The Use and Abuse of Human Rights Discourse:
A Legitimacy Test for NGOs, IGOs and Governments

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IMPORTANT

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Abstract. This article examines abuses of human rights discourse—particularly by intergovernmental and non-governmental organizations, but also by governments, scholars, and within the broader public arena. Illegitimate uses of human rights discourse are those that, while adopting the language of human rights, do so to achieve partisan political aims that are often deeply hostile to essential values of human rights law. At first glance, it may appear that no plausible lines can be drawn between 'human rights' and 'partisan politics'. Human rights positions are always in some sense 'political'. It is argued here, however, that the concepts of 'human rights' and 'partisan politics' do not merely collapse into each other. A three-step legitimacy test is proposed for identifying illegitimate appropriations of human rights discourse. The first prong identifies several uncontroversial choices that are presupposed by any human rights policy: choices about territory, issues, victims, and time frame. The second prong introduces a further, more controversial, kind of choice. It is argued that choices about *perpetrators*—i.e., about which states or actors are criticized for committing abuses—must be generally proportionate to *prima facie* incidents of abuse, as defined by policy's selected territory, issues, victims and time frame. In other words, the test simply holds policies to their own declared mandates. Policies showing, at most, occasional or minor breaches of proportionate perpetrator selectivity can be deemed to pass the legitimacy test. By contrast, *substantially disproportionate perpetrator selectivity* (the core concept in this article) requires application of the third and decisive prong: *substantially disproportionate perpetrator selectivity must not effectively recapitulate the position of any contentious party to a recognized political, social or cultural conflict*. That requirement may seem unworkable, since human rights are constantly concerned with political, social and cultural conflicts. However, several case studies are introduced to show its application. The test is applied, for example, to claims by Muslim groups, where the authors purport to adopt broad and even-handed human rights mandates, while in fact directing virtually all of their criticisms at the abuse of Muslims by Western or pro-Western regimes, ignoring grave violations committed by more avowedly Muslim regimes. It is argued that such an approach may be legitimate in the partisan political arena, but not in the arena of human rights, as it contravenes some of the core values of international human rights law.

Keywords: international human rights, regional human rights, international organizations, non-governmental organizations (NGOs), inter-governmental organizations (IGOs), United Nations

By the early 20th century, classical positivism still dictated that a government's treatment of its people was an internal affair. Even severe abuses were not deemed to be subject to any

system of global norms.[2] In the decades since the Second World War, however, that view has changed. The principles and concepts of human rights have emerged not only as binding norms of international law, but also as fundamental criteria of political legitimacy. Nowadays when we ask how good or bad a government is, the answer may well come in the form of a systematic assessment of its human rights record.[3]

One advantage of that historical shift is that we gain a set of legal standards recognized throughout much of the world. Most cultures have long recognized some general concept of grossly abusive government conduct—e.g., through mass or indiscriminate murder, torture, or detention, or through reckless and widespread economic impoverishment—even if disagreements on more complex issues, such as the finer details of economic or social policy, or the extent of free expression or of women's rights, are likely to persist.[4]

One disadvantage of the shift, however, is that the language and concepts of human rights are not always used with care. Precisely because of their increasing global respectability, human rights easily become a political football. The values of human rights may seem to be abused—used for purely partisan political ends—when criticisms of governments or other internationally responsible actors appear to be selective: for example, when one government is singled out for its abuses, while a comparable regime escapes censure. When the Bush Administration included human rights abuses among its reasons for toppling Saddam Huessein[5], critics retorted that states such as Saudi Arabia, Zimbabwe or North Korea were also brutal, without having become the targets of military invasion.[6]

Yet the problem of selectivity is tricky. Selective approaches to human rights are not always a bad thing. In fact, they are the norm. A non-governmental organization (NGO) like Save the Children is selective in its focus on children. It selects children as the victims relevant to its mandate (i.e., its mandate is 'victim-selective'[7]) not because it scorns the human rights of adults, but on the belief that children's circumstances require specific attention.[8] Similarly, the NGO Article 19 is selective in focussing on the issue of free speech (i.e., its mandate is 'issue-selective'[9]), not because it denies the importance of other rights, but because, in its own words, **'**Freedom of expression is a fundamental human right which

underpins all other rights, including life'.[10] In that sense, the Genocide Convention[11] and the Convention against Torture[12] are also issue-selective: they were drafted not to eclipse other human rights, but to devote detailed attention to certain extreme abuses. The question is, what kinds of selectivity are there? What kinds are legitimate?

Selectivity is a double-edged sword. On the one hand, it seems necessary. Few organizations have the time or resources to work on all violations, everywhere in the world. Moreover, different organizations from different political and cultural backgrounds may bring a crucial diversity of perspectives to the human rights movement. On the other hand, we surely cannot accept any old selection as credible. We might welcome selectively limited NGOs with names like 'Save the Refugees' or 'Save Africa's AIDS Victims', yet we would not readily welcome an NGO with a selectively limited name like 'Save the Nazis'. But why? Which standards have we just assumed in accepting the first two, but rejecting the third? Is it simply a matter of personal taste? Or are we in fact already assuming criteria of legitimacy?

The University of Minnesota Human Rights Library website, now a leading source for documentation on global human rights, currently lists hundreds of human rights IGOs and NGOs. It includes organizations with solid track records, like the UN treaty-based committees, Save the Children or Article 19.[13] But it also includes, for example, Northern Ireland's Sinn Féin, an organized political party that has long been linked to paramilitary activities of the Irish Republican Army[14]. Should we recognize Sinn Féin as a human rights organization on par with Save the Children? Given such a vast quantity of organizations, all calling out for our attention, our endorsement, and our money, how can we know which causes genuinely serve the purposes of human rights law?

There is nothing new about identifying legitimate and illegitimate human rights claims.[15] Diplomats and activists do it every day. In the halls of Geneva or New York, one commonly hears, 'The report by organization *X* is a goldmine' or 'The position taken by *Y* is pure government propaganda.' In other words, diplomats and activists are always drawing their own conclusions about legitimacy. We can imagine an empirical study that would use interviews with them to elicit the standards they use. In this article, however, my approach

will not be empirical, but normative. I shall not ask which standards they do employ, but which standards they *should* employ—or, indeed, which standards they are already (if only intuitively) employing, if they are doing their jobs well. The focus in this article is not on all aspects of credibility. I shall not examine issues such as funding or internal management. Rather, I shall propose a legitimacy test for assessing an organization's, government's or scholar's *professed* policies.

In Part I, I examine some preliminary problems arising around distinctions between 'human rights' and 'partisan politics'. I examine objections that might be brought against a legitimacy text. I respond by invoking a broad notion of a human rights community, and duties owed to it by organizations, governments, politicians, scholars, or other individuals who seek recognition of their views within that community.

In Part II, I set forth the first prong of a three-pronged legitimacy test. The role of the first prong is to ascertain some essential choices that are always, expressly or tacitly, presupposed by any human rights policy: (a) a choice about one or more *territories* to which the policy will apply (e.g. the whole world, one or more particular states, one or more particular regions); (b) a choice about one or more human rights *issues* for which the policy is adopted (e.g., torture, free expression, children's rights); (c) a choice about one or more victims, or kinds of victims, for which the policy is adopted (e.g., Kurds in Turkey, HIV and AIDS victims throughout the entire world, the Burmese opposition leader Aung Sung Su Ki, all children in sub-Saharan Africa); and (d) a choice about one or more time frames within which abuses may have occurred (e.g., during the Second World War, during the 1994 Rwandan Genocide, since the founding of a given state). Those choices are generally uncontroversial, and define what I shall call the policy's 'parameters'. They are generally flexible, and must simply avoid excessive randomness and blatant contradiction with core human rights norms. Accordingly, the first prong is easy to fulfil, and few policies ever fail at this stage. The utility of this prong lies in helping us to ascertain the elements that will be essential for the second and third prongs.

