and cultural rights.

Even though, under the banner of the United Nations, the UDHR is meant to apply to all the peoples of the world, it soon became clear that some states were focusing more (or solely) on only a certain group of rights. This trend toward particular rights (or groups of rights) adherence was largely fuelled by the ideological divisions of the Cold War era that pitted the Soviet Union and other communist states against the United States and the ‘West’. The splitting of human rights into various ideological camps affected their prominence and importance amongst both states and human rights non-governmental organizations (NGOs). In the West, where NGOs first gained prominence, this tendency toward a much greater focus on the protection and promotion civil and political rights has largely continued, even after the end of the Cold War and the fall of the Soviet Union and (the majority of) its satellite countries.

The collapse of the Soviet Union effectively signalled the death of the West’s primary communist foe and heralded the virtual triumph of capitalism in a global political sphere where liberal democracies were to be the accepted standard of good government.

The cessation of expansionist communism, largely manifested by the USSR, affected the political perception of economic and social rights in the West as well where they were viewed as being ‘socialist’ in nature. In the human rights domain, Cold War politics were often played out between the two groups of rights in a sort of proxy contest. The end of the Cold War seemed to mean economic, social, and cultural rights were no longer so much adversarial (or even taboo) in the ‘triumphant’ West as they were anachronistic, unnecessary, or even irrelevant in the minds of many, especially conservatives. This was the international political setting for the debate within Amnesty International over whether or not to begin actively promoting and defending economic, social, and cultural rights as it had civil and political rights for almost thirty years.

As the largest and among the best-known international human rights NGOs in the world, Amnesty International had been in the forefront of human rights promotion since the early 1960s. The organization’s early efforts focused on people imprisoned for non-violent expression of political or religious beliefs by their governments, those Amnesty International coined as ‘prisoners of conscience’. As the size and the funding of the NGO expanded, its mandate expanded to include other human rights covered under the civil and political rights umbrella. It was at its biennial meeting in 1991 that the idea of actively promoting and reporting on economic, social, and cultural rights (for the NGO was never against these rights) was first brought up. Amnesty International was no longer solely based in, or supported by members from, the West. Country sections from the global South, former Eastern Bloc countries, as well as Amnesty International’s members in country sections from the West were asking whether it was time for the

organization to represent all of the human rights listed by the UN UDHR. Promotion and defence of civil and political rights was no longer seen by all as a focus on a certain group of rights but as neglect of other rights.

Thus began the lengthy, laborious, and at times, antagonistic debate within Amnesty International over whether or not to accept the defence and promotion of economic, social, and cultural rights into its mandate. In the discussion over the possible inclusion of these rights, those in support of the status-quo (for whatever reasons) were often on the defensive. The Amnesty International membership realized, however, that as the world's largest international human rights NGO, the decisions made by them for their own organization would have far-reaching effects for those helped by Amnesty itself as well as other human rights NGOs. Although not responsible for such groups, Amnesty International realized that it was a world leader in terms of human rights protection and promotion, and the example that it set was often followed by many.

All of these factors added to the complication of the question put before the NGO: whether or not to begin actively (as opposed to passively) promoting and defending economic, social, and cultural rights. Not only was there a lot of controversy around the issue itself, but the NGO's organizational structure required significant portions of the membership in country sections spread across the globe to agree with and support such an enhancement of mandate responsibilities. This required consensus meant a potential clash of cultural ideas, similar to the one that, in part, caused the schism between civil and political rights and economic, social, and cultural rights in the first place. This being said however, the trepidation and concerns that existed within Amnesty certainly did not

equal the antagonism, animosity, and rivalry that helped fuel the tensions of the Cold War. The common goal for all within Amnesty International continued to be the defence of human rights and the prevention of (recurring) violations the world over. The question over whether to expand Amnesty's core mandate was essentially a question of how the NGO would continue to protect and promote human rights as well as how much, in an expanded capacity, the organization could do.

This thesis will examine why Amnesty International made the change from a relatively tight mandate focus on the protection of civil and political rights and (after much internal debate) expanded into the somewhat ambiguous and more controversial domain of economic, social, and cultural rights. This thesis will also review and analyze the reasons put forward by Amnesty members for and against such a mandate change. The larger ideological arguments surrounding the politically charged concept of economic, social, and cultural rights will provide a framework for understanding Amnesty International's specific deliberations and decisions.

Chapter 1 Background

CP and ESC Rights

“All human rights for all.”¹

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly of December 10th, 1948, put forward a comprehensive list of human rights to the world. This document was deemed a “common standard of achievement for all peoples and all nations.”² It is a document that is meant to recognize the universality and indivisibility of human rights. After the devastation, brutality, and barbarity of the two world wars fought in the first half of the 20th century, the nations of the world wanted to prevent these sort of atrocities from ever happening again. The United Nations Organization was to be the forum where states could come together to discuss their differences as well as pool their resources in pursuit of common goals. The UDHR was to represent a culmination of efforts by the world’s nations to declare definitively, for all to recognize and acknowledge, the basic human rights entitled to all members of humanity with no exception. As human rights scholar William Korey writes, the UDHR was to “...serve as a guidepost for the future and to which states should aspire.”³

¹ United Nations. “Universal Declaration of Human Rights: Fiftieth Anniversary of the Universal Declaration of Human Rights 1948-1998.” <http://www.un.org/Overview/rights.html> (Retrieved 21 February 2008).

² Ibid.

³ William, Korey, *NGOs and the Universal Declaration of Human Rights: “A Curious Grapevine,”* (New York: St. Martin’s Press, 1998), 1.

As inferred by their name, human rights are meant to be universal and apply to each and every person on the planet, regardless of race, religion, sex, nationality, etc. Their existence is not determined by individual state acknowledgement. Rather, these rights exist at the international level as “...norms of justified or enlightened political morality.”⁴ The human rights listed by the UDHR and the subsequent UN International Covenants (described below) are numerous and fairly specific in their description. They are intentionally designed in such a way in order to address the common problems of governments the world over. Human rights are predicated on the concept of human dignity intended to promote an international climate of peace and security.⁵ With them, persons are treated as agents and not as objects. Human rights use an egalitarian (as opposed to paternalistic) view of individuals and are seen as a means for the individual to shape his or her own life.⁶

The concept of human rights can be deceptively complicated in its application. Sets of rights covered by various UN human rights documents include: security rights, due process rights, basic liberties, rights of political participation, equality rights, and economic and social rights.⁷ These are often divided into two separate categories, neither of which are universally agreed upon or protected by all states, the main guarantor of human rights. States have been known to either favour a particular group of rights over another or even reject one group altogether. The Universal Declaration of Human Rights,

⁴ James W. Nickel, *Making Sense of Human Rights*, 2nd Ed., (Oxford: Blackwell Publishing, 2007), 10.

⁵ Yet are to be respected even when peace and security do not exist. Ibid, 9, 10.

⁶ Jack Donnelly, *Universal Human Rights in Theory and Practice* 2nd Ed., (Ithaca, NY: Cornell University Press, 2003), 37.

⁷ James W. Nickel, 11.

however, is supposed to serve as an inclusive document that encompasses the two categories of human rights: civil and political rights and economic, social, and cultural rights.

The UN General Assembly later expanded on both groups of rights in more comprehensive forms. The International Covenant on Civil and Political Rights (ICCPR) was adopted December 16, 1966 and entered into force on the 23rd of March 1976.⁸ The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the General Assembly on the same date as that of the ICCPR and entered into force on the 3rd of January 1976.⁹ Although both categories of human rights are laid out in the UDHR, they are not always accepted and enforced comprehensively. They are not considered to be indivisible as the Universal Declaration states. In some cases, these two groups of rights are viewed as antagonistic or even antithetical. Such viewpoints were born of historical political and ideological rivalries.¹⁰ Today, much of the strong ideological rhetoric surrounding human rights has (largely) died away from international discourse. Officially at least, a great number of states have signed the two supplementary International Covenants on Civil and Political (CP) and Economic, Social, and Cultural (ESC) Rights. By 2001, there were only 10 states that had signed on to only one of the

⁸ United Nations, “Office of the High Commissioner for Human Rights: International Covenant on Civil and Political Rights.” http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (Retrieved 22 February, 2008).

⁹ United Nations, “Office of the High Commissioner for Human Rights: International Covenant on Economic, Social and Cultural Rights.” http://www.unhchr.ch/html/menu3/b/a_cescr.htm (Retrieved 23 February, 2008).

¹⁰ These will be discussed more in the next chapter.

Covenants and 140 states had signed both.¹¹ It remains the concept of ESC rights, however, that garners more scepticism and controversy.

Within the Universal Declaration of Human Rights, the first twenty-one articles focus on civil and political rights. The final nine articles of the short thirty-article document have to do with economic, social, and cultural rights. Civil and political rights are not intended to be superordinate to economic, social, and cultural rights. Despite this, CP rights are often referred to as ‘1st generation’ rights (which thereby relegates ESC rights to the ‘2nd generation’ position).¹² The Universal Declaration itself does not make any reference to such a designation.¹³ In the preambles of both the International Covenants of CP and ESC Rights, an acknowledgement of the importance of the other group of rights is stated. This assertion of the validity and importance of both categories of rights within each Covenant was likely quite purposefully done by their authors in order to minimize Cold War partisanship and ideological tensions.

Civil and political rights are often described as protection *from* certain infringements on personal liberties by the state (and others).¹⁴ These rights are often associated with the liberal democracies of Western states (e.g. Western Europe, North America, Australia, New Zealand). Among some of the civil and political rights listed by the Universal Declaration are freedom from arbitrary arrest and detention, freedom of

¹¹ Jack Donnelly, 27, 28.

¹² James W. Nickel, 97.

¹³ Except by the fact of the order the rights are written in on the actual document.

¹⁴ This simplified summation of CP rights has been put forward by such human rights scholars as Maurice Cranston but is refuted by many others such as Brian Orend in *Human Rights: Concept and Context*, (Toronto: Broadview Press, 2002), 31-32 and Jack Donnelly in *Universal Human Rights: In Theory & Practice 2nd Ed.*, (Ithaca, NY: Cornell University Press, 2003), 27-29, who contend that CP rights are not so clear cut.

opinion and speech, freedom of association, the right to own property, and the right to life, liberty and security of person.¹⁵ Civil and political rights are of central importance to liberal democracies that place great emphasis on what are largely considered ‘negative’ rights. Negative rights are those in which the state’s responsibility is mainly that of forbearance from interference with the freedom(s) of the individual. Although the term ‘negative’ rights is often used interchangeably with CP rights, the two are not exactly synonymous. The protection of some civil and political rights requires active involvement from the state. The running of elections and holding of trials, for example, are all quite ‘positive’ responsibilities.¹⁶ The ordination of these rights as ‘1st generation’ is because, according to a widely held view within Western liberal thought, CP rights are the foundation upon which a fair and just society is built. Conservative thinkers and philosophers and perhaps most importantly, the U.S. government, view civil and political rights as the more important of the two groups of human rights.¹⁷

Economic, social, and cultural rights generally imply duties by the state *to* its citizenry. They are usually referred to as ‘positive’ rights in that a government has duties it must carry out in order for these rights to be respected and realized. During the Cold War years, this category of rights was defended vigorously by communist countries and often disparaged by the United States or downgraded from the status of rights to mere ‘aspirations’.¹⁸ Some of the ESC rights listed in the Universal Declaration include the

¹⁵ United Nations, “Universal Declaration of Human Rights”.

¹⁶ Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, (Princeton, NJ: Princeton University Press, 1980), 36, 37.

¹⁷ Jack Donnelly, 27.

¹⁸ Amnesty International, *Human Rights for Dignity: A primer on economic, social and cultural rights*, (London: Amnesty International Publications, 2005), 10.

right to employment, the right to an adequate standard of living, access to necessary medical services, and security in the event of unemployment or sickness with emphasis on special care and assistance to mother and child.¹⁹ A violation of this category of rights would only require a failure to act, i.e. a sin of omission, whereas as a violation of a CP right usually involves the sin of commission.

The contrast between the violations of these two groups of rights, commission versus omission, helps to reinforce the notion that ESC rights are a secondary, and therefore less important, set of rights. The argument is that for a government to fail in providing some sort of economic assistance (adequate housing, for example) to its populace would be less serious an offence than for a government actively to commit torture (for example). Human rights violations caused by inaction are construed as less heinous than those requiring action by the violator.²⁰

With both groups of human rights it is the state that is the guarantor, whether in acting ('positive') or refraining from acting ('negative'), or in protecting an individual's human rights from others in society (through the passing of laws, policing, etc.). With ESC rights however, the state generally has a much larger responsibility in the maintenance of 'positive' rights than for 'negative' rights. Generally there are often larger financial along with organizational commitments that are associated with respecting ESC rights (e.g. providing social security, health care, etc.). This responsibility (construed by some as a 'burden') is what frames ESC rights in such a

¹⁹Ibid.

²⁰ Jack Donnelly, *International Human Rights 2nd ed.*, (Denver, Westview Press, 1998), 25.

controversial light (in the form of ‘rights’) for Western liberal democracies where the predominant economic order of the state and society is that of free-market capitalism (especially in the United States). The somewhat vague Lockean sense of rights entails only the core liberties assigned by civil and political rights along with the right to private property. These Lockean rights are those that the United States was founded on and still lionizes today.

Amnesty International

“It is better to light a candle than to curse the darkness.”²¹

As international human rights non-governmental organizations go, Amnesty International is one of the best-known and well-respected there is. The organization has been around since the early 1960s and has made a name for itself both in the developed world as well as the developing world as a protector and promoter of human rights.²² For decades, Amnesty International has carried out its mandate to expose (mainly) governments that have denied their citizens protection of civil and political rights. Political prisoners and victims of torture (among other human rights violations victims) have had their governments ‘named and shamed’ by Amnesty International (AI) to the international community. The methodology adopted by the organization at its inception

²¹ Amnesty International motto in Morton E. Winston, “Assessing the Effectiveness of International Human Rights NGOs: Amnesty International,” in *NGOs and Human Rights: Promise and Performance*, ed. Claude E. Welch, Jr., (University of Pennsylvania Press: Philadelphia, 2001), 25.

²² Amnesty International, *About AI: AI’s first 40 years*, <http://web.amnesty.org/pages/aboutai-timeline-eng>.

has since created awareness around the world of what happens when human rights are ignored or violated. AI exemplifies why vigilance must be kept when defending human rights.

Amnesty International's mandate, until the late 1990s, had been relatively specific and focused. Calls began to come in the early 1990s from many within its membership, especially those in the global South, to focus not only exclusively on civil and political rights. These members wanted to expand AI's mandate to include a broader (or full) spectrum of human rights, that included the defence and promotion of economic, social and cultural rights as well (which will be discussed in the following chapters).²³

Despite its current global status and reputation as a well-respected NGO, Amnesty International came from very humble beginnings. It was founded by British lawyer Peter Benenson, in May of 1961. Benenson's purpose for the organization was to “[r]ekindle a fire in the minds of men.” and help them feel a sense of belonging to something greater than themselves.²⁴ The founding of the organization took place in an era when people were starting to take notice of the injustices occurring in the world around them but often felt helpless to do anything. Amnesty provided such people a peaceful means of shedding light on these injustices and making a difference.

The original focus of Amnesty International (and its early predecessor *Appeal for Amnesty, 1961*) was to be largely on what the organization referred to as ‘prisoners of

²³Curt Goering, “Amnesty International and Economic, Social, and Cultural Rights,” in Daniel A. Bell and Jean-Marc Coicaud, eds., *Ethics in action: the ethical challenges of international human rights nongovernmental organizations* (Cambridge, NY: Cambridge University Press, 2006), 209.