In Part III, I examine the second prong. I introduce a further, more controversial type of selection, which I call 'perpetrator selectivity'. I argue that choices of perpetrators—choices about which states or actors are to be criticized—must be proportionate to *prima facie* incidents of abuse, as defined by the policy's *own* selected territory, issues, victims and time frame (i.e., as already established under the first prong). I identify the problem of *substantially disproportionate perpetrator selectivity* as the test's key concept, and as the core criterion for determining a policy's legitimacy.

In Part IV, we turn to the third and most important prong of the test, where, in most cases, legitimacy will be determined. I argue that there are indeed acceptable instances where perpetrator selectivity may be substantially disproportionate to the organization's own adopted mandate parameters. They key, however, is that *substantially disproportionate perpetrator selectivity must not effectively recapitulate the position of any contentious party to a recognized political, social or cultural conflict*. At first glance, that standard may appear complicated or unworkable. Several case studies are introduced, however, to show that it provides a reliable standard for evaluating the legitimacy of claims made in the name of human rights. For example, the test shows how we can reject some claims by Muslim groups, where the authors purport to adopt broad and even-handed human rights mandates, while in fact directing virtually all of their criticisms at the abuse of Muslims by Western or pro-Western regimes, ignoring grave violations committed by more avowedly Muslim regimes. I argue that such an approach may be legitimate in the partisan political arena, but not in the arena of human rights, as it contravenes some of the core values of international human rights law.

In Part V, having completed an examination of the three prongs and applied them to specific case studies, I provide, a concise restatement of the test.

I. Preliminaries

The distinction between genuine human rights mandates and partisan political mandates is not obvious. Even the most principled human rights claims, such as condemnation of genocide[16], have political dimensions. No clear line can be drawn between the concepts of 'human rights' and 'politics'. The concepts, values and advocacy of human rights always arise within political contexts. In this article, however, I shall argue that, in order to differentiate between legitimate and illegitimate human rights policies, we can distinguish a human rights position from a partisan political position without having to assume any overly broad separation between human rights and partisan politics. The relationship between the two concepts will not be fully clear until Part IV, when all elements of the test have been examined. However, we can begin with some preliminary observations.

A. 'Partisan Political' Positions May Be Distinguished Without Being Derided

The aim of the legitimacy test will be to show that some policies and organizations, even some that appear to be deeply concerned with promoting human rights, should not be recognized as having credible human rights mandates. However, I shall not suggest that human rights positions are 'good' and partisan positions 'bad'. I shall not use the concepts of 'political' or 'partisan' as dirty words. Partisan politics are vital elements of healthy societies, and are vital elements of a healthy international society. Nor shall I challenge the prerogative of the organizations I condemn to state their views.[17] Rather, I shall argue that human rights positions and partisan political positions are—not absolutely, but to a meaningful degree—different kinds of positions, performing different roles; and that we damage the human rights movement by failing to distinguish those roles. Indeed, I shall argue that policies and organizations that should not be recognized as properly affiliated with the human rights movement can still make certain contributions to human rights and to the broader political arena. Accordingly, I shall not argue that the policies or organizations I condemn necessarily lack *political* credibility, but only that they lack credibility as *human rights* policies or organizations.

B. The Focus on Mandates

Some questions about the legitimacy of an IGO or an NGO have nothing to do with its formally adopted mandate. An organization whose declared mandate is *prima facie* legitimate may loose credibility because its employees pocket charitable donations; or because the organization alleges inadequately documented facts; or because, even with the best of intentions, it is wasteful or poorly managed. In this article, however, I shall not examine issues of organizations' internal structure or operation. I shall examine only how an organization defines and justifies its own mandate—the position it expressly advocates—asking whether that position serves the values of human rights law.

My reason for focussing on an organization's own professed positions is not that I deem that issue to be more important than, say, issues of waste or mismanagement. Rather, I shall focus on mandates as a means of examining broader questions about legitimate and illegitimate uses of the concepts and values of human rights in public discourse. Accordingly, the mandate legitimacy test will stand only as a *necessary*, and not a *sufficient*, condition for recognition of a policy or an organization as legitimately affiliated with the values of the international human rights movement: a policy or organization must pass the test only as one necessary criterion of legitimacy. Other criteria, such as inefficiency or corruption, must be assessed through other kinds of analyses.

C. Ascertaining a Mandate

Policies are not always straightforward. Governments and organizations often publish vague or idealistic self-descriptions, and their actual practices must be taken into account. A mandate is not a matter of objectively ascertainable fact, but of interpretation. For example, Amnesty International publishes its Statute, divided into sections detailing its 'Vision and Methods', 'Core Values', and 'Integrated Strategic Plan' as well as several sections setting forth its structure and organization.[18] That document sets a good example, as it provides members as well as outsiders with criteria for testing Amnesty's activities against its declared aims. Yet even that carefully drafted statement is not without ambiguities. On the one hand,

it advocates 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 standards'[19], which suggests a very broad issue mandate[20], including, say, economic, social and cultural rights. On the other hand, it then proceeds to state that its focus is '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 its work to promote all human rights.'[21] Depending on how we interpret a concept like 'integrity', that statement may or may not be construed to extend beyond civil and political rights, to embrace economic, social or cultural rights. Only in view of Amnesty's dominant day-to-day activities does its general focus on civil and political rights become clearer.[22]

D. The Test Need Not be Officially Adopted in Order to Be Useful

I am not principally seeking for the mandate legitimacy test to be officially adopted by international organizations, to be used, for example, in determining when to assign NGO observer status. The test *could,* perhaps, be used in that way; but I shall not explore the pragmatics of such a step. I prefer to liken the test to a code of ethics adopted by professionals (such as physicians or lawyers) to regulate themselves. I am more interested in promoting a critical approach to the language and values of human rights than in dishing out prizes and penalties. Accordingly, in Part IV, I shall criticize certain organizations not with the aim of having them shunned, but in the hope of encouraging that critical approach, and in the hope of urging those organizations to reconsider their policies.

E. Some Objections to Legitimacy Testing

Again, diplomats and activists engage in intuitive or informal legitimacy testing all the time. However, they may well resist my proposal for a formal test. Before examining the elements of the legitimacy test, then, we should consider some possible objections that might be brought against the whole idea of legitimacy testing.

Conceptual Indeterminacy. The legitimacy test proposed here will draw upon terms such as 'victim' or 'proportionality', which cannot always be given precise meaning. The test will be applicable to any policy or mandate claiming to promote human rights, and, in some cases, reasonable people could certainly disagree about whether a given policy or organization passes such a test. It would seem, then, that a formal test is not feasible, as it might raise more questions than it answers.

Anti-Formalism or *Legal Realism.* It might also be argued that the best diplomats' and activists' intuitions are cultivated over long years of practice, and cannot be reduced to a straightforward or mechanical test. For example, we can assume that most diplomats or activists would be wary of a group called 'Save the Nazis'. But what if the group wants to investigate whether Nazis had received fair post-War trials, thus pursuing a core value of human rights law? Diplomats or activists might concede the aim, while rejecting the name. Similarly, in examining whether or how to recognize an organization like Sinn Féin, they may wish to examine any number of factors in concrete settings. It might be argued, then, that legitimacy is not a pass-or-fail affair; that no formal test can substitute for the real experiences gained through human rights diplomacy, activism or adjudication. Accordingly, another objection to a legitimacy test could be called *anti-formalist* or *legal realist*: conversion of our flexible intuitions into formal standards would make them too rigid for the dynamism and complexity of international human rights.[23]

Inclusiveness. Powerful states or blocks are commonly seen as dominating international institutions.[24] By accommodating the broadest possible range of organizations, particularly NGOs or the views of less powerful states, regardless of their political outlooks, diplomats and activists can be said to promote a spirit of inclusiveness. If they disagree with a given policy, that should be the very reason for taking that policy seriously, in a spirit of dialogue and pluralism. On that view, we should not shut the door through categorical pronouncements of illegitimacy. What counts as 'real human rights' as opposed to 'sheer partisan politics' may be a matter of viewpoint: one person's human rights is another's dirty politics. We should accept that disagreements will always persist, and get on with the work

of human rights. Formal criteria of legitimacy may add further layers of polemics and infighting, diverting attention from the issues that really need attention. Moreover, inclusiveness comports intellectual diversity: participation by the broadest possible number of voices might be said to promote the proverbial 'marketplace' in ideas about human rights—not in the orthodox sense that truth will inevitably prevail, but in the sense that broader participation allows greater possibility for contrasting views to be aired, increasing the likelihood that diplomats and activists will have the information they need to reach fair and balanced conclusions.

F. Responses – A Social Contract for the Human Rights Community

While the foregoing objections raise serious concerns, they fail to discredit the attempt to promote legitimacy testing. An articulated legitimacy test *may* be rigid, but need not necessarily be so, particularly if its emphasis is on minimal standards that are easy to fulfil, with concern directed towards gross and persistent abusers. In the interest of pluralism, we should indeed maintain a strong presumption in favour of recognizing organizations' own declared policies. However, even a strong presumption of legitimacy should not be deemed irrebuttable.

In the remainder of this article, I shall argue that, along with its claim to be heard *by* the human rights community, an organization, government or individual also carries a duty *towards* that community of good faith adherence to core values of human rights, for example, by not grossly betraying the very victims whose interests that organization purports to vindicate.[25] I shall argue that recognition as a legitimate policy entails a kind of *quid pro quo* or 'social contract' for the international human rights community, the terms of which can be said to run something like this: 'We, participants within the international human rights movement, will recognize your, or your organization's or government's, expectation of being heard; however you, in turn, must fulfil our minimal expectation of good faith adherence to—i.e., of avoiding gross and persistent deviation from—certain necessary and fundamental

values and practices of human rights law.' The task in this article will be to decide what those values and practices are, and what it means to adhere to them.

That 'social contract' can be said to presuppose a human rights version of a promissory estoppel principle. Recall that, under promissory estoppel, party A may not, in the first instance, have owed any duty to party B; however, having freely undertaken a performance in which party B, over time, places reasonable reliance, party A then incurs a presumptive duty to perform. For example, it cannot be compatible with the core values of human rights for an organization, through its proclamations or conduct, to create a legitimate expectation that it will pursue grave violations, which it in fact has never pursued and shows no intention of pursuing.[26] At some point, such an organization not be recognized as having credible human rights policy. Indeed, insofar as competent diplomats and activists rely on their own experience and intuitions, it can be said that they already assume a tacit 'contractual' understanding roughly along such lines, i.e., 'I'll recognize you if you prove some level of credibility—of good faith adherence to the values of human rights law—to me'.

Finally, in response to the concern about conceptual indeterminacy, I would note that, from the outset, I shall adopt a strong presumption of legitimacy. If an organization's claims are strong enough to sustain some reasonable grounds for having passed the test, then it should enjoy a strong presumption of having passed. Again, my concern will be with gross and persistent violations of the test, beyond any plausible disagreement. We shall see that a strong presumption of legitimacy will remove borderline organizations or policies from any risk of failing.

II. First Prong: The Mandate Parameters

I shall now set forth the first prong of the legitimacy test. Admittedly, the division of the test into 'prongs' or 'steps' is crucial. It poses a risk of appearing artificial or mechanical. However, the aim (not unlike Rawls's idea of 'lexical ordering'[27]) is simply to provide a

means of identifying several distinct elements of mandate legitimacy, and the relationships among them. A full statement of the test appears in Part V.

We can begin by noting that selective approaches to human rights are of various kinds. Again, Save the Children is selective as to victims, limiting itself to children. However, it is concerned with a vast range of issues.[28] Its mandate, then, is broad with regard to issues, but selective with regard to victims. Article 19 is the opposite: broad with regard to actual or potential victims (virtually any adult, along with children under certain circumstances, would count), but, through its focus on expression, selective with regard to issues. Similarly, as intergovernmental organizations (IGOs), the Organization of American States or the African Union are broad in terms of the recognition of issues, covering a standard catalogue of civil and political rights[29], but, of course, selective in limiting their territorial mandates to their own regions[30].

Selectivity, then, can take different forms. I shall begin by identifying some generally uncontroversial kinds, called 'territorial selectivity', 'issue selectivity', 'victim selectivity' and 'temporal selectivity'. I shall argue that passing the first prong of the test is easy. Organizations are largely free to select their territorial, issue, victim and temporal parameters, subject only to very minimal criteria. We shall see that, taken alone, it would be rare for one single form of selectivity to undermine a policy's or organization's legitimacy. Rather, after examining each form of selectivity in turn, we shall, in Parts III and IV, examine how they combine with a more controversial form of selectivity, called 'perpetrator selectivity', to warrant assessment of legitimate and illegitimate policies. I shall mention perpetrator selectivity only briefly for now, returning to it later on, after the other kinds of selectivity have been discussed. In a word, much of the work of human rights involves identifying perpetrators, i.e., parties (such as states, officials, or other internationally recognized entities) responsible under international law for violations of rights. I shall argue that legitimacy depends largely on the ways in which policies or organizations identify and condemn actual or alleged perpetrators. A common accusation brought against IGOs, NGOs or governments is lack of even-handedness in condemning human rights abuses. For now, I shall simply note

that, in the language of the legitimacy test, 'even-handedness' will translate in slightly more technical terms as 'legitimate perpetrator selectivity'. However, the element of perpetrator selectivity cannot be understood in isolation. It must be assessed in conjunction with the other forms of selectivity, which we can now examine.

A. Territorial Selectivity

Under the United Nations Charter[31], membership in the Organization is open to all of the states that participated in its founding (art. 3), and 'to all other peace-loving states which . . . are able and willing to carry out [Charter] obligations.' (art. 4) Member states are deemed to be bound by the general purposes of the organization[32], which include respect for human rights (arts. 1(3), 55, 56), as subsequently defined, say, by the Universal Declaration of Human Rights[33] (UDHR) and the numerous treaties, resolutions and decisions promulgated within various UN bodies. In practice, concepts such as 'peace-loving' and willingness to carry out Charter obligations have rarely posed barriers to membership. A cardinal aim of the UN has been to include as many states as possible, in the hope that even states performing poorly may be induced to improve through UN influence.[34] Virtually all states are currently members. Accordingly, the UN provides a model of an organization with a territorial reach that is almost—or perhaps the better word is *ideally*—limitless, or universal.[35] Of course, within that universal mandate, specialized bodies may be created for territorially restricted issues, such as the international tribunals for Rwanda or the former Yugoslavia, as established by the Security Council. Generally speaking, however, the leading UN human rights bodies have sought territorially unrestricted mandates.