²⁴ Stephen Hopgood, *Keepers of the Flame: Understanding Amnesty International*, (Ithaca, NY: Cornell University Press, 2006), 7.

conscience', a term coined by AI.²⁵ These are people who have been imprisoned by their governments for their (usually, but not exclusively, political) opinions or even religious beliefs. The goal of Amnesty was to secure the release of these prisoners or, at the very least, secure for them a fair trial through international attention often brought to bear on them and their captors by various means, most notably letter-writing campaigns. This sort of action, started at its very inception, still represents one of Amnesty International's core responses to human rights violations.

On a larger scale, Benenson and AI's other co-founders wanted to expand the right of asylum for those who found themselves accused or detained by the state as well as to promote the creation of a potent international framework that could protect and guarantee freedom of opinion. The concept of the 'prisoner of conscience' tied the idea of freedom of thought to that of physical freedom.²⁶ This was a powerful concept in a period where one's ideas and even thoughts could endanger them. Although the political context has changed immensely in the decades since the founding of Amnesty, the fundamental concept that bringing international attention to human rights violations causes serious discomfort and even embarrassment to perpetrator governments still holds true.²⁷

As an organization, Amnesty International had been fairly conservative over the years with regard to any sort of change to its mandate. Incrementalism has been its adopted approach. For the first decade or so, the focus remained solely on Benenson's

²⁵ Ibid, 55.

²⁶ Ibid, 61.

²⁷ Jonathan Power, *Like Water on Stone: The Amnesty International Story*, (Boston: Northeastern University Press, 2001), 122.

original idea, the ‘prisoner of conscience’ (i.e. the political prisoner). In the early days, the fledgling NGO worked towards the release of people imprisoned for (the non-violent expression of) their beliefs. It continued to work in this way for so many years not just to stay true to the founders’ vision but also for reasons of (a lack of) human resources.²⁸

Amnesty International was not always the globe-spanning NGO it is today. As international recognition brought with it an increased membership and more funding, Amnesty was able to widen its scope of human rights violations concerns. Over the next twenty years, the organization continued to advocate for fair and prompt trials for its adopted prisoners of conscience and began to lobby against torture and the death penalty as well. Extra-judicial killings and ‘disappearances’ (a euphemism for kidnapping and killing someone) were also included in its work. The 1980s and 1990s saw a frightening growth in the number of human rights violations committed by paramilitary groups and death squads in Latin America and other areas, so in 1991 AI decided to add these to the range of abuses the NGO spoke out against.²⁹ Previously Amnesty, like most human rights organizations, had been focused almost exclusively on violations and abuses committed by governments (since they are the guarantors of such rights). Holding non-state actors accountable for such deeds added a new dimension to Amnesty International.

Although there had been incremental mandate expansions throughout the first thirty years of Amnesty International’s existence, such expansions had all (until recently) stayed close to the original concept of protecting the rights of prisoners of conscience (POCs). All such changes by the organization had

²⁸ Curt Goering, 205-207.

²⁹ Ibid, 205, 206.

remained focused on the core ‘first generation’ concepts of civil and political rights. It was not until the 1990s that Amnesty decided to officially (re)affirm its commitment to all human rights delineated by the United Nations Universal Declaration of Human Rights.

Universality has been a theme that Amnesty International has struggled to maintain throughout its existence (the organization has always tried to be “open to all, concerned with all”³⁰). Peter Benenson established this trend with the first set of POCs the fledgling non-governmental organization chose to champion.

Benenson envisioned three separate political prisoners from the three ‘worlds’ of the Cold War: a communist bloc prisoner, a Western prisoner and a Third World prisoner. This way no one group in the highly polarised Cold War world could accuse the nascent organization of having an ideological bias.³¹ It is this same notion of universality, applied to the concept of human rights, that has helped to catalyse the push for full spectrum rights promotion and protection by Amnesty.³²

Factual and even moral objectivity, according to AI biographer Stephen Hopgood, have been important guidelines for Amnesty International in their mission to ‘shine the international spotlight’ on human rights violations and violators around the globe. Amnesty has relied on visceral human reactions to such atrocities as violence, death, and physical and emotional pain to stir both its membership and ordinary citizens around the world. The NGO’s manner of getting the purest message across to the world has been by using as few details as possible

³⁰ Stephen Hopgood, 208.

³¹ Jonathan Power, 120.

³² This will be discussed in the following chapter.

(with pictures being ideal) in describing a human rights violation or its victim and never using the first-person voice. It was felt that moral authority relied on the absence of context, especially in the often ideologically supercharged world of the Cold War era. The naked facts showing someone in pain and suffering were deemed to be enough to generate revulsion and condemnation in any individual, be they Eastern or Western, communist or capitalist, etc. Amnesty International's specific cultural and social links were to be dissolved in the universality of the message.³³

Amnesty International sought (and seeks) a normative sphere beyond politics to make its claim of injustice. Human rights are to represent this sphere. Former Secretary General of AI Pierre Sané stated that “Amnesty was not established to free prisoners of conscience. Amnesty was established to contribute to the full realization of human rights for all.”³⁴ Amnesty International’s mandate was not designed as a core value but rather as a strategy to bring the idea and acknowledgement of human rights to the people of the world. It is not impartiality, however, that AI strives for in its morally and factually objective reporting of human rights violations, it is advocacy for the universal respect of human rights as well as advocacy on behalf of those who have had those rights violated by their governments.³⁵

Over the last more than four and half decades, the membership-driven

³³ This is one reason why an AI country section was never allowed to work on a campaign within its own borders. Stephen Hopgood, 206

³⁴Ibid, 208.

³⁵ Or in some cases, as mentioned above, non-state actors.

Amnesty International has grown from its humble beginnings in London into the globe-spanning organization it is today. It has 2.2 million members in over 150 countries around the world. Its mission is based largely on research and investigation into human rights violations followed by public disclosure in order to generate action to end such abuses.³⁶ The organization received the Nobel Peace Prize in 1977 (the first human rights NGO to do so) and was characterized as a “bulwark against increased worldwide brutality and the internationalization of violence and terrorism.”³⁷ Amnesty has been referred to as the ‘conscience of the world’ due to its history of unwavering commitment to the defence of human rights internationally. The NGO as been described as a ‘transnational advocacy network’, a ‘social movement organization’, a ‘public interest group’ and even a ‘solidarity group’.³⁸

Amnesty International is organized as a membership driven NGO whose strength comes from its numbers. The democratic method Amnesty uses to organize itself, along with its huge member base, separates it from other human rights NGOs, which are often primarily research-based alone. Its over two million members and global span (albeit weak in the global South) give it a legitimacy of having the backing of ordinary citizens everywhere concerned about human rights abuses. The NGO cannot be dismissed, as many social justice groups often are, by their detractors as being merely an organization of academic elites or ‘fringe’

³⁶ Amnesty International, “Who we are”, <http://www.amnesty.org/en/who-we-are>, (Retrieved April 19, 2008).

³⁷ William Korey, 159.

³⁸ Morton E. Winston, 25, 29, 30.

activists. Amnesty's success stories (although no government has ever attributed a decision change directly to the NGO) and record of standing up for human rights empowers people the world over.

Amnesty International essentially uses a strategy of international accountability in order to achieve its goals of ending human rights abuses and preventing future violations. The NGO relies on international censure (from both the public and other states) due to the attention it has brought on the violator government to cause that government to change its behaviour and end the rights abuse or violation. After the important stage of information gathering, evaluation and dissemination, the AI membership is activated and mobilized to mount public pressure on their own governments and, more perhaps importantly, that of the victim(s) of the human rights violation(s). Mass demonstrations, vigils using the powerful AI symbol of the lit candle, direct lobbying in the form of letter-writing, and online campaigns are all methods used by Amnesty to 'shine a light' on human rights abuses around the world.³⁹

³⁹Amnesty International, "Who we are: About Amnesty International," <http://www.amnesty.org/en/who-we-are/about-amnesty-international> (Retrieved April 19, 2008).

Chapter 2

ESC rights in the world today

“Freedom without bread...has little meaning.”¹

As noted earlier, economic, social, and cultural rights are listed alongside, and given equal status to, civil and political rights in the United Nations’ seminal human rights document, the Universal Declaration of Human Rights. Their standing, however, in the international political sphere and even among human rights organizations, is less established and accepted.² Despite the moral and political equivalence of ESC rights to CP rights before the UN, their position as universally accepted human rights is not as secure as some would have it be. The rights listed in the UDHR have been shunted into separate categories by governments, human rights scholars and commentators, and oddly enough, yet out of political necessity, by the UN itself (in the two International Covenants).

The previous chapter demonstrated how these two groups of human rights are characterized, and more importantly, understood in various ways, which has led to controversy surrounding their universal acceptance. Conversely however, even the partitioning of CP and ESC rights into two groups, both philosophically and procedurally

¹ Eleanor Roosevelt quoting her husband Franklin D Roosevelt in Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 43.

² As will be discussed in this chapter.

(again, by the International Covenants), is not agreed upon by all.³ Although there has been some shifts in attitudes (by the public and governments) towards ESC rights, their status as true human rights still remains controversial among governments, lawmakers, and even some human rights scholars and defenders after sixty years.

The (perceived) schism between CP rights and ESC rights in the international political sphere has been present almost since their inception in the UDHR. The codified version of these rights was born after the end of World War II and during the early stages of the Cold War between the Soviet Union and the West (principally the United States). It was during these extremely ideologically polarized times that even human rights seemed to ‘take sides’.⁴ The two Cold War rivals, the USA and the USSR, each championed one of the two groups of rights (CP rights and ESC rights respectively). By doing so, each could claim some sort of moral high ground by professing to respect human rights while still keeping ideologically consistent. This sort of rivalry persisted despite the fact that the UDHR encapsulated the principles of both liberal individualism as well as collectivist socialism in the rights listed within it.⁵

Critics of economic, social, and cultural rights as ‘rights’ per se are many and varied in both their arguments and their positioning on the political spectrum. Opponents

³ A short list would include Jack Donnelly in “Post-Cold War Reflections on the Study of International Human Rights” in *Ethics & international affairs: a reader*, ed. Joel H. Rosenthal, (Washington, D.C.: Georgetown University Press, 1999), Henry Shue in *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, (Princeton, NJ: Princeton University Press, 1980), and even the 1993 Vienna Declaration where all human rights are presented as “indivisible and interdependent”, United Nations, “World Conference on Human Rights: Vienna Declaration and Programme of Action.”

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En) (Retrieved 4 June, 2008).

⁴ Curt Goering, *Ethics in action*, 204.

⁵ Robert G. Patman, “International Human Rights after the Cold War,” in *Universal Human Rights?*, ed. Robert G. Patman, (New York: St. Martin’s Press, Inc., 2000), 2.

of ESC ‘rights’ range from neo/classical liberals and libertarians to heads of prominent human rights NGOs (such as Human Rights Watch⁶). Some of the criticisms levelled against universal ESC rights (and indeed, the concept of any *a priori* rights) flow from the ideas of late 18th /early 19th century political philosopher Jeremy Bentham. Bentham thought that the idea of natural rights was “nonsense upon stilts” and that such ‘rights’ could, at best, only be classified as lofty goals and, at worst, an infringement on core civil and political ‘negative rights’, as legislated by a state’s government.⁷ Bentham’s arguments constituted an assault on the general concept of pre-existing human rights.

The response to Bentham’s charges by the United Nations in the UDHR, and in a larger sense, the nations of the world, is unambiguous. If humanity is to avoid the “...barbarous acts which have outraged the conscience of mankind...” due to the “...disregard and contempt for human rights...” demonstrated clearly in the two world wars of the 20th century, there must be universal recognition of the “...dignity and worth of the human person...”⁸ A global political system seeking freedom, justice, and peace requires that the concept of inalienable human rights be its foundation.

Other assaults on ESC rights merely constitute a form of defence in order to protect CP rights. Some, such as British human rights scholar and political philosopher Maurice Cranston, felt that if too much is classified as a human ‘right’, the concept itself would end up being diluted.⁹ The argument follows that eventually governments may

⁶ Aryeh Neier, *Taking Liberties: Four Decades in the Struggles for Rights*, (New York: Public Affairs, 2003), xxx.

⁷ The Internet Encyclopedia of Philosophy, “Jeremy Bentham (1748-1832),” <http://www.iep.utm.edu/b/bentham.htm>, (Retrieved 29 December, 2008).

⁸ As stated in the UDHR Preamble. United Nations, “Universal Declaration of Human Rights”.

⁹ Maurice Cranston, *What are Human Right?*, (London: The Bodley Head, 1973), 65-67.

relegate all human rights to the status of mere ideals by well-intentioned, but utopian, international agencies and the political left.

Cranston, although known as a strong believer in civil and political rights, was an influential critic of the idea of economic, social, and cultural rights during the 1970s. He condemned the inclusion of ESC rights in the UDHR. Cranston claimed their status as human rights would politically endanger ‘legitimate’ human rights around the world.¹⁰ He argued that some ESC ‘rights’ do not even make philosophical sense. He felt that Article 24 of the Universal Declaration of Human Rights, which states that “[e]veryone has the right to...periodic holidays with pay”¹¹ was an example of the affront to the concept of human rights that ESC rights represented. Even if ‘holidays with pay’ were possible to provide for the world’s working poor by their governments (which Cranston argued was not), an individual had to first be employed for this human ‘right’ to make sense. Cranston’s point is that the UDHR drafters were careless with their language (as well as intent) by declaring too many things to be ‘universal’ human rights when such rights clearly cannot even be applied universally.¹²

In his arguments against ESC rights, Cranston makes some salient points. He is correct that the definition of a human right cannot be too broad without risking true human rights. Alongside freedom of speech and belief and freedom from fear, freedom from want (in terms of basic necessities) is frequently listed and should not be considered

¹⁰ Ibid.

¹¹ United Nations, “Universal Declaration of Human Rights: Article 24”, <http://www.un.org/Overview/rights.html>.

¹² Maurice Cranston, 65-67.

as utopian.¹³ Perhaps, too, the UDHR drafters were a bit careless in the language used around some of the rights (e.g. Cranston's criticism of Article 24). His example highlights the importance of the use of language in documents of such significance.

Aryeh Neier, who is a prominent international human rights activist and was executive director of the NGO Human Rights Watch for twelve years until 1993, is another such critic of economic, social, and cultural 'rights'. His position as head of Human Rights Watch (an NGO often mentioned alongside Amnesty International for its similar 'name and shame' method) for over a decade lends considerable weight to his arguments surrounding human rights issues. Neier believes that elevating ESC rights to a status equal to that of CP rights will endanger the protection of (presumably more important) civil and political rights. He also argues that the acceptance of ESC 'rights' is "profoundly undemocratic" because it takes power away from democratic institutions and processes that normally allocate resources within a jurisdiction. Neier feels that fully protected and respected CP rights will allow for a society to voice concerns about any lack of social or economic infrastructure (and presumably amend them).¹⁴

Neier's indictment of ESC rights being 'undemocratic' in nature is specious. Non-governmental organizations protecting CP rights call for proper-functioning judiciaries and police forces as well as demanding legislation by the state with regard to such issues. In this sense, ESC rights are no more undemocratic than are CP rights. All human rights are undemocratic only in the sense that they remove a state's 'right' to

¹³ These are the famous four freedoms of Franklin Roosevelt, which envision liberty as inseparable from the call to social responsibility. Mary Ann Glendon, xviii.

¹⁴ Aryeh Neier, xxx-xxxii.

violate them. His argument that making CP and ESC rights of equal importance will ‘endanger’ CP rights, or ‘dilute’ them as Cranston claims, is a spurious one. It is highly unlikely any state already respecting CP rights would begin to violate or abuse such rights if also ‘obligated’ to respect ESC rights.

The neo-liberal newsmagazine *The Economist*, in a 2001 article, echoed some of the concerns that both Cranston and Neier put forward with regard to enforcement of ESC rights. It argued that, unlike ESC rights, negative rights can be legally protected by a judiciary. A government, for example, can be ordered by a judge to release a prisoner or give a minority group its rights. It is considerably more difficult to order a government to set up a health care system or provide employment for all its citizens. Both *The Economist* and Neier argue that this is not, nor should it be, the duty of a state’s judiciary. Both concur that enshrined ESC rights could be constitutionally quite dangerous. They could take the responsibility of legislation out of the hands of the citizenry (represented by elected officials). *The Economist* argues that ESC rights are “compelling as a statement of principles but too general and vague to be useful as a legal instrument.”¹⁵ *The Economist*, also warns human rights groups that they “...risk frittering away hard-won political capital in pursuit of rights that are both indefinable and undeliverable.”¹⁶

The Economist presents a position on economic, social, and cultural rights common among neo/classical liberals. Their commitment to the concept of civil and political human rights is generally steadfast. Their alignment on the political spectrum,

¹⁵ “The Politics of Human Rights” and “Righting Wrongs,” *The Economist*, Aug. 18, 2001, Vol. 360, Issue 8235, pp. 9 and 18 (respectively).

¹⁶ “Righting Wrongs” in *The Economist*, Aug. 18, 2001, Vol. 360, Issue 8235, 18.

however, calls into question their doubts regarding the legitimacy of ESC rights. As with John Locke, the protection of private property is paramount for this ideological faction. The fact that respect for ESC rights often calls for ‘positive’ actions by the state is anathema to this idea.¹⁷ Therefore *The Economist*’s case against ESC rights is seemingly more ideological in nature than it is rational.

The claim that economic, social, and cultural ‘rights’ threaten deeply cherished civil and political rights has not only been made by those within the human rights sphere (i.e. scholars, NGO members, etc.), but by neo/classical liberals, and especially libertarians, as well. Eleanor Roosevelt, one of the key architects of the Universal Declaration, was attacked by numerous right wing political and business groups within the United States during the drafting of the document. They felt that the promotion of any form of ESC rights was a serious threat to free enterprise and would represent an opening of American society to dangerous communist ideology.¹⁸

One of the arguments made by such groups against considering ESC rights as fundamental human rights has been that in order to implement and maintain such ‘rights’, the liberties and freedoms promised the individual by CP rights could potentially (or almost certainly, in a libertarian’s argument) be infringed upon.¹⁹ These infringements

¹⁷ Seeing as more government involvement and possibly (increased) taxation might be required rectify possible ESC rights violations.

¹⁸ This argument is shown to be weak in light of what many northern European states accomplished as is discussed later in this chapter. Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen*, (Philadelphia: University of Pennsylvania Press, 1998), 246.

¹⁹ The liberties infringed upon would presumably be the ‘liberty’ promised in Article 3 of the UDHR interpreted broadly by classical liberals and libertarians as freedom from excessive government/taxation. Tax money dedicated to maintain basic ESC rights would also presumably take away from tax spent the ‘positive’ CP rights (policing, judiciary, etc.) Alan Gewirth, *The Community of Rights*, (Chicago: University of Chicago Press, 1996), 44.

on CP rights would manifest themselves in such ways as the financial responsibilities (or ‘burdens’ as they are often considered) that they would place on the larger group in order to provide adequate housing, medical services, etc. The argument, espoused by the right of the political spectrum, libertarianism especially, is that ESC ‘rights’ would truncate the right to life and liberty.²⁰ Education of children (to varying levels), however, is perhaps one of the few (or only) exceptions to such an ideological position. It is a social right that has been just about universally accepted by societies as a necessary ‘burden’.²¹

Soviet-bloc states traditionally supported and (claimed to have) valued economic, social and cultural rights much more than civil and political rights. Communist ideologies claimed to represent the ‘worker(s)’ interests and purported to offer protection from the ravages of (individual-focused) capitalism in the form of secure employment, housing, etc.²² The West and especially the U.S., in contrast, focused on the personal liberties that gave each individual the right to choose his or her own destiny and where one could achieve great successes (or failures) through his or her own merits and hard work (or lack thereof). Many ESC rights, according to some Western liberal democracies are, however, not seen as ‘rights’ per se but merely as aspirations. The U.S. government’s position is that

“[a]t best, economic, social, and cultural rights are goals that can only be achieved progressively, not guarantees. Therefore, while access to food, health services and quality education are the top of any list of

²⁰ And, in the case of the United States, the pursuit of happiness. These types of arguments are countered above in this chapter in the discussion of *The Economist*’s charges against ESC rights. Robert Nozick, *Anarchy, State and Utopia*, (New York: Basic Books, Inc., Publishers, 1974), 33.

²¹ James W. Russell, *Double Standard: Social Policy in Europe and the United States*, (Toronto: Rowman & Littlefield Publishers, Inc., 2006), 110.

²² Carol Devine, Carol Rae Hansen and Ralph Wilde, *Human Rights: The Essential Reference* ed. Hilary Poole, (Phoenix: Oryx Press, 1999), 53.

development goals, to speak of them as rights turns the citizens of developing countries into objects of development rather than subjects in control of their own destiny.”²³

Due to this ‘aspirational’ status attributed them by some (especially Anglo-American) liberal democracies, ESC rights are at best seen by these governments as secondary in importance to CP rights.²⁴ At worst, if one were to follow the line of reasoning in the above quotation, economic, social, and cultural rights could be interpreted as an impediment to one’s personal liberty. For example, a proactive state with a redistributive tax system may be seen as unacceptably paternalistic and incompatible with the (American) idea of freedom.²⁵

Even though the Cold War was defined by the confrontation between the two great superpowers, another faction emerged in the 1960s and played a significant role in the human rights debate, the so-called ‘Third World’. The Third World consisted largely of poorer countries, usually coming from what is today labelled as the ‘global South’ (Africa and Asia especially), with many having recently been freed from (for the most part) European colonisation. This decolonisation has been described by human rights scholar Michael Haas as one of the largest collective extensions of human rights in history, through the implementation of the right of a people to collective self-determination.²⁶ Such a relatively rapid enlargement of the UN’s membership made for

²³ Amnesty International, *Human Rights for Human Dignity*, 10.

²⁴ Michael Haas, *International Human Rights: A Comprehensive Introduction*, (New York: Routledge, 2008), 131. Some comments regarding ESC rights by high-ranking American government representatives are discussed in Chapter 3.

²⁵ Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach*, (Cambridge, UK: Cambridge University Press, 2000), 55.

²⁶ Michael Haas, 83.

dramatic changes to the “...composition, character, tone, language, and much of the agenda on the United Nations itself.”²⁷

These newly independent countries joined the United Nations en masse and had their own viewpoints on the ‘CP versus ESC rights’ polemic. Two factors helped shape the Third World bloc’s position. The first was that since many of these countries were not at the negotiations table during the drafting of the Universal Declaration (or were represented by their former colonial masters), the claim to its universality was called into question.²⁸ The second factor was the fact that most, if not all, of the countries comprising the Third World were impoverished with basic necessities for their populations often not being met sufficiently. This combination of circumstances led the Third World to take issue with what was viewed as an overly strong emphasis by the UN on ‘Western’ civil and political rights when it was the rights concerning self-determination and development that were often of greater importance and concern to them. Such issues, encapsulated by ESC rights, often aligned Third World interests and human rights foci with those of the Soviet Union.²⁹

Although the United Nations in its early years consisted of significantly fewer countries than it now counts among its membership, the Universal Declaration of Human Rights was a document intentionally drawn up with the input of representatives from a range of nations and cultures. It was the UN’s Economic and Social Council (ECOSOC) that mandated a Human Rights Commission (chaired by Eleanor Roosevelt) to draft an international bill of rights. Roosevelt had originally intended to have a small committee

²⁷ Paul Gordon Lauren, 252.

²⁸ Robert G. Patman, 4.

²⁹Ibid.

consisting of her and three others but was forced to expand its membership greatly. Prominent members of this committee represented by non-European (or North American) nations included such countries as Republic of China, the Philippines, Lebanon, and Chile among others. This does not negate the fact that there was a lack of representation on both the drafting committee as well as the in the General Assembly (G.A.) of countries that are today considered part of the global South.³⁰ Notwithstanding the input of some non-European/non-North American countries, a large portion of the philosophical basis for the UDHR was from English-speaking countries and almost entirely from the democratic West.³¹

The deep political and ideological divides between the United States and the Soviet Union during the Cold War in many ways prevented there being an acceptance (in terms of ratification and actual protection) by both factions of the full list of human rights laid out in the UDHR. The two sides seemed unwilling to fully acknowledge and embrace both groups of rights for fear of losing political ground.³² Human rights became, as Robert Patman argues, "...pawns in a superpower ideological confrontation."³³ The advancement of human rights as an important international issue did not cease, however, despite these political complications.

The United States frequently censured the Soviet Union for its disregard of civil and political rights (although often ignoring the violations committed by its own allies

³⁰ The only African state represented in the UN General Assembly at the time was Egypt. Carol Devine, Carol Rae Hansen and Ralph Wilde, 70.

³¹ Ibid, 61-62.

³² In the case of the Soviet Union, many CP rights were totally incompatible with the manner in which the government ran the state. Although not as far of divide, the U.S. also had some fundamental philosophical differences with ESC rights.

³³ Robert G. Patman, 3.

such as Mobutu Sese Seko in Zaire, ‘Papa Doc’ Duvalier in Haiti, Ferdinand Marcos in the Philippines, etc³⁴). Accusations of censorship, religious persecution, punishment without trial, and opposition to human rights monitoring were all hurled at the Soviet Union by the United States. The Soviet Union would reciprocate in kind by calling attention to the plight of the American poor and their absence of economic, cultural and social rights. One of the more stinging and poignant charges made was that of America’s hypocrisy when dealing with the civil and political rights of its own black citizenry.³⁵ These political barbs made for a tense political environment, yet kept international attention on the issue of human rights.

Despite the, at times, often hostile political climate, international legal entrenchment for the two categories of human rights was achieved, albeit sometimes almost seemingly in spite of one another. The superpowers would highlight their respect for one group of rights in order to call attention to their opponent’s violations of the other. In 1951, the two groups of rights were eventually divided into separate covenants for political reasons.

The decision to create a covenant for each group of rights was made in order to avoid a political deadlock over any sort of omnibus covenant that would be unacceptable to a large number of states. The Covenants were, however, presented for signing and ratification at the same time in order to highlight their equal status. This was a form of uneasy compromise between the Cold War adversaries that allowed the UN to move

³⁴ Ibid.

³⁵Mary Ann Glendon, 201-202.

forward with their legal codification.³⁶ In 1966, more comprehensive lists of both CP and ESC rights were outlined by the United Nations with the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights. These Covenants represented international norms and by 1976 were (finally) adopted in some form by nearly all states (though neither group of rights has been consistently protected by all signatories).³⁷

Human rights scholar James W. Nickel argues that in order to translate the Universal Declaration effectively into international law, two separate legal documents became necessary. This was also the case with the European Convention on Human Rights where the controversy surrounding ESC rights and the potential for them to scuttle the whole Convention caused their protection to be outlined in a separate document at a later time.³⁸ Without this division of the UN's International Covenants, there existed the danger of a single comprehensive human rights covenant being ignored by both Cold War adversaries and subsequently by many other states aligned with them.

It must be noted that, although some of the Western European states are recognized for their respectable, even generous, social programmes, the concept of an ESC 'right' is still not completely acceptable to them. The 1950 European Convention on Human Rights did not include any form of ESC rights language save for a later amendment (in 1952) that called for the right to education. It was not until 1961 (and later revised in 1966) in the European Social Charter that ESC rights took treaty form. James W. Nickel argues that despite their designation as rights, they are still treated more

³⁶Paul Gordon Lauren, 246.

³⁷ Jack Donnelly, 64.

³⁸ James W. Nickel, *Making Sense of Human Rights*, 137.

like goals.³⁹ Even though Cold War ideological rivalries may have played some part in this reluctance for legal codification of ESC rights by Western European countries, these states' liberal political roots must also be taken into account.

The United Nations' Convention relating to the Status of Refugees was also susceptible to the ideological schism of human rights prevalent during that period.⁴⁰ Western states managed to restrict the language of the Convention so that those falling within the international protection mandate were only individuals or groups who feared "persecution" due to their civil or political status. The international refugee regime excluded those denied even basic ESC rights such as health care, education, and food, unless these deprivations were brought about due to the civil and political status of the individual or group. The aim of such wording was a political manoeuvre by Western states to call specific attention to the USSR's political émigrés.⁴¹

The role Soviet bloc countries played in the formulation of the Universal Declaration and their call for the inclusion of economic, social, and cultural rights acted largely as a counterweight to the emphasis on civil and political rights championed by Western democracies, largely the United Kingdom and the United States. They were not, however, the only nations calling for a balanced approach to the international bill of rights being drafted. Latin American representatives were especially concerned about striking some sort of equilibrium between rights and duties (ESC rights being viewed

³⁹ James W. Nickel, 137.

⁴⁰ The Convention relating to the Status of Refugees was adopted by the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons on July 28, 1951 and entered into force on April 22, 1954. United Nations, "Office of the High Commissioner for Human Rights: Convention relating to the Status of Refugees." http://www.unhchr.ch/html/menu3/b/o_c_ref.htm, (Retrieved 10 May, 2009).

⁴¹ James C. Hathaway, *The Law of Refugee Status*, (Toronto: Butterworths, 1991), 6, 8.

more as duties of the state as compared to the rights of the individual). It was a proposal by the Cubans for the ‘new’ (ESC) rights to be given parity with the better known civil and political rights.⁴²

Many of the representatives from Latin America used as inspiration the recently declared Bogota Declaration of the Rights and Duties of Man. This document dealt with rights to social security, education, and work. Examples such as these gave the UN the ability to make claims that the UDHR had a “firm international basis wherein no regional philosophy or way of life was permitted to prevail”.⁴³ Statements of this nature helped assuage fears over this ‘universal’ document concerning the rights of man being simply a product of liberal Western thought.

This position is interesting when considering the consternation felt by representatives of some of the developing countries on the Declaration drafting committee. Regardless of the importance of such issues acknowledged by these nations, there was a fear of the political dangers associated with recognizing, as human rights, social and economic targets their governments could not conceivably reach in the near future. The representatives of such countries as India and Egypt admitted that they could only deliver on ESC rights expectations through gradual increments.⁴⁴ Article 22 of the UDHR, the first of the ESC rights, states that such rights are to be fulfilled “...in accordance with the organization and resources of each State...”⁴⁵ The insertion of the

⁴² Mary Ann Glendon, 156.

⁴³ Ibid, 164-165.

⁴⁴ Mary Ann Glendon, 116.

⁴⁵ United Nations, *Universal Declaration of Human Rights*, <http://www.un.org/Overview/rights.html>.

phrase “...and resources” was in response to the alarm India, Egypt, and other nations had of unrealistic expectations aroused in their populations by the UDHR.⁴⁶

Despite the careful crafting of the Universal Declaration by a diversity of nations, this still did not prevent it from being politicized over the following decades. During the 1970s, however, the two Cold War rivals experienced a period of détente with respect to the antagonistic positions they had previously taken. This period included the unexpected visit U.S. President Richard Nixon made to Maoist China in 1972. This respite from ideological vitriol was not to last long. In the latter half of the decade, Democratic President Jimmy Carter announced his administration would make a concerted effort to have the U.S. government focus on human rights. Although Carter did bring more of a political spotlight on the human rights issue, his methods began to once again create once again a climate of enmity with the Soviet Union.

The Carter Administration claimed to be pursuing the goals of “justice, equity, and human rights.”⁴⁷ Carter’s policies tied foreign aid to human rights and despite opposition within the United States and abroad, they brought international focus on the issue.⁴⁸ President Carter even went before the United Nations General Assembly in order to promote the UDHR and state that the nations of the world could no longer use state sovereignty to hide human rights abuses.⁴⁹ There were, in the end, many problems with the American government’s approach, most notably the fact that human rights reports were never compiled on the U.S. itself. Despite this, human rights scholar R. Patman

⁴⁶ Mary Ann Glendon, 188.

⁴⁷ Michael Haas, 89.