In contrast to the UN, regional organizations, by definition, formulate their mandates through territorial selection. Again, the Charter of the Organization of American States limits its membership to 'American states' (arts. 4, 5). It is by no means unthinkable that, say, the Council of Europe might, in a few decades' time, admit states like Morocco, Tunisia or Israel, if such states sought membership; however, while reaching beyond the bounds of Europe as

traditionally recognized, the organization would still be far from territorially universal. Among the major intergovernmental organizations, then, only the UN is more-or-less universal in its territorial human rights mandate.

Governmental and Non-governmental organizations divide along similar lines. For example, under the statute of Amnesty International, the organization 'urges *all* governments to observe the rule of law, and to ratify and implement human rights standards'.[36] Similarly, like Amnesty, the US State Department issues detailed yearly reports on all states (excluding itself, although analyses and positions on national affairs are available under separate reports). Those approaches thus claim for themselves a broad, arguably universal, territorial mandate. By contrast, an NGO like the Kurdish Human Rights Project reflects strong territorial selectivity, insofar as its focus remains on the principle areas of origin of Kurdish communities. It describes itself as '[w]orking to protect and promote the human rights of all persons living throughout the Kurdish regions of Iran, Iraq, Syria, Turkey and the former Soviet Union.'[37]

It would be unusual for an organization's territorial mandate as such to be illegitimate. Under the first prong of the legitimacy test, only blatantly random or arbitrary territorial selection would raise real concerns, and there do not seem to be many such cases in practice. For example, it would be odd, *prima facie*, for an IGO, NGO or government to choose a territorial mandate like 'all European states except Belgium and Portugal'. Rather, I shall argue that doubts generally arise insofar as territorial evidence provides evidence of illegitimate perpetrator selectivity.

B. Issue Selectivity

Although the drafters of the UN Charter had considered including a list of human rights, consensus in favour of doing so was lacking. A decision was taken to include them in separate instruments.[38] Again, the Charter, without enumerating specific human rights, includes among the organization's purposes 'promoting and encouraging respect for human rights and for fundamental freedoms for all'. (art. 1(3); cf. arts. 55, 56) In principle, then, the

black letter of the Charter can be called issue-universal, insofar as anything that counts as a human right is potentially included. Similarly, the Economic and Social Council is designated *inter alia* to 'make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all' (art. 62(2)), again, without the term 'human rights' being given any narrower definition in the Charter itself. Instruments like the Genocide Convention and the Convention against Torture are, in comparison, strongly issue-selective. Similarly, no current NGO mandate qualifies as issue-universal. Even the most prominent, and territorially universal, ones do not, in practice, become involved with all conceivable rights violations.

In view of the breadth of current human rights norms, it is difficult to imagine many limits to issue selection. For example, organizations for economic development or for environmental protection can now be seen as promoting recognized values of the human rights movement.[39] The only obvious challenge on grounds of issue selection would arise where the substantive norms embraced by a policy expressly contradict core human rights in ways that allow no plausible reconciliation. For example, in a 2003 press report, Massoud Shadjareh, Chairman of the Islamic Human Rights Commission (which I shall examine shortly in greater detail), an organization frequently consulted in the British media, welcomed the Nigerian high court victory of Amina Lawal, a woman who received worldwide media attention after having been sentenced to death by stoning for breaching an Islamic law against fornication (*zina*). Shadjareh claimed that '"Hudood punishments under the banner of shariah in a secular state are unacceptable and cannot be the starting point for the implementation of shariah."'[40]

The organization then proceeded, however, to state that the appropriate punishment would have been 'a certain number of lashings'.[41] That view cannot easily be called a compromise position or a reconciliation of Islam with international human rights law. It is a categorical rejection of certain core human rights, namely, against cruel, inhuman or degrading treatment (if not torture), as well as privacy, or freedom of conscience and religion.

It suggests that, at least in some areas of policy, the IHRC cannot be said to endorse a credible human rights position.

But we must guard against hasty pronouncements of illegitimacy. Even if that policy us illegitimate, it does not suffice to render the IHRC altogether illegitimate. As we shall see, most of the *issues* falling within the IHRC's mandate[42] are standard human rights concerns, raising no such problems. In most cases, then, under the first prong of the legitimacy test, an organization's choice of human rights issues is presumptively broad. Later we shall see that, as with territorial choices, the real problems of issue selectivity arise in conjunction with perpetrator selectivity.

C. Victim Selectivity

It might be easy to confuse victim selectivity with issue selectivity, but they are distinct. For example, the NGO called Aboriginal Deaths in Custody Watch Committee of New South Wales (ADCWC-NSW) calls itself 'an Indigenous community organisation monitoring the treatment of Aboriginal people in police and justice custody.'[43] Accordingly, territorial and issue selection for the organization's mandate are clear. The territory is limited to New South Wales, and the organization focuses not on all human rights, but on those concerned with police or judicial custody. Of course, taken alone, those two very narrow selections could apply to anyone in custody in New South Wales. The ACDCWC-NSW, however, further limits its mandate through its concern with Aboriginals, who have a long history of oppression in Australia.[44]

Victim-selectivity is not rare. As to territory, the mandate of the International Lesbian and Gay Association, for example, is universal: 'The International Lesbian and Gay Association is a world-wide network of national and local groups dedicated to achieving equal rights for lesbian, gay, bisexual and transgendered (LGBT) people everywhere'.[45] As to issues, its mandate is similarly broad, encompassing a full catalogue of civil rights and liberties, covering abuses such as torture, murder, freedom of speech, unjust detention and discrimination.[46] However, its victims are limited to sexual minorities.[47]

An organization may, even in good faith, make conflicting mandate statements. As noted earlier, its actual practice must be taken into account. For example, the Islamic Human Rights Commission states that it 'campaign[s] for justice for all peoples regardless of their racial, confessional or political background.'[48] On closer inspection, that statement, suggesting a broad victim mandate, is not strictly true. The organization's website includes an incident reporting service addressed to any person feeling he or she may be a 'victim of *anti-Muslim* harassment or discrimination'.[49] The website also includes hundreds of press releases setting forth positions issued by the organization since its founding. With rare exceptions (e.g., criticism of the attacks on New York and Washington of September 11, 2001[50]), the only condemnations concern harms to Muslims or Muslim interests. Here too, however, the IHRC cannot be faulted for a *de facto* victim selection that is narrower than the one set forth in its general mission statement. Save the Children and Article 19, too, would no doubt willingly issue occasional statements endorsing all human rights, for everyone, everywhere, even while their focus remains on specific issues and victims. The IHRC can legitimately say it is no different: focusing on abuses of Muslims in the belief that special attention or expertise is required, but without thereby denying abuses committed against others. Confusion arising from discrepancies between apparent and actual victim mandates can, then, be avoided as long as we bear in mind the possibility of *de facto* victim mandates, ascertainable through an organization's actual practice, that are narrower than their more formal proclamations may suggest. As with territorial and issue selectivity, then, we shall see under the second and third prongs that choices about victim selectivity are generally legitimate, but may be rendered illegitimate in conjunction with unacceptable patterns of perpetrator selectivity.

D. Temporal Selectivity

Special tribunals, such as those for Rwanda, the former Yugoslavia, or for Nazi War Criminals at Nuremberg, are concerned with abuses committed only after one specified time and before another. For the most part, however, temporal selectivity is rare, as most human

rights policies and organizations are concerned with ongoing abuses. While abuses of temporal selectivity can be imagined in theory (e.g., governments or actors accused of conduct falling outside of the recognized time frame), they do not appear to arise much in practice. Thus the temporal element should be noted, but is unlikely to become a focus for legitimacy testing.