⁴⁸ The fact that human rights NGO Amnesty International won the Nobel Peace Prize in 1977 also lent attention to the human rights issue.

⁴⁹ Paul Gordon Lauren, 272.

argues that Jimmy Carter's vision to have human rights as "the soul of US foreign policy" had lasting effects on the American foreign policy agenda.⁵⁰

Even with the political rhetoric and deep animosity expressed by the two Cold War rivals, not all states were divided so sharply in their support for one group of rights over another. There were some states during that period, namely the welfare states of Western Europe, in particular the Nordic states, that managed to combine respect for CP as well as ESC rights within their societies (whether legally entrenched or not) with a certain degree of harmony that continues today.⁵¹ In fact, well known human rights scholar Jack Donnelly argues that even the United States, the country the most ideologically hostile to the idea of ESC 'rights', has some limited welfare programmes available to specific groups of citizens (e.g. health care for the elderly).⁵² Such examples do not mean the United States government has accepted the principle of ESC rights but it is nonetheless in de facto compliance with some of its social obligations according to the Universal Declaration of Human Rights.

The beginning of the 1990s saw the end of the Cold War, which brought about a change in the debate around human rights. To a certain degree it lessened some of the ideological tensions surrounding the acceptance of economic, social, and cultural rights for the West. The USSR, champion of ESC rights (and scourge of CP rights) no longer existed. With the loss of its primary political rival, the U.S. no longer needed to be so

⁵⁰ Robert G. Patman, 6.

⁵¹ James W. Russell, 60, 61.

⁵² Jack Donnelly, "Human Rights and Asian Values: A Defense of "Western" Universalism" in *The East Asian Challenge for Human Rights*, eds. Joanne R. Bauer and Daniel A. Bell, (Cambridge, UK: Cambridge University Press, 1999), 74.

rigid in its opposition to ESC rights. Defenders of ESC rights no longer needed to fear being labelled a ‘communist’. The end of the Cold War also brought demands by the citizens of many former Eastern bloc states for civil and political rights.⁵³

The transformation from communism to capitalism has been a difficult one for the citizens of many former Soviet bloc countries. In many of these countries, unemployment and many of the social ills associated with it have manifested themselves. The citizenry of many of these states are often losing whatever social security they used to receive from their formerly communist governments. They have traded it for the economic instability that can accompany laissez-faire, capitalist governments where the promise of liberal democracy is not always delivered.⁵⁴

Sadly, many of these states have yet to become fully functioning liberal democracies. They are stuck in a transitional phase between the two political economic models, neither here nor there. Many former Soviet bloc states are still lacking the civil and political rights the West claimed accompanied capitalism while losing the economic and social securities they once had.⁵⁵

Since the collapse of the Soviet Union, perceptions and ideological stigmas surrounding the two human rights categories have changed. To many in the West, the fall of the ‘Iron Curtain’ and the end of the Cold War heralded the end of the ideological taboo surrounding the ESC rights in Western human rights language. The ideological

⁵³ Neera Chandhoke, “Thinking through Social and Economic Rights,” in Daniel A. Bell and Jean-Marc Coicaud, eds., *Ethics in action: the ethical challenges of international human rights nongovernmental organizations* (Cambridge, NY: Cambridge University Press, 2006), 181.

⁵⁴ James W. Russell, 40.

⁵⁵ Ibid, 5, 138.

gulf between the East and West has narrowed significantly, if not disappeared altogether, in today's largely uni-polar world. Free-market capitalism and, to a certain extent, liberal democracy, seems to have 'won the day'. The decrease in international political tension (between the classic Cold War rivals, anyway) has somewhat narrowed the ideological gulf between CP and ESC rights among these governments. Due to this ease in political tension, it has also become more acceptable today to people and governments for human rights-defending non-governmental organizations and the UN to promote and defend all rights listed in the UDHR.

Large international human rights-promoting NGOs such as Amnesty International and Human Rights Watch have begun to support in a comprehensive manner economic, social, and cultural rights (i.e. no longer 'in spirit' only) and push governments for their protection.⁵⁶ These changes have not come without concerns and trepidations but the memberships of these NGOs have felt that, among other reasons, the international political climate is right for such a full spectrum approach to human rights defence and promotion.⁵⁷ In fact, the greatest challenges faced today by those who endorse the full scope of human rights put forward by the UDHR (and subsequent International Human Rights Covenants) are no longer framed so much in ideological terms as they are in cultural ones.

⁵⁶Both NGOs discussed in Curt Goering, "Amnesty International and Economic, Social, and Cultural Rights," and Kenneth Roth, "Defending economic, social and cultural rights: Practical issues faced by an international human rights organization," in Daniel A. Bell and Jean-Marc Coicaud, eds., *Ethics in action: the ethical challenges of international human rights nongovernmental organizations* (Cambridge, NY: Cambridge University Press, 2006).

⁵⁷Curt Goering, 210 and Kenneth Roth, 169.

The 1993 United Nations World Conference on Human Rights in Vienna, Austria resulted in the Vienna Declaration and Programme of Action. This was the first major UN-sponsored human rights conference since the International Conference on Human Rights in Teheran in the spring of 1968. The point of the Teheran conference was to review the progress being made in the area of human rights (ironically located in an increasingly autocratic Iran) since the adoption of the UDHR twenty years earlier as well as to plan out a programme for the future.⁵⁸

The Vienna Conference, twenty-five years after the Teheran Conference, was the first of its kind in the post-Cold War era.⁵⁹ This was a landmark conference, which, among many other things, resulted in the creation of the post of UN High Commissioner for Human Rights only a few months later in the General Assembly. Such a post had been suggested many decades previous during the drafting of the two Covenants, but could never be agreed upon by enough member-states.⁶⁰ The Vienna Conference consisted of thousands of delegates from 171 nations and hundreds of NGOs. By the end, the delegates had all reaffirmed their support for the Universal Declaration and agreed on a declaration stating that “[t]he universal nature of these rights and freedoms is beyond question.”⁶¹ The indivisibility and interdependence of all human rights listed in the UDHR was also acknowledged (albeit reluctantly by some) at the conference.

⁵⁸ United Nations Office of the High Commissioner for Human Rights, “Proclamation of Teheran”, http://www.unhchr.ch/html/menu3/b/b_tehern.htm, (Retrieved 28 February, 2008).

⁵⁹ United Nations Office of the High Commissioner for Human Rights, “World Conference on Human Rights”, <http://www.unhchr.ch/html/menu5/wchr.htm>.

⁶⁰ A.H. Robertson and J.G. Merrills, *Human Rights in the World: An introduction to the study of the international protection of human rights 4th Edition*, (New York: Manchester University Press, 1996), 112.

⁶¹ Paul Gordon Lauren, 274.

The important achievements and statements that resulted from the 1993 UN World Conference on Human Rights (put forward as the Vienna Declaration and Programme of Action) however, were not realized without considerable debate, controversy and eventually compromise.⁶² Many of the Asian states' representatives met in Bangkok at the Regional Meeting for Asia of the World Conference on Human Rights, prior to the Vienna Conference, in order to formulate their own set of priorities concerning human rights. At this preparatory meeting, autocratic Singaporean leader Lee Kuan Yew proclaimed to other Asian government representatives (and the world) that the concept of (individual) freedom is alien to Asian culture(s).⁶³ This bold statement presented a new test for proponents of an integrated concept of human rights: whether or not all human rights were relevant to, and compatible with, all cultures. In this new Asian paradigm, CP rights were spurned, largely by undemocratic Asian regimes such as Singapore, Burma, China, etc., for (ostensibly) cultural reasons.

“Cultural relativism” became one of the wedges used either to prioritize one group of human rights (either CP or ESC) over another or to nullify one, or even both groups, altogether. It is based on the concept that the normative criteria of human rights must come from within the culture and society to which they are applied.⁶⁴ The traditional concept of human rights is often seen as coming out of Western society and philosophical thought. The governments of some non-Western societies (in this case Asian) have therefore begun to claim cultural relativism as a

⁶² Ibid.

⁶³ Martha C. Nussbaum, 37.

⁶⁴ Ibid, 48.

defence to the charges laid against them of human rights violations and abuses.

This defence of cultural relativism is being made despite the fact that many, including the majority of those who attended the Vienna conference, would argue for the universal acceptance of such rights.

Although it is not entirely clear exactly what these ‘Asian values’ are, the concept seems to revolve around the idea that the community is more important than the individual and from that notion flows the idea that Asian governments (should) focus more on ESC than CP rights.⁶⁵ Proponents of such values seem to ‘cherry-pick’ from the economic, social, and cultural rights group. Philosopher Amartya Sen argues that the custom of Asian societies is to disregard political freedom(s) and focus on economic conditions. Rights and entitlements, seen in Asian cultures as ‘Western’ concepts, are replaced by duties and discipline.⁶⁶ Sen goes on to argue that the ‘Asian values’, largely defended by the autocratic and semi-authoritarian governments of Eastern Asia (i.e. excluding states such as India, South Korea, or Japan), are West-obsessed. They do not stand *for* something but rather *against*. In this case, it is the perceived political dominance of the West. Lee Kuan Yew named the U.S. in particular as a reason for the need for a set of Asian values that cherishes discipline and order.⁶⁷ The claim by such non-democratic states to be supporters and defenders of any set of rights is a weak one at best.

⁶⁵ Amartya Sen, “Human Rights and Economic Achievements” in *The East Asian Challenge for Human Rights*, eds. Joanne R. Bauer and Daniel A. Bell, (Cambridge, UK: Cambridge University Press, 1999), 96.

⁶⁶ *Ibid*, 89.

⁶⁷ Amartya Sen, *Identity and Violence: The Illusion of Destiny*, (New York: W.W. Norton & Company, 2006), 94.

The claim of cultural relevance as a justification for the ‘Asian’ values, espoused by some of the more authoritarian Asian governments (mentioned above) and their leaders, does not seem to hold much water. As mentioned above, so-called Asian values are more a lack of respect for human rights in general than a culturally specific focus on one group of rights (or values). In this sense, one could argue that such disdain for human rights is as universal as the respect for them is (or should be), and not uniquely ‘Asian’ in any way. Different supporters of the concept of ‘Asian values’ have attempted to define and defend them, albeit in different and sometimes disparate manners.⁶⁸

Despite the Asian states’ (that signed the Bangkok Declaration) initial rejection of civil and political rights’ equal status with that of economic, social, and cultural rights, as mentioned above, there was a final consensus reached by all representatives at the Vienna Conference. Although the Asian states’ (once again excluding democratic states such as India, South Korea, and Japan) representatives did make compromises in order for a such a consensus to be reached and declaration to be made, the vacillation over the acceptance of CP rights remained. The ambivalence, and even animus, these governments held towards perceived ‘Western’ civil and political rights before the adoption of the Vienna Declaration manifested itself afterwards. According to some scholars, the reluctance by such

⁶⁸ At the 1993 Vienna conference, the Singaporean Foreign Minister stated that “[u]niversal recognition of the ideal of human rights can be harmful if universalism is used to deny or mask the reality of diversity.” Here, the defence for the stated values is based on a difference in cultures. At the same conference, the Chinese Foreign Minister claimed ‘Asian values’ required individuals to “put the state’s rights before their own.” In the first statement, Asian values are explained as culturally different, i.e. the community is placed before the individual. In the second, it is the state and its ‘rights’ that are of prime importance. Ibid.

states neither to cite nor to implement the Vienna Declaration and Programme of Action demonstrates this contempt and rejection of the notion of CP rights as universal human rights.⁶⁹

The attention brought by the Asian states' Bangkok Declaration to the notion of human rights being valued, or at least interpreted, differently by different cultures and societies did affect the language of the final Vienna Declaration. In paragraph 5 of Section 1, the Declaration states that “[a]ll human rights are universal, indivisible and interdependent and interrelated.”⁷⁰ The Vienna Declaration cedes no ground to those who would dismiss outright one group of rights or value over another.⁷¹

The Vienna Declaration does, however, acknowledge the concerns of many states (and not just the signatories to the Bangkok Declaration) claiming that human rights, or at least civil and political rights, are a rigid Western concept, tailored to fit only Western countries. In the next line of paragraph 5, the Declaration goes on to state

“While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”⁷²

⁶⁹ Vittit Muntarbhorn, “Asia and Human Rights at the Crossroads of the New Millennium: Between the Universalist and the Particularist?,” in *Universal Human Rights?*, ed. Robert G. Patman, (New York: St. Martin’s Press, Inc, 2000), 83.

⁷⁰ United Nations, *World Conference on Human Rights: Vienna Declaration and Programme of Action*, [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En) (Retrieved June 4, 2008).

⁷¹ Ibid. The Vienna Declaration states, “[t]he international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”

⁷² Ibid.

At the dawn of the post-Cold War era, the Vienna Declaration and Programme of Action made by the UN conference was meant to reaffirm to the international community the importance of a globally respected universal human rights regime.

Boutros Boutros-Ghali, Secretary General of the United Nations at the time, recognized the historic importance of the meeting and the path it would lay for human rights. At the conference, Boutros-Ghali challenged delegates to look past their ideological and cultural differences and to “recommit themselves to realizing visions of international human rights based on the quintessential value of each and every human being.”⁷³

Economic, social, and cultural rights, although recognized by the UN Universal Declaration of Human Rights since 1948, remain a source of contention and disagreement in international politics. This has not stopped the United Nations from remaining firm in its endorsement of the full spectrum of human rights, holding both CP and ESC rights in equal esteem. Nor has it (fully) prevented major human rights non-governmental organizations such as Amnesty International and Human Rights Watch from moving forward with plans to defend and promote ESC rights along with their traditional focus on CP rights. Within these NGOs, however, the decision to begin actively defending and promoting economic, social, and cultural rights has not been a given. The question over whether or not to defend the full spectrum of human rights (listed by the Universal Declaration) has been greatly debated by these organizations. The advantages and disadvantages of such a decision would need to be carefully weighed before any decision could be made.

⁷³ Paul Gordon Lauren, 274.

Chapter 3

The pros and cons of mandate change

“Violations of economic, social and cultural rights are not a matter of inadequate resources; they are a matter of justice.”¹

In 2001, while celebrating its fortieth year of existence, Amnesty International adopted a new mission statement. This replacement of its old mandate allowed for the necessary change in order to fully support and work towards the promotion and defence of economic, social, and cultural rights. This permitted Amnesty to finally make the assertion that they were truly a ‘full spectrum’ human rights non-governmental organization that supported the UDHR’s claim of the indivisibility of all human rights. It distinguished the AI from other NGOs that focused on only one group of rights (CP or ESC). Although the decision to affect this change was made in 2001, the international NGO had been having internal discussions and debates about such a move for over a decade.

As discussed in Chapter 2, the political stigma attached by some states in the West that surrounded economic, social, and cultural rights throughout the Cold War has slowly abated since the collapse of the Soviet Union. NGOs and other such agencies dealing with human rights were (re)affirming their support for the full spectrum of rights listed in the UDHR, which includes ESC rights. At the Vienna + 5 NGO Forum in Ottawa in 1998, the momentum in support of ESC rights that started at the Vienna World

¹ Amnesty International, “Economic, Social and Cultural Rights,” <http://www.amnesty.org/en/economic-social-and-cultural-rights>. (Retrieved June 5, 2008)

Conference on Human Rights in 1993 continued. Economic, social, and cultural rights took centre stage for the first time ever at a major international human rights conference.² The end of the Cold War, along with several important global conferences and fora, helped to create an international climate where these human rights NGOs could discuss actively defending ESC rights.

These events obviously had an effect on the decisions made by major human rights NGOs such as AI and Human Rights Watch over whether to change their mandates or not. The mission statement adopted by Amnesty International in 2001 states that

“AI’s mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of promoting all human rights.”³

This chapter will examine the debates that took place within Amnesty International and the issues that were looked at and weighed by its members before coming to this historic and important decision.