E. Overview of First Prong

In conclusion, we see that the first prong of the test rarely poses problems in practice. The various forms of selectivity, when taken in isolation, rarely provide compelling evidence of an illegitimate mandate. Organizations are largely free to choose their territory, issues, victims and time frame. Those four selections need only fulfil minimal criteria, such as avoiding a blatantly random territorial mandate, or avoiding outright contradictions with basic human rights norms, which is usually easy to do. However, we can now examine more closely the element of perpetrator selectivity in order to achieve a more reliable test.

III. Second Prong: Proportionate Perpetrator Selection

For organizations like Save the Children or Article 19, territorial universality entails perpetrator universality: they are indeed selective with respect to issue and victim, but, where those issues and victims arise, their mandate is to criticize any government (or internationally responsible actor) anywhere. Similarly, for many organizations, territorial selectivity entails perpetrator selectivity. The American Civil Liberties Union, although it may from time to time comment on international human rights, defines its mandate in terms of litigating US domestic issues, by definition limiting the governments it challenges to branches of US federal, state and local government, and their officials.[51]

Perpetrator selection, then, concerns the states or internationally responsible actors that are scrutinized or criticized by a policy or organization *within the framework of its own adopted parameters*. Accordingly, the second prong can be stated as follows: Perpetrator selection must be proportionate to *prima facie* incidents of abuse, *as defined by the*

organization's own selected territory, issues, victims and time frame. Certainly, standards such as 'abuse' or 'proportionate' do not admit of scientific rigour, and are subject to political differences and political manipulation.[52] That is why the focus will be on *substantial disproportion between an organization's perpetrator selectivity and its own adopted mandate parameters*, i.e, a level of disproportion about which there can be no reasonable disagreement. What, then, counts as 'proportionate' and 'disproportionate' perpetrator selectivity?

Let's begin by taking a closer look at the Islamic Human Rights Commission (IHRC). The IHRC is a UK-based NGO established in 1997. It has a prominent voice, is widely regarded as moderate, and is often cited in the mainstream press.[53] The IHRC's mission statement reads as follows,

> **The Islamic Human Rights Commission** was set up in 1997. We are an independent, not-for-profit, campaign, research and advocacy organization based in London, UK. We foster links and work in partnership with different organizations from Muslim and non-Muslim backgrounds, to campaign for justice for all peoples regardless of their racial, confessional or political background.
>
> Our aims are manifold, and our inspiration derives from the Qur'anic injunctions that command believers to rise up in defence of the oppressed. IHRC volunteers and campaigners . . . share in the common struggle against injustice and oppression.
>
> Our work includes submitting reports to governments and international organizations, writing articles, monitoring the media, cataloguing war crimes, producing research papers, taking on discrimination cases and so on.
>
> Aside from our countries index we have a number of country specific projects and research areas e.g. Chechnya, Mauritius, Turkey, Palestine and Nigeria. Our issue related work includes researching war crimes, campaigning for prisoners of faith and other prisoners held for their beliefs, campaigning against religious discrimination and persecution, as well as many other

issues in and across areas as far a field as the UK to China, Bosnia to Papua New Guinea, Europe to the United States of America and South Africa.[54]

Naming all corners of the globe, and not suggesting any exceptions either in the mandate itself or in its other statements or activities, the IHRC's territorial mandate is *prima facie* universal.[55] Next, although its *de facto* victim mandate is limited to Muslims, that is itself a very broad one, in view of the size, diversity and territorial dispersal of the global Muslim population. Finally, nor is the mandate strongly issue selective: while making no detailed reference, say, to social or economic rights, it does refer to a broad range of civil and political rights, and its many published reports confirm that interest.[56]

Although the aforementioned Lawal case raises questions of legitimacy in particular instances, the IHRC's broadly stated territorial and issue mandates, combined with its *de facto* victim mandate, generally pass the first prong of the test. They are, on the whole, legitimate. However, they raise questions under the second prong in view of the organization's perpetrator selectivity.

Within its hundreds of press statements, very few condemn governments in Muslim or predominantly Muslim states. Turkey is the only predominantly Muslim country routinely criticized, but only insofar as its government has remained conspicuously *secular*.[57] In other words, although governments in Muslim states are sometimes criticized[58], it is often for conduct perceived as too secular or too pro-Western.[59] Certainly, Turkey, like many states, can be, and has been, criticized on many counts.[60] However, the overall level of freedom and democracy in Turkey cannot seriously be compared to the highly oppressive regimes of, say, Libya[61], Saudi Arabia[62], Syria[63] or Turkmenistan[64]. The IHRC criticizes Pakistan several times for its hard line on Muslim clerics[65]—again, a policy perceived as too *secular*—but pays little attention to child executions, or to the government's failures in punishing widespread rapes or honour killings[66].

Rarely do IHRC press releases condemn many of the regimes in which Muslims have faced serious abuse, such as Algeria, Iran, Libya, Morocco, Syria, Tunisia or Turkmenistan.[67]

Rarely do they condemn, say, female genital mutilations in Muslim West African communities[68] or in Egypt, Oman, Yemen, or the United Arab Emirates.[69] Neil Hicks, comparing Turkey and Egypt as the two larger regional Islamic powers, notes Turkey's 'substantial progress in the human rights field over the last two decades,' while Egypt's record of gross abuses has remained generally constant during that same period.[70] Yet, compared to its focus on Turkey, the IHRC has paid little attention to Egypt. The IHRC is criticizes France for imposing limits on wearing the hajib[71]; rarely, however, does it criticize Muslim states or practices that force girls or women to wear it.[72] The problem is not that the IHRC might have failed to report any particular incident—we cannot expect every NGO to report every incident arising from its mandate—but that, contrary to its own declared issue and victim mandates, it systematically declines to report extreme abuses committed against Muslims by regimes that self-identify strongly as Muslim.

Aside from those very specific forms of criticism against governments such as those in Turkey or other states seen as overly secular or pro-Western, IHRC criticism has generally focussed on abuses against Muslims in non-Muslim regimes including Australia, Britain, Bulgaria, Cambodia, France, India, Israel, Macedonia, Malyasia, Mauritius, Moldova, Nigeria, Serbia, Singapore, South Africa, Tanzania (with respect to Zanzibar), Thailand and the United States.[73] In other words, with very few exceptions—certainly not enough to approach any kind of proportionality between its perpetrator selectivity and its declared victim mandate—the *real* IHRC mandate, largely contradicting its declared mandate, is to condemn only those abuses against Muslims that are committed by regimes that are either Western, strongly secular, or distinctly pro-Western on key policy issues; and thus grossly, persistently and systematically ignoring the rights of large numbers of victims falling within its own declared mandate.

In general, the more oppressive an Islamic state is, and the more Islamic it is, the less likely the Islamic Human Rights Commission has been to criticize it. The IHRC's patterns of perpetrator selectivity emerge, then, as highly disproportionate to its own declared mandate parameters. With respect to some of the world's most oppressive states, which count

Muslims among their primary victims, an organization leading the NGO community in promising to vindicate the rights of Muslims remains largely silent. That disparity between what the IHRC promises, on behalf of large numbers of victims falling within its own mandate, and what it delivers, raises serious questions about the IHRC's honesty towards the victims whose rights it claims to advocate, and *ipso facto* towards the human rights community whose values it purports to embrace. That disproportion cannot plausibly be seen as marginal or borderline. It is pervasive, fundamentally defining most of the IHRC's press and policy statements and civic activities since its founding.