The 1991 International Council Meeting (ICM), held by Amnesty International in Yokohama, Japan, was a watershed moment for the organization. The world was undergoing dramatic political changes at the time. The challenges to human rights defenders were presented in new political contexts, which in some cases required revised strategies. Economic, social, and cultural rights were being recognized by Amnesty as an area of human rights where it had not previously focused its attention or

² Mary Robinson, *A Voice for Human Rights*, ed. Kevin Boyle, (Philadelphia: University of Pennsylvania Press, 2006), 116.

³ Curt Goering, *Ethics in action*, 204.

resources. Now, however, there existed political and strategic windows of opportunity to fully support the Universal Declaration of Human Rights.

The dawning of a new political era meant that changes were possible and perhaps necessary for organizations such as Amnesty International as well. It did not seem logical to many within AI's membership that an NGO that large (it was up to over one million members by 1991) and effective should remain so limited in its mandate scope. For a great number of Amnesty International members (but not all), keeping such a narrow mandate when the possibility for greater (as well as a greater number of) accomplishments existed, seemed to be almost an act of selfishness.⁴

It was also argued that the position taken by Amnesty International with respect to the universality and indivisibility of human rights seemed almost hypocritical if economic, social, and cultural rights were only to be used as context in the reports on 'first generation' (i.e. CP) rights violations.⁵ Poverty, joblessness, ill health, homelessness, etc., were simply seen as conditions in which more serious human rights abuses took place. At the 1991 ICM, the organization's membership began to emphasize the importance of Amnesty International publicly and actively highlighting the indivisibility of 'first generation' civil and political rights with so-called 'second generation' economic, social, and cultural rights.⁶

Calls came from various sections of the AI membership (mostly those of the global South but also with support from the AI USA and AI Canada sections) to move

⁴ David Matas, *The Amnesty Mandate History*. (Sent in an email by the author), 51.

⁵ Curt Goering, 209.

⁶ As had the Universal Declaration of Human Rights, a document upon which all human rights NGOs (officially) gained their legitimacy.

towards a full spectrum approach to human rights where all of the Universal Declaration would be promoted and defended.⁷ Although officially downplayed by Amnesty as one of the reasons behind its shift towards a full spectrum defence of human rights the concerns of the global South did play a part.⁸ ‘Southerners’ both within the membership, as well as those from other NGOs, felt that AI’s defence of only civil and political rights (despite their universal importance) and seeming neglect of economic, social, and cultural rights, reflected a “Northern bias.”⁹

Amnesty International was accused by its membership of being ‘blind’ to many of the human rights violations that affected poor and developing countries by both members and rights violations victims themselves. Dire social and economic conditions were interpreted by some in the South as being acceptable to Amnesty (and some other human rights NGOs) as a part of the normal political context and background in which these organizations protect civil and political rights.¹⁰ An example of such ‘rights-violation blindness’ that reinforced this notion occurred in the Sudan in 1994. Amnesty International investigators entered a camp full of starving, displaced people in order to investigate the alleged torture and extra-judicial killings of a small number of people by

⁷ By methods, at that point, still to be determined. David Matas, 140, 159.

⁸ Amnesty International, “Q&A-Economic, social and cultural rights are human rights”, <http://web.amnesty.org/web/web.nsf/print/6E34E164621DDF9802572B50043A61B> (Retrieved 19 November, 2007).

⁹ Curt Goering, 209.

¹⁰ Environmental NGOs (ENGOs) dealt with similar charges of having a ‘Northern’ bias. During the 1980s, when deforestation and wildlife depletion were issues that resonated well with the public in the developed North, little attention was paid to how ‘solutions’ to such problems affected the livelihoods of locals. To remedy the problem of so-called ‘coercive conservation’, ENGOs from developed countries have since learned to linked conservation to local development. This strategy has helped to address the accusations that these ENGOs are selecting issues and solutions that are only of interest to supporters in the developed world. Raymond L. Bryant and Sinead Bailey, *Third World Political Ecology*, (New York: Routledge, 1997), 141-142.

the Sudanese government. While there, however, the NGO largely ignored the plight of the thousands of others in the camp. These people were also victims of government actions where extreme suffering was being caused by the violation of their ESC rights.

Rather than being lauded for championing the three core rights of its mandate (freedom of conscience and expression, the right to physical and mental integrity, and freedom from discrimination¹¹), Amnesty was instead seen as being guilty of selectively defending human rights. This was a deprecatory and (purposely) shameful accusation the human rights organization had levelled at numerous governments over the years. It was disquieting to have such an accusation applied to it.¹²

While such examples of ‘rights-violation blindness’ were occurring within AI, campaigns by various social movements and other international NGOs were bringing attention to the devastating effects and drastic social consequences of the Structural Adjustment Programs (SAP).¹³ These SAPs, whose terms were dictated by the International Monetary Fund and World Bank, often required austerity measures on social spending by governments. They were imposed on the populations of developing countries in the Global South throughout the late 1980s and early 1990s. Along with a reduction in social spending, onerous national debt burdens were often placed on the people of these countries.¹⁴ These sorts of events and issues only increased the frequency

¹¹ David Matas, 169.

¹² Ibid.

¹³ Structural Adjustment Programs were conditions set by the IMF and World Bank on developing countries in order for them to receive loans from these institutions. They generally required the implementation of free market policies such as deregulation and privatization on the applicant countries.

¹⁴ Amnesty International, “Defending Human Rights in a Changing World,” <http://www.amnesty.org/en/library/asset/ACT30/006/2008/en/48a36ebb-5e44-11dd-a592-c739f9b70de8/act300062008eng.html>, (Retrieved 30 September, 2008).

and urgency of calls within the membership for more and quicker movement towards a full spectrum of rights protection.

Not only did the limited mandate prevent efforts to address other serious (ESC) human rights violations, but it was also seen as having a potential alienating effect. Those from the global South were beginning to see Amnesty as an organization that did not address (or perhaps understand) their issues and concerns. The line of reasoning followed that those from the ‘North’ (or ‘West’ as it is sometimes called, i.e. developed countries) did not accept the idea of economic, social, and cultural ‘rights’; Amnesty International did not defend ESC rights; therefore Amnesty was only for ‘Northerners’. Moving towards a full spectrum of human rights defence became a matter of not only social justice, but inclusiveness as well.

The benefits of expanding the mandate to include the concerns surrounding ESC rights violations that people from the global South had expressed were numerous. As mentioned above, it addressed concerns by ‘Southerners’ (as well as ‘Northerners’) about a ‘Northern’ bias in the mandate. It also made the NGO more open and inviting to those of the South with local human rights concerns. People suffering from extreme poverty, hunger, and homelessness may have reservations when asked by international NGOs to join in the fight against CP rights violations alone.¹⁵

There existed worries about a lack of expertise regarding the new challenges of ESC rights defence.¹⁶ By addressing such concerns and being more open to the

¹⁵ Neera Chandoke, *Ethics in action*, 184.

¹⁶ Which will be discussed later in greater detail. Curt Goering, 211.

challenges faced by those in developing countries, however, AI would (ideally) attract into its membership people with experience and expertise in dealing with such issues. Having a truly international membership would also lend Amnesty International a certain legitimacy when confronting human rights violators in Southern (or any) countries who try to defend themselves and their acts by charging that Amnesty is simply imposing ‘Western’ standards or that (universal) human rights are culture-specific.

Another issue raised with regard to Amnesty’s sole focus on the three core rights of the original mandate was that there seemed to be a bias towards male concerns in terms of human rights violations. This was more of a sin of omission in that the NGO was not sufficiently receptive to female human rights concerns. Although civil and political rights are extremely important to women as well as men, many women throughout the world are more frequently dealing with such issues as property rights, reproductive rights, and rights to health, education and nutrition.¹⁷ A move towards the promotion and defence of ESC rights would help to address these concerns.

Along with the misgivings held about Amnesty International’s narrower, CP rights-focused mandate by those within the membership from both South and North (as well as the victims of ESC rights violations from the Global South), there was also a larger ‘audience’ to consider. As the world’s largest international human rights NGO, Amnesty was a leader and a trend-setter in the debate surrounding all human rights. The perception created by the organization’s seeming disregard for EC rights was that the

¹⁷ Daniel A. Bell and Joseph H. Carens, “The Ethical Dilemmas of International Human Rights and Humanitarian NGOs: Reflections on a Dialogue Between Practitioners and Theorists,” *Human Rights Quarterly* 26(2004) 300-329.

human rights listed by the UDHR were divisible and not of equal importance. This misperception negatively affected the whole global human rights movement as well as giving a false legitimacy to governments who would also try to downgrade the importance of ESC rights.¹⁸ AI's size and reputation, in effect, required it to take a more proactive stance on defending and promoting economic, social, and cultural rights.

Despite the potential complexities of the proposed full spectrum mandate desired by many within the membership, the limited, core-CP rights mandate was also becoming difficult for AI to explain and defend.¹⁹ By the 1991 ICM when ESC rights were being seriously discussed, Amnesty had already incrementally expanded its mandate. It had done so by opposing abuses such as executions and 'disappearances' by paramilitary groups as well as promoting the right to physical and mental integrity.²⁰ The ability to clearly discern which rights would fall under the AI mandate was becoming increasingly complicated. Easily summarizing and explaining which human rights violations were within the mandate's jurisdiction, and more importantly why, was a task already nearly beyond the grasp of the average Amnesty member. As the number of important human rights concerns falling 'outside the mandate' increased, many members knew a change was (over)due.

Even after the 1991 decision by the ICM to bring more focus onto economic, social, and cultural rights, AI still divided these from civil and political rights into what it referred to as 'oppositional' and 'promotional' mandates respectively.²¹ The organization

¹⁸ Amnesty International, "Q&A-Economic,, social and cultural rights are human rights".

¹⁹ The complexities of a full spectrum mandate will be reviewed in detail later in the thesis.

²⁰ Stephen Hopgood, 120.

²¹David Matas, 100.

began to lay out policies that would help guide its membership in its ‘promotional’ work.

There has been an honest effort by the NGO to raise public awareness about all the human rights listed in the UDHR. Amnesty International has developed educational training programmes that have sought to promote knowledge and understanding about economic, social, and cultural rights as well as respectful attitudes and behaviour towards such rights.²²

Members, however, were becoming confused with regards to the differences between the ‘promotional’ and ‘oppositional’ aspects of the mandate. Questions were asked as to why violations of one group of human rights were being opposed but respect for another group simply being ‘promoted’.²³ Obviously the changes made at the 1991 ICM in Yokohama were only a partial solution towards AI adopting a full spectrum mandate.

Even with the majority of the AI membership agreeing that changes to the mandate were needed, there was still a long way to go with a lot of issues to be discussed and concerns to be dealt with. As mentioned previously, by the 1990s, Amnesty International was a vast organization and the largest of the many international human rights NGOs that existed. This did not (and does not) mean, however, that its resources, both human and financial, were limitless or even abundant. An expanded form of mandate with a whole new set of rights to promote and defend would have serious repercussions on the work the NGO was already doing. Kenneth Roth from Human

²² Amnesty International, “AI Campaigning Manual,” (London: Amnesty International Publications, 2001), <http://www.amnesty.org/en/library/asset/ACT10/002/2001/en/dom-ACT100022001en.pdf>, 278.

²³ Curt Goering, 208.

Rights Watch, an NGO operating with a similar ‘name and shame’ method that also underwent a mandate expansion in the 1990s to include ESC rights, makes the point that finite resources can limit an organization’s work. Without making trade-offs, a new mandate must be approached carefully and incrementally.²⁴

The areas of civil and political human rights defence that were already covered by the Amnesty mandate at the beginning of the 1990s provided enough challenges to keep the organization’s membership busy. Some members (largely from the developed country AI sections in Europe such as the Netherlands and the United Kingdom) had deep concerns about expanding the mandate into a new and potentially vast area of human rights defence.²⁵ The AI International Secretariat based in London was particularly well known for its guardianship of the old mandate.²⁶ They were worried that a new focus on a large (and sometimes vaguely defined) set of rights could potentially limit the important work already being done on AI’s core rights or prevent the initiation of new projects in these areas. The reverse of this concern was that any sort of mandate expansion to include ESC rights would create expectations from people around the world that Amnesty simply could not live up to.

Amnesty International had, in its thirty-plus years of work, built up a certain amount of expertise in defending civil and political rights. To begin anew, building a base of knowledge involving a complicated (and often controversial) set of rights, was a daunting task for the Amnesty membership, especially when many felt the NGO was best

²⁴ Kenneth Roth, 177.

²⁵ David Matas, 155.

²⁶ Ibid, 99.

suited to just continue doing what it did best.²⁷ In order to appease such concerns and not ‘throw open the floodgates’ as many members feared, it was decided that Amnesty would allow permissible work to broaden incrementally. This sort of approach would help to insure that the NGOs mandate stayed “focused, relevant, coherent, and effective”.²⁸

In addressing the issue of economic, social, and cultural rights defence, one of Amnesty International’s greatest strengths and assets was converted into one of its biggest potential liabilities. The three-decade-old core mandate of Amnesty International based on civil and political rights was agreed to by thousands of members around the globe. A sense of antipathy towards issues such as imprisonment for political reasons and torture is essentially universal. Opinions over the validity of ESC rights and the measures to be taken over violations of such rights on the other hand have the potential to polarize people into specific political camps.

This sort of situation did not occur with civil and political rights as people joined AI with the understanding that it was a CP rights defence organization. Much of the AI membership, and perhaps more importantly, its funding, come from sources in the ‘rich’ countries of the North.²⁹ Many of these countries have strong political traditions of classical liberalism (e.g. the U.S., the United Kingdom). Their citizens may have different ideas about ESC rights and/or the solution to the violations of such rights.

An important concern of the organization was the degree of consensus over the moral status of this new (to AI’s mandate, anyway) group of rights. A schism over such rights could possibly “undermine the unity and cohesion” of the organization. Members

²⁷ Daniel A. Bell and Joseph H. Carens.

²⁸ David Matas, 142.

²⁹ Western Europe, Canada and especially the United States.

recognized the great challenges that would be faced in trying to establish (acceptable) standards for economic, social, and cultural rights and what constituted a violation of them.³⁰

This fear of a lack of consensus within the movement was one of the major hurdles to the acceptance of an expanded form of mandate. Whether Amnesty International spoke with ‘one voice’ as it originally proclaimed or ‘many voices’ as the slogan was later changed to, acknowledging its ever-expanding global membership, there had always been only one message. Any sort of impasse or disagreement would have to be worked out within the organization before an expanded mandate could be presented to the world, especially considering the controversial nature of ESC rights to many governments.

Gaining consensus on a position for ESC rights within the Amnesty mandate was an arduous and drawn out process. An even greater debate, however, took place throughout the NGO over how it would promote and, more importantly, defend these rights on the world stage. The same questions and challenges put to the Amnesty membership over ESC rights legitimacy now had to be viewed through a wider a global lens. The exception was that this time it was not just members of a human rights organization that needed to be convinced, but rather the population at large and the governments of the world. The argument that ESC rights are not wholly accepted by all as fully-fledged rights needed to be confronted. Although the same sort of agreement

³⁰ Daniel A. Bell and Joseph H. Carens.

needed within Amnesty was not required from the public and governments around the world, this human rights NGO still had to be seen as defending ‘legitimate’ human rights.³¹

This was to be no easy task considering the continuing (i.e. post-Cold War) hostility that certain governments, the United States in particular, held towards economic, social, and cultural rights. High level officials in the US government, including even American ambassadors to the UN, continued to harbour negative perceptions of ESC rights.³² These officials claimed that the status of ESC rights as true human rights was mythical, going on to state they only “...obfuscate[d] human rights discourse by introducing spurious rights.”³³ Former American UN ambassador Jeanne Kirkpatrick described ESC rights as a “letter to Santa Claus”.³⁴ Another former American UN ambassador, Morris Abram, while on the UN Commission on Human Rights discussing “The Right to Development” in 1991, referred to ESC rights as “little more than an empty vessel into which vague hopes and inchoate expectations can be poured”, “preposterous” and a “dangerous incitement”.³⁵ The disdain for ESC rights by some powerful governments around the globe had to be taken seriously by NGOs supporting them and figured into their strategies to defend them.

Amnesty International had, of course, throughout its existence been accustomed to governments disagreeing (sometimes vehemently) with its denunciations of various

³¹ Curt Goering, 211.

³² Some working in the area of human rights no less!

³³ As quoted in Noam Chomsky, *Failed States: the abuse of power and the assault on democracy*, (New York: Metropolitan Book, 2006), 232.

³⁴ Ibid.

³⁵ Ibid.

human rights violations, an ESC rights-encompassing mandate, however, presented a unique challenge. For AI to achieve the protection of human rights there had to be a certain amount of legitimacy of these rights within the international political sphere. International pressure applied to rights violators must come from other governments as well as Amnesty members and sympathizers among the global public. Certainly Amnesty International and the United States (or other Western governments) did not always see ‘eye to eye’ on human rights issues. A complete dismissal of a whole group of rights by such a powerful government (or bloc of governments), however, called into question the idea of whether or not adopting a new full spectrum would be wise. Amnesty International could not risk being labelled as merely some sort of ‘fringe’ NGO whose values were completely out of sync with those of the vast majority.

Another serious concern about the legitimacy of defending economic, social, and cultural rights to Amnesty members, the public at large, and governments around the world was that there were few (if any) straightforward legally justiciable concepts. Civil and political rights had legal protection in the constitutions and charters of most (if not all) Western states and many developing countries around the world. NGOs like Amnesty International did not have to call on relatively new (and in the opinion of some conservative political thinkers and philosophers, potentially vague) liberal concepts to present viable cases against such things as torture or wrongful imprisonment. Civil and political rights protection had a history built up around them for centuries with legal actions such as *habeas corpus* along with other judicial and legal interpretations. ESC rights, as international legal concepts, are far less developed and lack many of the

institutionalized practices for interpretation and mechanisms for protection that CP rights have, especially on the state level where the onus of rights protection essentially lies.³⁶

This apparent paucity of legal avenues available to ECS rights defence caused much consternation within the organization. A lack of (immediate) clear legal options and direction meant that there was confusion among members about what action(s) could be taken when confronted with ESC rights violations and how far these action(s) could be taken. Once again, the fact that CP rights are (generally) negative rights whereas ESC rights are (generally) positive rights makes matters more complex. Getting bogged down in the minutia of public policy change has the potential to be excessively demanding on the financial and human resources of non-governmental organizations such as Amnesty International.³⁷

This is not to say, however, that no frameworks protecting ESC rights exist at all. There is the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) which is monitored by the Committee on Economic, Social and Cultural Rights. The 1961 European Social Charter (later revised in 1996) is monitored by the European Committee of Social Rights. The European Convention on Human Rights and Fundamental Freedoms is monitored by the European Court of Human Rights. There also existed within the United Nations (until 2006) the Commission on Human Rights with a Sub-Commission on the Promotion and Protection of Human Rights, which

³⁶ Martin Scheinin, “Economic and Social Rights as Legal Rights,” in Asbjorn Eide, Catarina Krause and Allan Rosas, eds., *Economic, Social and Cultural Rights: A Textbook* (Boston: Martinus Nijhoff Publishers, 1995), 53.

³⁷ Curt Goering, 211.

appointed rapporteurs to study ESC rights issues.³⁸ This was later replaced by the UN Human Rights Council in March of 2006 by a General Assembly vote. Work is done in the sphere of labour rights (part of ESC rights) by the International Labour Organisation (ILO).³⁹

Justiciability of economic, social, and cultural rights was a separate issue from that of their recognition as true rights by AI members, the global public, and the international political sphere. The AI membership's expressed concerns over the justiciability of ESC rights actually represented a step forward toward their acceptance into the Amnesty International sphere of action. Discussing the 'how?' of ESC rights defence meant that (enough of) the membership had moved on from the 'why?' in the debate over their acceptance into the mandate. It meant the fundamental concept of ESC rights was no longer being challenged. The organization's membership moved on to asking questions about the applicability of this group of human rights and not their validity. Clearly, however, AI needed to come to terms with the polemical nature of ESC rights. As mentioned above, the state's obligations to provide versus its obligations of prevent were to be the crux of the matter when discussing the justiciability of economic, social, and cultural rights.

Even with the acceptance of ESC rights by the world's governments (the rights guarantors), there would also have to be some measure of applicability of these rights in relation to the differing economic conditions of each state. To accuse the governments of

³⁸ Office of the United Nations High Commissioner for Human Rights, *Economic, Social and Cultural Rights: Handbook for National Rights Institutions* (New York: United Nations Publications, 2005), 7.

³⁹ Martin Scheinin, 43.

desperately impoverished countries of being human rights violators for not providing full employment and housing to their citizenry would make a human rights NGO (already perceived as too ‘Western’, rightly or wrongly) seem both patriarchal as well as disconnected with the political and economic realities on the ground. In order to avoid such a scenario, Amnesty International has realized the need to acquire knowledge and expertise about each country’s unique situation before moving forward with any sort of ‘naming’ or ‘shaming’ of ESC rights violators.

Amnesty International members worried that by trying to actively promote and defend ESC rights within various countries, they would be drawn too far into domestic political debates. There was a fear that local political opposition groups or parties might try to use Amnesty’s defence of ESC rights to their advantage by getting the NGO to condemn their government (i.e. their opponent) of committing human rights violations (when the group itself may not even truly support these rights).⁴⁰ Even though AI was not neutral (with regards to human rights), it was important that it be seen as non-partisan. Many within the Amnesty membership felt making specific decisions about spending priorities and allocation of funds in national budgets was not the duty of an international human rights NGO. The argument follows that except for a few powerful international financial organizations such as the International Monetary Fund (IMF), the World Bank, and possibly the World Trade Organization (WTO), governments are unlikely to feel compelled by external agents to redistribute their resources.⁴¹

⁴⁰ David Matas, 155.

⁴¹ Neera Chandhoke, 183.

It must be noted, however, that calls for resource allocations in order to protect human rights would not have been a totally new approach by Amnesty International. As pointed out earlier, the idea that civil and political rights are solely negative rights is not entirely accurate. In order to protect CP rights, governments do have to make investments in certain areas (e.g. properly trained police forces, the judiciary, prison systems, etc.). By advocating for such things in the past in its defence of CP rights, Amnesty, in fact, has demanded for the (re)allocation of resources for the sake of human rights.⁴²

Fortunately, the drafters of the UN's ICESCR understood that ESC rights are often achieved over time and not achieved by simply ceasing a particular behaviour. Article 2 of the ICESCR provides guidelines for how such obligations are to be applied to states. Both the economic realities of the individual state as well as the responsibilities of the international political sphere are taken into account throughout the article.⁴³ Phrases such as “undertakes to take steps...by all appropriate means, including particularly the adoption of legislative measures”, “to the maximum of its available resources”, “with a view to achieving progressively the full realization of the rights”, and “through international assistance and co-operation” highlight this awareness.⁴⁴ Although even the Covenant itself provides for a more gradual implementation process, this does not

⁴² Curt Goering, 212.

⁴³ The Covenant recognizes that each state “...undertakes to take steps, individually and through international assistance and co-operation , especially economic and technical...” Taken from Article 2 of the United Nations International Covenant on Economic, Social and Cultural Rights as quoted in Office of the United Nations High Commissioner for Human Rights, *Economic, Social and Cultural Rights: Handbook for National Rights Institutions*, 9.

⁴⁴ Ibid.

remove the difficulties an NGO would have in calling for the cessation of ESC rights violations.

Another concern about AI's impartiality with regard to selection of violations and violator arose from the adoption of ESC rights defence into a new form of expanded Amnesty mandate. With a large new set of rights to defend, the application of AI responsibilities would require decisions to be made by the organization and its leadership. In its old mandate, the tight focus and limited mandate often allowed AI to denounce all (CP) rights violators and violations around the globe. Obviously, even such a large NGO as Amnesty International could not 'name and shame' every government that did not provide employment, housing, and health care to its citizens and tough choices would have to be made about which 'battles to fight'. The projects of the NGO in one country could possibly end up differing from those in a neighbouring one, despite similar problems. Resources (both of AI and the state), the local government, and numerous other factors would all affect which ESC violations were dealt with in a specific state and even how they were determined. There was a worry that these new factors to consider could have adverse effects on Amnesty's reputation, which was built on both its impartiality and credibility.⁴⁵

The complex and intricate nature of deciphering government social (including labour, health, and housing) policies in order to determine actual ESC rights violations would inevitably lead to a widening gap in knowledge between rank and file AI membership and its professional staff. There was uneasiness amongst some Amnesty

⁴⁵ Daniel A. Bell and Joseph H. Carens.

members that such a knowledge gap could lead to the professional staff acquiring too much influence in the decision-making process and the setting of priorities. Since Amnesty International gains so much strength and credibility as a human rights organization from its grassroots nature, a power-shift to a policy-savvy professional staff could negatively affect the internal workings of the NGO as well as alter how it is perceived by governments worldwide and the people Amnesty helps.⁴⁶

The very fact the mere proposal of a new form of mandate defending all human rights listed by the UDHR ended up being so hotly contested within Amnesty International gave many members a reason for concern. It took the organization almost a decade of internal discussions and debate to finally agree on even the slow integration of ESC rights. The way in which decision-making works within the NGO's structure is not well suited to a large mandate scope (i.e. the complete Universal Declaration).⁴⁷

'Grey areas' of applicability and questions of interpretation of a specific right inevitably arise when trying to enforce human rights. This is especially true when dealing with economic, social, and cultural rights where the clear identification of the rights' violator(s) and even the solutions to the violation are not always easily defined. With the defence of civil and political rights, these ambiguous or unclear issues were resolved at AI's biennial International Council Meetings. The potential amount of problematic or contentious issues surrounding ESC rights had the possibility of overwhelming the agendas of the ICMs.⁴⁸ Since the focus of a human rights NGO should

⁴⁶ Ibid.

⁴⁷ AI biographer David Matas likened the NGO to a huge ocean liner where changes in direction are slow and never easy. David Matas, 96.

⁴⁸ Ibid, 155.

be to stop (and prevent) human rights violations, potential infighting over mandate priorities and resource allocations was indeed a concern for AI when considering whether or not to adopt ESC rights-protection into its mandate. Amnesty International wanted to ensure that a mandate expansion would not redirect its energies from its main goal of stopping human rights abuses and violations.⁴⁹

The question facing Amnesty International over whether to expand its mandate (or transform it into something else completely) and actively promote and defend economic, social, and cultural rights was a large one with many far-ranging repercussions for the organization itself, its members, and those whose rights it tries to protect. In the early 1990s, many within the membership (especially those from the North American sections as well as sections from the global South), felt that the NGO was at a crossroads in terms of its mandate. It was felt within the membership that the issue was not whether or not to change the mandate, but rather, to change it by how much and in what way.

During that period, the combination of the Cold War ending along with a high profile UN conference on human rights not long afterwards set the stage for the possibility of a renewed and reinvigorated approach towards full spectrum rights defence. Debates about ESC rights and their status were happening around the world between governments and civil society groups, and within NGOs themselves, both domestic and international. Some embarrassing and shameful situations of ‘rights-blindness’ occurred that prodded Amnesty International into giving a serious look at the possibility of

⁴⁹ Curt Goering, 212.

actively defending ESC rights and how it could be done. Members from all over the globe brought to the biennial ICMs their input and concerns about such a move.

Amnesty International obviously wanted to maintain its image as a global defender of human rights but it also had a reputation for being a significant force in the human rights NGO sphere. It would do no good for AI to expand its mandate on paper alone. The NGO membership had to carefully weigh the advantages and disadvantages and make a decision based on what was possible. Such a careful and deliberate approach was necessary for all the actors involved.

For it to be effective, Amnesty could not be seen (by its own members, by governments, or by the people it was trying to help) either as incompetent or as unrealistic in what it hoped to accomplish. Governments as the main guarantors of ESC rights would have to understand what human rights violations they had committed and how to remedy them. People around the globe would have to be clear on how Amnesty International would defend them and what was within the NGO's scope of capabilities. All the various aspects of a mandate change were deliberated on for a decade before the organization confidently, yet cautiously, felt it could move forward with ESC rights promotion and defence.

Chapter 4

Process of change within Amnesty International

“Many think Amnesty International to be relevant, had to change, to evolve.”¹

Although the Amnesty International membership had been discussing both the advantages and disadvantages of moving towards some sort of full spectrum mandate, a speech given in 2000 to a group of AI ‘mandate experts’ provided extra impetus for the conversion. The former chair of the UN Committee on Economic, Social and Cultural Rights, Philip Alston, informed members of AI (then still in the midst of discussions over a change to full spectrum) that it would be wrong for them to consider their NGO a “human rights organization” when, in fact, Amnesty was actually a “civil and political rights organization”.² Alston, a highly respected member of the human rights community, claimed that Amnesty International’s narrow CP rights-focused mandate had been part of the reason for ESC rights’ global neglect and subordinate status.³ In essence, he was calling attention to the fact that given AI’s size and reputation, it affected human rights not only by what it did, but also by what it didn’t do. It is possible this may have been a deliberately provocative manoeuvre by an ardent advocate of both CP and ESC rights. It was not so much a statement meant to shame Amnesty International but to

¹ As stated by Michael Bossin, AI Canada (English-speaking) Executive Committee Chairman, in interview with author, see Appendix A.

² “FSA Resolution: Explanatory Note” (internal document, Amnesty International, 2007).

³ David Matas, 159.

challenge the organization into fully and truly defending all human rights.⁴ Many went into the 2001 AI ICM with Alston’s provocative speech in mind.

At Amnesty International’s 2001 International Council Meeting in Dakar, Senegal, its members met with Alston’s words still ringing in their ears. After almost a decade of discussion and debate, the membership expressed the desire to end the human rights non-governmental organization’s exclusive focus on civil and political rights. The writing was on the wall and those gathered in Dakar for the meeting knew that the NGO’s neglect of economic, social, and cultural rights defence had to end. Those at the ICM (and the country sections they represented) wanted to “escape from its CP rights straight jacket”.⁵

Long time Amnesty member and observer David Matas argues that by the 2001 ICM, the NGO’s mandate had become so stratified and complex that “no one could list it without referring to notes”.⁶ The AI mandate was composed of various fragments including policy, strategy, boundaries, focus, priorities, planned work and actual work as well as both mission and statutory authorization. Matas likened the mandate situation to shards of a broken mirror where each piece reflected one of AI’s features but none reflected the complete picture.⁷ Given the circumstances and existing complexity, full spectrum supporters within Amnesty’s membership had a valid point when arguing the possible further complication of the NGO’s mandate was not sufficient reason for the continued exclusion of ESC rights defence from it.

⁴ “FSA Resolution: Explanatory Note” (internal document, Amnesty International, 2007).

⁵ David Matas, 159.

⁶ Ibid, 152.

⁷ Ibid, 147.

Despite the push from many quarters for an expanded form of mandate that would see Amnesty defend and promote ESC rights, not even those groups (or country sections) supporting such an action wanted to rush into the change. Not only would an incremental and methodical transition alleviate many of the concerns members expressed about such a move (as discussed in the previous chapter), it would allow Amnesty to ‘test the waters’ on certain human rights issues with which it had no familiarity or organizational experience. All agreed that if adoption of a full spectrum defence of human rights was to be the NGO’s future, it had best ‘wade in from the shallow end’ rather than risk its reputation and/or the people it pledged to help, by ‘jumping in the deep end.’ Resource constraints, AI’s need to develop its strategic thinking skills and the capacity of its membership would all put restrictions on what the NGO could do.⁸

At the 2001 ICM, Amnesty International changed its restrictive mandate to a more open mission, in the form of an AI statute. This perhaps seemingly minor bureaucratic change allowed the organization to formulate new policies and start working in the areas of ESC rights without waiting for permission following a potentially protracted debate at the next biennial ICM still as much as two years away. The move from a mandate to a mission was important. A mandate expressed what work could, and perhaps more significantly could not, be done whereas a mission stated what the NGO hoped to accomplish and gave both the organization as a whole, as well as individual sections, more freedom in deciding how to achieve this goal. This was a major step in

⁸ “Inside the Mission-Issue 12” (internal document POL 21/003/2002, Amnesty International International Secretariat, 2002), 1.

allowing the organization as a whole, as well as the various country sections independently, to begin to pursue new projects under the full spectrum rubric.