Yet even substantially disproportionate perpetrator selectivity is not perforce illegitimate. Again, not every organization can respond to all violations relevant to its mandate parameters. At best, we have so far made out only a still-rebuttable case for IHRC's illegitimacy as a human rights organization. It is appropriate, then, to turn to the third prong of the test in order to determine when substantially disproportionate perpetrator selectivity is admissible. That analysis will also allow us to examine some other organizations and policies.

IV. Third Prong: Non-Partisanship

Turning now to the final, and key, prong of the test, I shall argue that it is permissible in some circumstances for perpetrator selectivity to be substantially disproportionate to an organization's own mandate parameters; however, for a human rights mandate to retain legitimacy, *substantially disproportionate perpetrator selectivity must not effectively recapitulate the position of a contentious party to a recognized political, social or cultural conflict.*

At first glance, that criterion might appear odd. Any number of human rights stances are 'partisan' in the sense of taking sides in a broader political, social or cultural conflict. Organizations devoted, e.g., to abolition of the death penalty, or to abortion rights, or, in some cases, even to torture or free expression, certainly take sides in partisan struggles. Partisanship in itself is not infirm. It invalidates a human rights mandate only in conjunction

with substantially disproportionate perpetrator selectivity. For example, it is not uncommon or surprising for organizations, however broad their territorial mandates may be, to pay particular attention to the countries in which they are located, and thus to devote disproportionate attention to local circumstances. Thus the Dutch branch of the International Commission of Jurists, while attentive to global and European violations, focuses much attention on the Netherlands. By contrast, the Netherlands Helsinki Committee pays limited attention to the Netherlands, focusing instead on central and eastern Europe and territories of the former Soviet Union.[74] Those kinds of perpetrator selectivity might well be said to fail the second prong, but are not illegitimate insofar as they would rarely fail the third prong: it would be difficult to identify generally recognized political, social or cultural conflicts characterized by distinctly 'pro-Dutch' or 'anti-Dutch' positions (although evidence of more broadly pro-Western and anti-Western—and *in that sense* pro-Dutch or anti-Dutch—positions might indeed merit third-prong scrutiny). Accordingly, it is not *human rights claims* as such which are barred from taking sides in political, social or cultural conflicts. Virtually any claim does that. It is *only substantially disproportionate perpetrator selectivity* which must not recapitulate the positions of parties to such conflicts. In virtually all cases, it is the third prong that will determine the legitimacy of a mandate. In the remainder of this discussion, I shall now illustrate the full application of the test through examples.

A. The Islamic Human Rights Commission

Let us again return to the IHRC. As our concern is not with borderline cases, but with organizations conspicuously taking sides in recognized political, social or cultural conflicts, the IHRC cannot be said to pass the third prong. The IHRC is highly perpetrator selective along the blatantly partisan lines that have emerged throughout the post-colonial period between political, social or cultural forces commonly identified as Western or secular, and those commonly identified with Islamic religion or communities. For example, in its statements since 1997, the ICHR has expressed no serious condemnation of figures such as Hafez Al-Assad[75], Mu'ammar al-Gaddafi, or Saparmurad Niyazov, who have perpetrated

massive abuses against Muslims under the most repressive regimes. The IHRC occasionally criticized Saddam Hussein while he was still in office, but has typically done so in the oblique context of arguing that some non-Muslim figure or regime, usually Israel or Ariel Sharon, should be deemed equally heinous.[76] Indeed, occasional references to the Jewish Holocaust are made largely in the context of equating Israel with Nazi Germany.[77] No such analogy to Nazi Germany is drawn to any Muslim figure or state. Terms such as 'Nazi', 'Nazism' or 'Holocaust' are commonly used to depict treatment of Muslims by non-Muslims (as disclosed through the IHRC website's search engine), but rarely to characterize even the most brutal and totalitarian Muslim regimes in their treatment of their own Muslim citizens.[78] The IHRC endorses re-adoption by the United Nations of the principle that 'Zionism is Racism',[79] condemning the resistance of that effort led by former UN Commissioner for Human Rights, Mary Robinson[80]. Similarly, the IHRC has effectively endorsed Iranian President Mahmoud Ahmadinejad's call for the state of Israel to be 'wiped off the face of the Earth'.[81] In one depiction of Holocaust memorial ceremonies, the Auschwitz survivor and author Elie Wiesel[82] is described as follows: 'the inevitable Holocaust cultist, with his inevitable tortured expression, delivered his inevitable speech.'[83]

A greater variety of views emerges through some secondary documentation. For example, in one letter to a correspondent, the IHRC, at least in part, acknowledges human rights abuses committed more generally in Islamic states.[84] However, such statements rarely appear in the IHRC's principle, and principally featured, reports and policies. They can only really be found through imaginative probing of the organiation's internal website search engine. Many of them have an improvised character, leaving unclear the extent to which the views expressed are intended to represent serious IHRC policy.[85]

In a world perceived by many Muslims as Islamaphobic, where media images regularly portray Americans and Western Europeans as living in fear of Muslims, Muslim organizations may well be justified in seeking to generate contrasting images—images of Muslims as victims of Western, pro-Western or strongly secular policies or regimes—thereby seeking to show that the values of human rights are neither distinctly Western, nor secular,

nor necessarily well observed in the Western or pro-Western world.[86] Moreover, it might be argued that the IHRC is simply attempting to reflect views that are widely held among Muslims themselves, which, would presumably entail the view that Muslims themselves view Hafez Al-Assad, Mohamar Quaddafi or Saparmurad Niyazov in a better light than Ariel Sharon. Yet such a view (assuming it does represent common Muslim opinion) would be inconsistent with an essential principle of human rights law, as reflected in the approaches taken by leading IGOs and NGOs, namely, that a given abuse A of a human right R against a victim V is *no worse* when committed by one government G_1 as opposed to another government G_2.[87] From the point of view of human rights law (I shall take no view on whether Islam is compatible with this principle), torture, rape or silencing of a Muslim is no worse when committed by a Christian or Jew, atheist or Maoist, than when committed by another Muslim.

By extension, it would be a misreading of the values of human rights to claim, for example, 'We know that bad things happen in the Muslim world, but that is our own internal affair'. Fundamental to human rights law is the precept that, within the bounds of an otherwise legitimate territorial mandate, *no affair* is 'internal' or 'external'. Every major international human rights treaty, every norm of customary international human rights law, confirms that the aim of the human rights movement is to lead international law away from its early modern origins in principles of absolute state sovereignty, to lead it as far as possible towards overcoming jurisdictional boundaries insofar as fundamental interests of human beings are at stake. As positive law, international human rights can only be understood as the highest, the ultimate, legal standard, requiring that *its* norms be chosen over any actually or potentially competing values or loyalties (except other norms within the international human rights corpus).[88] That is a mighty injunction. It is, in human history, a very recent one, and, notwithstanding occasional rhetoric to the contrary, is by no means readily reconcilable with all 'major' faiths, traditions or value systems. I do not rule out the possibility of such reconciliation, but its success is not to be casually assumed.[89]

A related argument would be that IHRC's mandate may legitimately consist of, so to speak, filling in the gaps of other human rights organizations. It might be argued that other organizations, like Amnesty International, document abuses in Muslim regimes generally, and that the IHRC, while not denying the findings of other organizations, simply seeks to highlight abuses of Muslims by Western, secular or pro-Western regimes. Yet that position, too, would be problematical. By omitting any explicit declaration to that effect, the IHRC currently presents itself as being very much the opposite of what it is: it presents itself as an organization concerned generally with, and speaking with general authority about, abuses of Muslims throughout the world.

It is a truism that law is not only a taskmaster but also a teacher. Indeed, in an age when the most experienced lawyers struggle to figure out what law is, and when the most basic norms and processes of law and government appear opaque to the average person, we can question how true that saying really is. Yet if there is one area in which such a maxim has real force, it is in human rights. People may pay their taxes without understanding the arcana of tax law. They may engage in countless transactions without knowing much commercial or contract law. However, it is part of the very meaning of an international human rights movement that even (or especially) the poorest and most outcast should know they have fundamental rights and what it means for them to be violated, and should know that we live in a world where heinous violations are constantly committed against others.[90] Many organizations have long understood the educational mission of human rights law, and see education as crucial elements of their work. Many of their websites are consciously designed for educational purposes. Part of their legitimacy, then, must lie in the quality of information they provide.

Someone who consults the IHRC website, for example, effectively accepting the IHRC's own invitation to find insight into the human rights of Muslims throughout the world, should have that promise fulfilled to some reasonable degree. Certainly, organizations operating under conditions of extreme poverty, hardship or crisis may be unable to design impeccable websites (although the site for the Palestinian Non-Governmental Organizations' Network,

which I discuss in the next section, is by no means unprofessional; and, in any event, the IHRC operates under no such adversity); and even the best funded and equipped cannot easily become encyclopaedic sources. Hence, again, my focus on gross and persistent neglect of human rights abuses falling within organizations' *own* declared mandates. An organization should not define itself as interested in the human rights of Muslims *generally* when that is not, and has never been, its interest; when its interest, instead, has been to align itself with a longstanding partisan platform—a platform that may indeed have important human rights ramifications, and may indeed stake out important partisan political positions, but which cannot be understood as, primarily, a human rights policy.

The IHRC can indeed do excellent work. Its incident reporting service, for example, provides valuable internet, e-mail and telephone links for Muslims who have encountered violence, discrimination or harassment.[91] Those kinds of initiatives are common elements of human rights organizations. In themselves, however, they do not suffice to make the IHRC a legitimate human rights organization.

B. The Palestinian Non-Governmental Organizations' Network

The Palestinian Non-Governmental Organizations' Network (PNGO) was established in 1993. Although created as an umbrella group comprising a variety of NGOs, it is not a purely administrative unit. It regularly publishes its own views and statements. As its 'Overall Goal', the PNGO cites 'the development and empowerment of civil society within an independent Palestinian state based on the principles of democracy, social justice and respect for human rights'.[92] According to its mission statement, the PNGO 'envisages the establishment of an independent and democratic Palestinian state based on the rule of law, social justice and the respect for human rights'.[93] It thus seeks to '[a]dvocate for the rights of the Palestinian people' and to '[s]trengthen democratic values within society'.[94]

That mandate is legitimate only if the PNGO extends scrutiny of abuses to all entities to whom legal responsibility for human rights in the Occupied Territories is attributable. However, the PNGO's rigorous condemnations are reserved entirely for the Israeli

government and armed forces.[95] On some more long-term issues that are unrelated to the immediate security crisis, like the status and treatment of women, the PNGO's criticism of the Palestinian Authority[96], and even of attitudes among the Palestinian people[97], is often candid and progressive. However, allegations of immediate, systemic and ongoing violations of civil and political rights committed by the Palestinian Authority[98] are almost always omitted.

It might be argued that the PNGO must take a milder approach, as the Palestinian Authority operates under arduous conditions, lacking the stability enjoyed by the governments of full-fledged states. Certainly, an instrument like the International Covenant on Civil and Political Rights[99] (ICCPR), as to its states parties, recognizes derogations from certain obligations under genuine, declared states of emergency (art. 4(1)). That general principle can arguably be applied to the Palestinian Authority, even if, lacking statehood, Palestine is not a party to the ICCPR as such.[100] The important point, however, is that, in two senses, such a norm cannot relieve NGOs or IGOs of the duty to document *prima facie* abuses falling within their declared territorial, victim and issue mandates. First, such an approach still cannot excuse the PNGO from failing to report abuses by the Authority of non-derogable rights. Second, the Palestinian Authority may indeed *subsequently* be deemed to be fully or partly relieved of international responsibility for some abuses, *to the extent* that a state of emergency is deemed to exist.[101] However, it is neither for IGOs nor for NGOs to decline to report *prima facie* evidence of abuse simply on their own prior assumption that a state of emergency justifies or exculpates such abuse. In a nutshell: the PNGO, in view of its own declared mandate, is bound to recognize *prima facie* abuses committed by the Palestinian Authority, even if, in some instances, the Palestinian Authority, on subsequent examination, is found not to hold full responsibility, on grounds of a genuine state of emergency.

C. Sinn Féin

An organization like Sinn Féin must be scrutinized if only because a reliable source like the University of Minnesota Human Rights Library lists it as a human rights NGO. Sinn Féin certainly appeals to strong human rights values, including 'sustainable social and economic

development; genuine democracy, participation, equality and justice at all levels of the economy and society'[102], as well as more controversial ones, such as 'the right of Irish people as a whole to attain national self-determination.'[103] However, Sinn Féin does not use the term 'human rights' in its name, nor in its self-presentation does it make transcendental, universalist human rights claims in any detailed way. In its mission statement, it expressly describes itself as 'the oldest *political movement* in Ireland'.[104] Sinn Féin, then, although listed on the Minnesota site as an NGO, cannot be accused of falsely calling itself a human rights organization, as it makes no real attempt to present itself as anything other than a fairly typical political party. The Minnesota site cannot necessarily be faulted, as it is right to keep its essentially educational mandate as broad as possible, avoiding heavy-handed editorial choices which might be construed as bias of its own; the onus then falls upon us to make judgements about linked sites.

D. Intergovernmental Organizations

Throughout its existence, the UN Human Rights Commission (recently replaced by the Human Rights Council[105]) was condemned as a politicised body, in which members shielded their own governments, and allied or friendly governments, from criticism or investigation, with disregard for actual victims. To call it 'politicised' is to say that its substantially disproportionate perpetrator selectivity had proceeded along partisan lines, generally following such high-profile conflicts as East versus West (during the Soviet period) or Western versus Islamic. As a result, only states carrying insufficient weight within those conflicts, such as Chile, Israel or South Africa, faced close scrutiny, while heinous violators of human rights, such as China, Libya, Saudi Arabia, Syria, or the former Soviet Union and its satellites, were left unscathed.[106] That record contrasted strongly, during the same period, with the approach of the treaty-based Human Rights Committee, which cultivated a sober and even-handed method—praising improvements even within the worst regimes, criticising defects even within the best.[107] When, in March 2006, the General Assembly voted to replace the Commission with the Human Rights Council, the US objected that the new body would

remain subject to the same kinds of political manipulation.[108] Although the new Council appears better situated to scrutinize powerful states, the legitimacy test should be applied to the new Council as soon as patterns of practice begins to emerge.

Similar scrutiny could be applied to the African human rights protections, particularly through the Cold War period. In form, the erstwhile Organization of African Unity[109] began life as a recognizable brand of intergovernmental organization, adopting norms that recognized universal human rights in terms which, albeit conceding weightier concepts of collective rights, remained largely consonant with the universalist scope of the Universal Declaration of Human Rights.[110] In other words, while generally confining its territorial mandate to the African continent, its issue and victim mandates, within those territorial bounds, were broad. For many years, however, it sold out that professedly universalist mandate to an agenda of global partisan politics. In various proclamations, for example, it condemned South African *apartheid,* American racism and even Zionism, while, in both word and deed, systematically overlooking the primary source of human rights violations on the continent, namely, abuses committed by non-white African regimes[111], thus creating a conspicuous disproportion between criticisms directed at white or Western-style regimes and those directed at indigenous African regimes. Post-colonial politics thus served more as a means to foil attention to human rights than as a means of promoting it. The reforms of the 1990s were directed largely at reversing that trend, i.e., at conferring legitimacy upon the region's human rights norms and claims, and, as patterns of practice begin to emerge, will have to be judged accordingly.