In order to facilitate new projects in the realm of ESC rights, a working group was created at the 2001 ICM to produce a strategy for how the organization could move forward. Amnesty International chose a two-pronged approach to developing its work in the sphere of economic, social, and cultural rights. Because, by nature many of the individual ESC rights are often jurisdiction-specific (depending on local needs, economic conditions, etc.), AI started up various state-related projects. Besides the focus on individual countries, Amnesty also devised strategies concentrating on specific (ESC) rights as well in order to call attention (the public's, governments', etc.) to and then promote their intrinsic value(s).⁹

Amnesty International then had to decide how large a scope of ESC rights abuses and violations it would oppose. There had to be selectivity among those opposed. This refinement was due to both the resource constraints of the NGO as well as the possibilities of realistically remedying a given situation, i.e. AI could not call for actions that were far beyond a government's financial, infrastructure, etc., capabilities.

The organization decided that in the assessment of whether or not 'grave abuses' had occurred, three different factors would need to be taken into consideration. Firstly, Amnesty would need to look at whether evidence existed of a focused form of discrimination. This means it would investigate if the denial of ESC rights in a particular country was a population-wide phenomenon (i.e. non-focused, possibly due to lack of

⁹ Ibid, 3.

government funds) or a targeted punishment against a particular group (defined by ethnicity, religion, language, region, etc.) only. Secondly, AI would contrast governments' compliance with economic, social, and cultural rights' standards with those of previous levels achieved by that government. The rolling back of essential services such as health, housing, etc., by a government could imply a denial of a vital responsibility and fall into the category of abuse of human rights and therefore warrant an AI investigation. The third consideration of whether a 'grave abuse' had occurred would be the violation of a set of core minimum humanitarian standards. Governments have a basic duty and responsibility not to let their citizens (or specific groups there within) die of starvation, preventable diseases, etc., when the capacity to do so exists.¹⁰

The Amnesty International membership debated usage of the term 'grave abuse' in the AI lexicon. Some thought that the mission's original wording; "To undertake research and action focussed on preventing abuses of all the human rights enshrined in the Universal Declaration of Human Rights", was too equivocal and allowed for too many possible ESC rights 'violations'. The wording was changed to "grave abuses" which meant that possible rights violations would have to pass the three above-mentioned criteria.¹¹ Amnesty did not refine or identify the definition of the term 'grave abuse' any further but has not encountered any problems because of this (potential) lack of clarity. In place of Amnesty International's stated opposition to "grave abuses of all human

¹⁰ "Going Full Spectrum: consultation responses and next steps" (internal document POL 21/001/2004, Amnesty International International Secretariat, 2004).

¹¹ Ibid.

rights”, the organization has adopted the shorthand phrase ‘full spectrum’ to encompass this idea.¹²

The concept of what ‘core minimum standards’ were with regard to ESC rights needed to be clearly spelled out in order for AI to proceed on the issue. As with the majority of its work, Amnesty used international standards as the focus of its own policies. There was a concern expressed that, left to its own devices, the membership might move too far away from what was internationally acceptable and/or sanctioned. Just as it had for civil and political rights abuse definitions, treaty norms, international jurisprudence and law, and resolutions from the UN Human Rights Commission would form the basis of the NGO’s decisions on economic, social, and cultural rights violations.¹³

In order to move toward its newly expanded role, after the 2001 ICM, Amnesty International initiated various ‘pilot projects’ on economic, social, and cultural rights. These pilot projects were designed to both help AI gain expertise and ‘test the waters’ of its new mission to actively defend ESC rights as well as assuage those within the membership who still harboured concerns over the change. The pilot projects were carried out by specific AI country sections.¹⁴ The evaluation of the pilot projects helped

¹² “27th International Council Meeting Circular 12: Going full spectrum-for and against” (internal document POL 21/001/2005, Amnesty International, 2005).

¹³ “Going Full Spectrum: consultation responses and next steps” (internal document POL 21/001/2004, Amnesty International International Secretariat, 2004).

¹⁴ Pilot projects by AI concerning the defence and promotion of ESC rights include documentation of forced labour in Burma, the right to food in North Korea and Zimbabwe, forced evictions in Israel/Occupied Territories, mental health discrimination in Bulgaria and Romania, and right to education of minorities in Croatia, among others.

the NGO in plotting its course by gaining valuable experience on ESC rights defence and in identifying future challenges.¹⁵

Along with the decision to initiate pilot projects, the 2001 ICM made the decision to loosen rules around the ‘Work on Own Country’ (WOOC) policy. This sort of work was previously frowned upon as it did not emphasize the ‘international’ nature of Amnesty International as well as being potentially quite dangerous to AI’s members (any government willing to torture one citizen may well torture another speaking out on their behalf). The new rules were to allow country sections to focus on the ESC rights issues within their own jurisdictions where local knowledge and experience might add to project expertise. In the case of ESC rights, the new broader WOOC policy strategy was meant to limit perceptions of outside interference on domestic government economic and social policies.¹⁶ A CP rights violation, such as torture, on the other hand, can rightfully be seen as equally abhorrent everywhere and requires no sort of geographical proximity to better understand it or grasp its seriousness.

The 2001 ICM also decided that the pilot projects could be collaborative affairs where the help of other NGOs with expertise on ESC rights issues, both national and international, could and would, be sought out. This decision has the added effect of possibly providing additional capacity, which partially allays some fears about a lack of human resources for new projects. Knowledge, experience, research, and even campaign activities involving ESC rights were to be shared between AI and fellow human rights

¹⁵ Ibid.

¹⁶ “27th International Council Meeting Circular 12: Going full spectrum-for and against” (internal document POL 21/001/2005, Amnesty International, 2005) and “Final Report on Mandate Review” (internal document, Amnesty International, 2001).

NGOs with the goal of not only helping AI gain its footing in this newly embraced role but, ultimately, confronting and ending ESC rights abuses.¹⁷

This new method of shared jurisdiction with other human rights NGOs has been quite a reversal from previous Amnesty policy and practice. As AI Canada (English-speaking) Executive Committee Chairman Michael Bossin relates, the organization has undergone an evolution and opened up to the idea of working with other like-minded and like-mandated NGOs. Whereas AI used to be very cautious about even such things as sharing a stage with another NGO at a human rights event, it now recognizes that more can be accomplished by combining talents, knowledge and resources.¹⁸

Amnesty International adopted a number of different tactics in order to comply with its new mission direction. Some other steps the NGO took to intensify its work regarding ESC rights included pressing for existing international standards to be developed further (such as those in the UN ICESCR) and encouraging countries' specific legislative proposals to comply with their governmental obligations to such standards. AI has been supporting the further justiciability of economic, social, and cultural rights. Amnesty intensified its encouragement of governments to sign all international instruments regarding ESC rights and has called on them to continue supporting the adoption of new documents in that area.¹⁹ These measures all represented a broad-stroke approach to the new mission, which was combined with its more focused pilot projects.

According to the 2001 wording of the Amnesty International statute that changed

¹⁷ Ibid.

¹⁸ Appendix A.

¹⁹ "Final Report on Mandate Review" (internal document, Amnesty International, 2001).

its mandate to a mission (as stated in Chapter 3), a very broad spectrum of work became possible. Although not officially a full spectrum human rights organization, by 2003, it was assumed by many that AI in fact was just that. Those within the membership clinging to the old, core rights-mandate were losing the argument. AI, by that point, had failed to identify a single example of a human rights issue that was uncontroversially outside the mission (at that time) but would end up inside a full spectrum approach to human rights protection and promotion.²⁰ In essence, the NGO could not remain halfway between the old mandate and a full spectrum version. The metamorphosis of Amnesty International in both word and deed had to be completed. Going full spectrum would be a “to some extent symbolic” manoeuvre and merely a ‘tidying up’ exercise.²¹

All of these actions by Amnesty International have helped the NGO in becoming a full spectrum human rights organization. Combined with its mission and its 2007 vision of “a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments”²², in terms of its mandate parameters, Amnesty has fulfilled this objective. In terms of its actual work, however, AI has yet to fully achieve the metamorphosis into a full spectrum NGO and is still, according to Bossin, “very much an organization in transition”.²³

In addition to the previously mentioned reasons for Amnesty’s move to promote and defend all human rights, Alston’s words, to a certain extent, seemed to have an effect

²⁰ “Going Full Spectrum” (internal document POL 21/002/2003, Amnesty International, 2003).

²¹ “FSA Resolution: Explanatory Note” (internal document, Amnesty International, 2007).

²² Appendix A.

²³ Ibid.

on the organization. Those who defined Amnesty International as a human rights-defending NGO realized that, in truth, they were laying claim to a grander title than they had a right to. This combined with the other reasons discussed in Chapter 3 spurred AI on to make, in some ways, great changes to the way it operated and how it viewed the interconnectedness of human rights.

Concerns over the change to a full spectrum mandate have not disappeared from the minds of all AI members, however, especially those in the ‘established’ sections. Some members are unhappy with the new direction of the organization considering it more like a lack of direction. There are accusations that Amnesty is “trying to be everything to everyone.” In some sections, members have complained that to have AI defending ESC rights is merely replicating the work of other NGOs and that is not what they joined Amnesty to do. Michael Bossin claims that these sorts of criticisms represent the beliefs of a sizeable minority within (the developed-country sections of) Amnesty.²⁴

Despite the detractors and those within the membership longing for the simplicity and focus of the old mandate, the majority has realized that it is time for change. For them, in order for Amnesty to remain relevant to the human rights movement, the NGO had to change and evolve. After a number of years ‘testing the waters’, Amnesty International has decided to fully integrate economic, social, and cultural rights into its human rights protection agenda with its upcoming Human Dignity Campaign. This new campaign is meant to, as Bossin puts it, “really bring ESC rights to people’s minds”. It

²⁴ Appendix A.

will help people understand the importance of ESC rights and that civil and political rights, even when fully respected, do not exist in a vacuum and that claim to respect human rights means to respect (and to uphold) all human rights.²⁵

²⁵ Ibid.

Chapter 5

Conclusion

In 2008, the United Nations, and indeed the world, celebrated the 60th anniversary of the Universal Declaration of Human Rights. This was not a celebration of the triumph of justice over injustice, or of a world where all human rights have been (at last) fully respected. The UDHR's 60th anniversary was more an acknowledgement of an enduring symbol of hope. The Declaration has come to embody the common thread of respect for human life that runs through all cultures and nations and binds them together. It is an expression of what humanity has in common and not what separates it. The UDHR represents what can be achieved by the nations of the world when they come together for the betterment of all. The 60th anniversary of the UDHR is reminder to everyone of what has been accomplished and what still needs to done.

The Universal Declaration of Human Rights is a seminal document that was painstakingly cobbled together by the representatives of various nations (as discussed in Chapter 2) in an effort to exemplify the global co-operation that would be required to prevent another devastating world war. The Declaration recognizes the “inherent dignity” and the “equal and inalienable rights” of not just those of one culture or another, or of signing member-states of the document but of “all members of the human family.”¹ It is a clarion call to not only member-states of the United Nations but all governments of

¹ United Nations, “The Universal Declaration of Human Rights”, <http://www.un.org/Overview/rights.html>. (Retrieved 13 December, 2008).

the world that no matter their nations' political ideology, religion, or cultural background, they are expected to uphold these rights.²

When governments fail in their pledge to uphold these rights, either purposefully or through neglect of duty (as many unfortunately all too frequently do), it is often global civil society that takes up the torch on behalf of those whose rights have been violated. The principles propounded in the Westphalian system still (arguably) largely exist today and governments are sometimes reluctant to criticize one another for fear of being taken to task on their own human rights abuses or violations. The pleas of those denied their human rights have been heard and their plight has been taken up mainly by two groups: the United Nations (and its various agencies), and non-governmental organizations (both domestic and international).

Among the NGOs dealing with human rights violations and attempting to put an end to them, Amnesty International has been pre-eminent. It is the largest and one of the oldest international non-governmental organizations in the world. Its efforts have helped people, raised awareness, shamed violator governments the world over, and earned it numerous accolades, including the Nobel Peace Prize in 1977. Amnesty began in the early 1960s with a fairly narrow focus on three core civil and political rights (freedom of conscience and expression, the right to physical and mental integrity, and freedom from discrimination). Over the years, the organization has largely kept to its original mandate for various reasons. The most important of these was that the membership felt that the organization should continue to do what it (already) did well and that there was always

² With some qualifiers based on state resources with regard to certain ESC rights.

(and would likely continue to be, unfortunately) ample opportunity to work on violations of those three core rights.

The political events of the late 1980s and early 1990s had far reaching effects on the world as well as on Amnesty International. The end of the Cold War meant that the political significance and the dynamics surrounding the two groups of human rights presented in the United Nations' UDHR (CP and ESC) had changed. The ideological antagonism projected by the Cold War rivals towards these rights in the political sphere had almost immediately lessened. Civil and political rights had essentially become an acceptable concept almost the world over, although not protected the world over. Economic, social, and cultural rights, however, were (and continue to be) on a slower path toward political acceptance.

The 1993 UN-sponsored World Conference on Human Rights in Vienna contributed to the world (through governments and civil society groups) re-examining the status of human rights. Although not without controversy, the Conference ended with states (re)committing themselves to respecting the principles of the Universal Declaration of Human Rights and NGOs rededicating themselves to protecting and aiding those whose governments do not. The indivisibility and interdependence of human rights was also (albeit reluctantly in some cases) acknowledged at the Vienna Conference.

Such events, along with a grassroots membership push, spurred Amnesty International into re-evaluating itself and its approach towards economic, social, and cultural rights protection (or lack thereof). Since its 1991 International Council Meeting in Yokohama, Japan, Amnesty had been feeling pressure from its membership, especially

from those in the global South, to change and expand its mandate to include economic, social, and cultural rights defence and promotion in order to become a true full spectrum human rights organization. Although Amnesty International drew great strength from its global membership, its great size as well as its organizational structure also had a retarding effect when making important and far-reaching decisions.

Over the following ten years, at Amnesty's biennial ICMs, all of the arguments for and against such a mandate change were debated by the global membership. For many, it was not so much resistance to the concept of actively defending ESC rights (although for some it was) as it was a fear of the unknown. The idea of leaving a mandate that had, up to that point, for the most part served the NGO well and earned it a reputation as a highly respected and efficient (CP) human rights defending organization, caused great trepidation among many. This concern was especially prevalent in the country sections of the more developed states (Western Europe, in particular).³ The new challenge presented to Amnesty International to leave its old core rights-mandate and grow to become a full spectrum organization would represent the NGOs biggest change ever.

Using the collective knowledge of its membership and the accumulated organizational wisdom of almost forty years experience, Amnesty International decided in 2001 to change its narrow civil and political rights-focused mandate into a more open mission and cautiously move towards becoming a full spectrum human rights organization. As was intimated in Chapter 4, not all debates over the merits of a full

³ Although perhaps surprisingly neither AI Canada (Anglophone and Francophone sections) nor the AIUSA sections. The AIUSA section was one of the biggest supporters of a change to full spectrum.

spectrum mandate (or mission) were resolved. The NGO has lost some of its support and supporters (mostly in the more established Sections of the West) due to the “‘remissioning’ of the organization.”⁴ The overall will of members to have Amnesty evolve and become more relevant to not only the desires of its entire membership, but especially to the needs of those whose human rights, both CP and ESC, had been violated, could not stop what David Matas referred to as “mandate-huggers.”⁵

Amnesty International’s evolution toward a full spectrum human rights organization should not be viewed solely as a momentous and far-reaching change to an NGO’s mandate. The fact that the principle of indivisibility and interdependence of all human rights has been embraced in such a significant way by such a large and reputable non-governmental organization makes it a highly symbolic victory, as Philip Alston alluded to in his speech to AI in 2001.⁶ This victory is shared by not only those within the AI membership pushing for ESC rights defence, but for all supporters of the UDHR and, in fact, all of humanity. It is a testament to the hopes and desires of those who drafted the Universal Declaration of Human Rights that such an important and globally representative organization as Amnesty International has fully acknowledged the worthiness of all human rights and pledged to protect them. Despite Michael Bossin of AI Canada admitting that it is too early to tell whether this change by AI has lent ESC

⁴ A term used by Curt Goering, Deputy Executive Director of AI USA in Curt Goering, *Ethics in action*, 205.

⁵ David Matas, 142.

⁶ Philip Alston’s speech is discussed in Chapter 4.

rights more political legitimacy in any measurable way, it is inevitable that they will gain more global recognition.⁷

Many of the fears and concerns expressed by the Amnesty membership in debates the organization had over the years (at their ICMs and elsewhere) have proven unfounded. The pace of change adopted by AI has allowed for a (relatively) fluid transition giving the NGO time to acquire knowledge and expertise and ‘build capacity’ in the area of ESC rights. Around the globe, violations of ESC rights such as the right to work, housing rights, the right to education of minorities, the right to health, along with other violations such as forced labour and forced evictions, have all been recently addressed by Amnesty in reports by its International Secretariat. The UN’s Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights also received a significant amount of attention under AI’s new mission.⁸ The Optional Protocol was adopted on December 10th, 2008, the UDHR’s 60th anniversary. It will be open for signature in Geneva in March of 2009.⁹

Since 2001, Amnesty International has also been seeking out other NGO’s (both national and international) with which to ally itself in order to facilitate ESC rights defence and promotion. AI’s decision to oppose only ‘grave abuses’ of ESC rights managed to allay many of the membership’s fears about the organization going off on

⁷ Especially, Bossin claims, with the launch of AI’s Human Dignity campaign in 2009. See Bossin interview, Appendix A.

⁸ Curt Goering, 215.

⁹ The Optional Protocol provides victims of ESC rights violations an international complaint mechanism when unable to get an effective remedy in their domestic legal system. It will also give direction to national courts and human rights institutions. It mirrors a similar Optional Protocol to the ICCPR entered into force over 30 years ago. International NGO Coalition for an Optional Protocol to the ICESCR, <http://www.opicescr-coalition.org/>, (Retrieved 3 January, 2009).

some quixotic quest. The organization has worked hard to address all anxieties and make the new direction of the NGO acceptable to all those concerned.

Recent high profile campaigns for poverty elimination and debt reduction (especially in Africa) by other NGOs, politicians, and even rock stars, have made the world aware, if not receptive, to the idea that economic, social, and cultural rights are important and need to be protected and defended as much as do civil and political rights. Although the decisions of AI are not directly linked to the global political climate, the NGO does not exist in a political vacuum. Its financial and human resources are contingent on the attitudes of people. Its legitimacy and results (whether AI likes it or not) are derived from the attitudes of governments and how they react to Amnesty's reports, campaigns, etc. As much as it has been a leader and pioneer in both the NGO community and the global fight for justice, AI has a defined political space in which it can operate. Adopting a full spectrum approach to human rights promotion and defence does not exceed the political boundaries set but merely makes maximum use of them. Regardless the hesitation of some states to accept ESC rights as legitimate rights, Amnesty International, along with other human rights NGOs defending these rights, have the weight of the United Nations and the ICESCR behind it.

Amnesty International did not make monumental changes to its organizational direction merely to address the criticisms of one UN official or even certain individuals or country sections within its membership. The majority of the NGO's membership realized that it was time for such an evolution. The decision was made with the certainty

that the cautious manner AI had always employed would continue to serve it in order to ensure that neither its identity nor its focus would be lost.

Amnesty had, in the past, been in trailblazer in the field of human rights and many of those within the organization knew that it was time to take another step forward. More and more examples and anecdotes of AI's blindness toward ESC rights abuses were surfacing, causing the marginalizaton and even irrelevancy of the NGO in the eyes of many. It was as much the realization of, and perhaps the shame felt over this fact that made the organization renew and strengthen its commitment to all human rights listed in the Universal Declaration of Human Rights. Amnesty had been a leader in (civil and political) human rights defence and promotion for decades. Those with the organization recognized that it was time to make the changes necessary for Amnesty International to continue in that role and to be on the forefront of global human rights protection.

Appendix A

Interview with Amnesty International Canada (English-speaking) **Executive Committee Chairman Michael Bossin**

The first 5 questions were submitted and responded to via email with subsequent questions and answers coming from a telephone conversation on 02/12/08 between Mr. Bossin in Ottawa and the author in Saskatoon.

Question 1.

What is Amnesty's position on ESC rights at this point? Does AI have a mission statement, a mandate, etc.?

Michael Bossin.

AI used to have a "mandate". Since 2001, it has had a "vision" and a "mission". In 2007, its vision became one "of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments." AI's mission, as of 2007, is "to undertake research and action focused on preventing and ending grave abuses of these rights".

So, this is pretty broad, and encompasses both civil and political as well as ESC rights.

Q. 2

Is AI still in transition to becoming a full spectrum human rights organization?

MB.

In terms of its statute - referred to above - I would say that AI is now a full spectrum human rights organization. In terms of its actual work, however, it is still very much an organization in transition.

As you know, traditionally, AI's work focussed on specific human rights: freedom of expression (focussed mainly on prisoners of conscience); fair trials for political prisoners; freedom from torture, extrajudicial killings, disappearances, etc. There was a list... We OPPOSED violations of these rights (all of which could be described as civil and political rights), while PROMOTING respect for all human rights - for example, through education and lobbying governments to ratify human rights treaties and conventions.

In 2001, AI's mission became "to undertake research and action focused on preventing grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights."

This opened the door to AI opposing, for the first time, violations of ESC rights.

In terms of the actual work that AI does, however, this has been a work in progress in terms of addressing ESC rights violations.

Next year, AI will launch a major international campaign (entitled the "Human Dignity Campaign"), which will focus on issues related to poverty. In my view, AI's work regarding people living in poverty will address many issues that still fall within AI's more traditional work - discrimination, for example.

Q. 3

Would you say all the concerns and fears expressed by the membership in the debates over ESC rights have been allayed?

Have any been realized?

MB.

Re: membership fears. They still exist - at least in Canada and, I would guess, all of the "established" AI sections.

Below is an email written by a very experienced "fieldworker" in our branch, which, I believe, is a fair expression of how some AI members feel about our new vision and mission. It was in response to a consultation paper about AI's new "Integrated Strategic Plan", which is being formulated now (for the period 2010-2016), and addressed to our current Branch President, David Kelleher. I think it says a lot about how some members of AI feel about the organization's new directions.

Here it is:

Hi David,

>> I will not go into the details of the new ISP, or why I think think
>> it misses the mark so badly. This is because I just don't have much
>> time for Amnesty anymore.
>> I think Amnesty has lost its way. As an organization, Amnesty was so
>> compelling when I joined in the mid-1980s - I left other

>> organizations to join Amnesty! It had a clear mandate, and
>> compelling work. We were working on dossiers (later called Action
>> Files) on behalf of the Forgotten Prisoners, named individuals who
>> needed our help. No one else was looking out for them, and so unless
>> we did something they truly were forgotten. There were also RANs,
>> which allowed us to get to know a part of the world and get involved
>> in medium term actions. And the Urgent Actions, which allowed us to
>> intervene quickly if someone was in dire danger. And finally there
>> were regular country campaigns, in which the organization focussed
>> its attention like a spotlight on a part of the world where things
>> had gone badly wrong. It was a brilliant mix of tasks, which really
>> offered something for everybody who came to a group.

>> Today's Amnesty as I'm seeing it is becoming an organization that is
>> more interested in chasing headlines and chasing funding. We no
>> longer work on POC cases, unless they are "emblematic" (ie. high
>> enough profile that they'll garner us some publicity). The number of
>> Urgent Actions is steadily declining. We are losing our country/ RAN
>> coordinators, their work is no longer valued or needed and as they
>> retire they are not replaced.

>> And our "mandate" is no longer recognizable as such, we are trying to
be everything to everyone. In doing so, we are getting into areas of
>> work in which we have little expertise, and in which we will be
>> stepping on the toes of other organizations that have the expertise
>> and have been at it for decades.

>> I have simply recycled all of the Human Dignity campaign materials
>> that came to our group. Why? because I faced an uprising when I first
>> told our group members of the campaign. Members told me "this is not
>> what we joined Amnesty to do - we support other organizations that do
>> this work and do it well". "Why is Amnesty replicating their work,
>> and not doing the work it developed such an excellent reputation on?"
>> "Why is Amnesty not working on behalf of POCs anymore?" And that is
>> my question for you and for the organization. Why is Amnesty no
>> longer supporting POCs? There certainly is no shortage of cases out
>> there.

>> I'll tell you a little story. At our last AGM, I was accompanying the
>> wife of Huseyin Celil. We are working on her husband's case on our
>> own local initiative, not because of any support for the case on the
>> part of the IS. At the AGM, the keynote speaker was Rebiya Kadheer,
>> whose case Amnesty had also worked on back in the day. She was free
>> and she was here speaking with us, and it was truly inspirational.
>> But the organizational success which her presence embodied was a
>> reflection of what Amnesty once was, not of what Amnesty is
>> becoming..

>> And beside me sat an older Uighur woman. Her son has been in prison

>> for more than 10 years in China. His case is actually very similar to
>> Celil's, except he never got out of China or got Canadian
>> citizenship. He is not high profile case or "emblematic". He's just
>> another prisoner rotting in a jail cell. Back when I joined Amnesty
>> in the 1980s, if I heard of a situation like this one, I'd get all
>> the particulars of the case and I'd forward them to the IS via Ottawa

>> or via the country/RAN coordinator. I'd know that there was no
>> guarantee that Amnesty would take up the case, and in fact it wasn't
>> necessarily even likely. But it was possible, and that possibility
>> gave people hope. But at the AGM I could give this woman no hope,
>> because I know where Amnesty's going and it isn't back into working
>> on Action Files (or "Individuals at Risk" as we now call them). In
>> fact, we're still shedding Action Files and other "legacy work" as
>> fast as the IS can get it done.
>> And so I sat there beside this woman and heard her story and I felt
>> utterly lost. Because it has come to this - the organization that was
>> founded to help the "Forgotten Prisoners", has forgotten its roots
>> and is abandoning the Forgotten Prisoners to their grim fates. The
>> irony is as profound as it is depressing to me - Amnesty
>> international has forgotten the Forgotten Prisoners.
>> So I do not have any more feedback than this for you. I think the
>> organization is going badly astray, and in fact has been for quite a
>> few years. I wish it were not so, but I can't see any way to change
>> it. And so as the organization moves on, I am in the process of
>> moving on too.
>> I wish you the best of luck in your work on the consultation.
>> Best regards, (*name withheld by MB*)

Q. 4

Have you encountered any unforeseen challenges to the promotion a defence of ESC rights?

MB.

As for unforeseen challenges, I actually don't think that this type of response - which presents a huge challenge to AI - was completely unforeseen. I have heard sentiments like the one above expressed for years.

Q. 5

How have governments historically antipathetic or hostile to ESC rights (e.g. the USA) reacted?

MB.

I am not really in a position, unfortunately, to comment on how governments have responded to our new "mandate". That may become more evident once the Human Dignity Campaign gets going.....

Hope this is of some help.

Michael

(Phone conversation portion)

Q.

Are the concerns expressed by the AI member in the response to question 3 typical?

MB.

That member likely represents a sizeable minority, although in developed country Sections.

Q.

Does the actual impetus for AI's move toward 'full spectrum' come from the need to fully cover and defend all human rights, or the shame of not having become 'full spectrum' already?

MB.

A little of both. Amnesty was told in 2001 by a prominent human rights defender that it was just a 'civil and political rights' organization, not a 'human rights' organization. (See attached document sent by MB.) It was not exactly 'shame' but the AI membership saw the need for more.

Q.

So incidences such as the one in the Sudanese refugee camp in 1994(discussed in Chapter 3) have had an effect on the membership? Is the controversy over the status of ESC rights not a deterrent to existing members or hindrance to recruiting new members in the Western AI country Sections?

MB.

AI was traditionally run by northern developed countries, often *for* people in the Global South. Now, the plan is to do effective work, not just gain members. Many think that AI, in order to be relevant, had to change, to evolve.

Q.

So membership is no longer a focus of Amnesty International? Does it not gain legitimacy from its membership?

MB.

AI is still a membership-driven organization. Four or five years ago, there was a huge emphasis on growth (of the membership), but now ‘effectiveness’ is seen as more important.

Q.

Do you think AI’s move toward ‘full spectrum’ has lent more legitimacy to ESC rights, rights that are still viewed as ‘aspirational’ by many people and governments around the world?

MB.

It is still too early to tell. The conversion has been a slow process. The 2009 Dignity Campaign will really bring ESC rights to people’s minds.

Q.

Has Amnesty experienced sort of organizational jealousy or mandate ‘turf war’ over the new plan to share knowledge, expertise, and even projects with other ESC rights-based NGOs?

MB.

AI has undergone an evolution and opened up to other NGOs. AI used to be very cautious and would even be wary over sharing the stage at human rights rallies with NGOs whose mandates were unfamiliar or dissimilar. That has really changed however. Together we can accomplish more.

Q.

I noticed your response to question 5 was very succinct. Are you deliberately avoiding discussing any political ‘chill’ from Western governments, e.g. Bush’s America or Harper’s Canada, toward a full spectrum approach?

MB.

Once again, because of the newness of AI’s decision(s), it is difficult to say. There has been a noticeable ‘chilling’ effect with regard to women’s right to abortion in both Canada and the USA.

The UN Convention on Refugees is a good example of politicizing rights.

Here is how James Hathaway describes the formulation of the Convention in his book “*The Law of Refugee Status*”¹⁰:

The strategic dimension of the definition comes from successful efforts of Western states to give priority in protection matters to persons whose flight was motivated by pro-Western political values. As anxious as the Soviets had been to exclude political émigrés from the scope of the Convention for fear of exposing their weak flank, so the more numerous and more powerful Western states were preoccupied to maximize the international visibility of that migration. In the result, it was agreed to restrict the scope of protection in much the same way as had been done in the post-World War II refugee instruments: only persons who feared “persecution” because of their civil or political status would fall within the international protection mandate.¹¹

...

...[T]he precise formulation of the persecution standard meant that refugee law could not readily be turned to the political advantage of the Soviet bloc. The refugee definition was carefully phrased to include only persons who have been disenfranchised by their state on the basis of race, religion, nationality, membership of a particular social group, or political opinion, matters in regard to which East bloc practice has historically been problematic. Western vulnerability in the area of respect for human rights, in contrast, centres more on the guarantee of socio-economic human rights than on respect for civil and political rights. Unlike the victims of civil and political oppression, however, persons denied even such basic rights as food, health care, or education are excluded from the international refugee regime (unless the deprivation stems from civil or political status). By mandating protection of those whose (Western inspired) civil and political rights are jeopardized, without at the same time protecting persons whose (socialist inspired) socio-economic rights are at risk, the Convention adopted an incomplete and politically partisan human rights rationale.¹²

¹⁰ James C. Hathaway, *The Law of Refugee Status*, (Toronto: Butterworths, 1991)

¹¹ Hathaway, *The Law of Refugee Status*, 6.

¹² Ibid, 8.

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