E. The Association of University Teachers (UK)

The legitimacy test does not apply only to IGOs and NGOs, but to human rights policies that might be adopted by any number of persons or organizations. In April 2004, a leading trade union of British university teachers and staff, the Association of University Teachers (AUT)[112] passed resolutions calling for academic and institutional boycotts of two Israeli universities, Haifa University and the Bar-Ilan University, and to refer for further

consideration a proposed boycott of Hebrew University.[113] Proponents of the boycott drew strongly on the language of human rights, condemning conduct by Israel and Israeli universities that was deemed detrimental to Palestinians and to academic freedom.[114]

Joining the effort to overturn those resolutions, I wrote at the time that such a measure might not in itself be objectionable. Throughout its 85 year history, however, the AUT had never adopted any systematic policies on global human rights, despite being a large, prominent, respected and funded organization with a highly qualified membership. It had never, for example, established a standing human rights committee, which, within the bounds of a declared mandate, would generally aim to criticize governments across-the-board with respect to academic freedom, in general proportion to actual levels of abuse. The AUT had participated in occasional, one-off campaigns, such as that against *apartheid* in South Africa (reminiscent of the selectivity of the UN Human Rights Commission), but had never taken any position or action, nor expressed any interest whatsoever, in regimes that have long been the most oppressive of academic freedom.[115] Indeed, in a policy statement adopted before the Israeli boycott resolutions, and still published on its website as of this writing, the AUT declares that it 'encourages and supports co-operation with Cuban educational institutions'[116], despite pervasive lack of democracy, free speech or academic freedom in Cuba.[117] (Again, as with support for Israel, the American blockade might be seen as an extraordinary or *sui generis* situation requiring special attention, and might more plausible come from an organization primarily concerned with economic and social rights. However, a position that cites the blockade as distinctly detrimental to *academic* freedom, while voicing no criticism of a governmental regime that is specifically responsible for academic freedom in Cuba, suggests a questionable use of human rights discourse.)

Similarly, the Israeli boycott resolutions would have ended exchanges of students and academics at a time when exchanges between, say, Britain and China have been augmenting in vast numbers. The AUT's selectively targeted of Israel, while ignoring, and having always ignored, dozens of far worse abusers.[118] In response to heavy external and internal criticism, a special AUT meeting was subsequently called in May 2005. The boycott resolutions were

defeated[119] for reasons that included the precept that 'international policy must be based on consistent principle'[120].

F. The US-led Invasion of Iraq

At the outset of this article, I mentioned the use of human rights discourse to justify the 2003 US-led invasion of Iraq. Does that policy pass the test? Yes, for the simple reason that we must distinguish between the legitimacy of a position on human rights and the legitimacy of conduct undertaken, fully or in part, in pursuance of that position. The question as to whether a military invasion was justified (be it on human rights grounds or on other grounds) is distinct from the question as to whether condemnation of human rights under Saddam's rule was justified. Even among the United States' most bitter foes, few reliable voices in the worldwide debates about the invasion made any serious attempt to deny the abuses of human rights under Saddam's rule. In other words, the invasion might well fail some *other* test of legitimacy (e.g., legality *ad bellum* under Chapter VII of the UN Charter[121] or *in bello* under the Geneva Convention relative to the Protection of Civilian Persons in Time of War[122]) but it does not fail the test for credible human rights *policy*.

In order for the policy to fail the mandate legitimacy test, it would have to be shown that, in promoting a particular position within a recognizable political, social or cultural controversy, the US government had more-or-less systematically overlooked comparable by states to which it was sympathetic. The Reagan administration was accused of doing just that in the 1980s—condemning human rights abuses in socialist states while overlooking those of allied regimes, e.g., in Latin America.[123] Certainly, the administration of George W. Bush makes no secret of its preference for democratic government; yet, in that respect, it does not differ, say, from Amnesty International, or from most other Western governments, on ends, even if they disagree on means. And certainly, the annual US State Department reports on global human rights will not please everyone—it might be argued, for example, that the

reports on Israel fail to address fundamental issues of the legitimacy of Israeli occupation. Yet that kind of criticism would still be far from anything like a gross disproportion, particularly since the report on Israel nevertheless covers human rights abuses in Israel at a level of detail largely comparable to that accorded to other states.

V. Restatement

Taking the three prongs together, the mandate legitimacy test can be stated as follows:

First Prong: Parameters. Territorial, issue, victim, and temporal mandates may be freely chosen, subject only to the minimal standards of avoiding gross arbitrariness or irreconcilable contradiction with core human rights norms. If those criteria are met, proceed to the second prong.

Second prong: Proportionate Perpetrator Selection. Perpetrator selection—criticism of internationally responsible actors—must accord with the mandate parameters adopted under the first prong. It must therefore be proportionate to *prima facie* incidents of abuse, as defined by the selected issues, victims and time frame, throughout the entire selected territory.

(a) Occasional or minor breaches in proportionate perpetrator selection may be deemed legitimate. The test is then passed, and stops here.

(b) Substantially disproportionate perpetrator selection requires application of the third prong.

Third prong: Non-partisanship. Substantially disproportionate perpetrator selection must not effectively recapitulate the position of any contentious party to a recognized political, social or cultural conflict.

Having worked through all elements of the test, it is now easier to contrast the four kinds of selection examined under the first prong with the rather different element of perpetrator selectivity. Territorial, issue, victim and time-frame selections are 'analytic': they are expressly or tacitly presupposed by the very existence of a human rights policy. Even a policy that does not accuse anyone of anything, but merely states rules, principles or recommendations, would presuppose these four elements. By contrast, the element of perpetrator selectivity is 'accusatory', arising only where responsibility for abuse is expressly ascribed to named states or actors. It is unsurprising, then, that perpetrator selectivity provides an important criterion of legitimacy.

Again, the test identifies only necessary, not sufficient criteria of legitimacy. It does not allow all illegitimate organizations to be identified (on grounds of corruption, mismanagement, etc.); but does allow us to say that organizations which *do* fail it have illegitimate human rights mandates. Policies failing the test may make valuable contributions to human rights or to the political arena, but should not call themselves human rights policies. They should not be recognized as such, and should refrain from presenting their positions as general statements of human rights policies. Either they should frankly identify themselves as political organizations, or they should revise their mandates.

Vigorous debate, disagreement and, yes, partisanship are essential ingredients of a healthy society. They are certainly related to core human rights claims of personal and collective identity, free expression and political participation. That does not, however, mean that every cause, even every good cause, is a human rights cause. The touchstone of a human rights organization or policy remains with its willingness to provide candid criticism of all governments, or other responsible entities, falling within an otherwise plausibly defined

territorial, temporal, issue and victim mandate. Policies failing that test may play a valuable role in political life, but are not legitimate human rights policies.

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[1] Reader in Law, Queen Mary, University of London. Many thanks to Evert Alkema, Brice Dickson, Malvina Halberstam and Henry Steiner for their valuable comments.

[2] See, e.g., Malcom Shaw, *International Law* 200 (4th ed. 1997). On special regimes including, e.g., humanitarian law or protection of minorities or workers, see, e.g., *id.* at 201 – 02, and additional works cited therein.

[3] See generally, e.g., Louis Henkin, *The Age of Rights* (1990).

[4] In a worthy but little known work on the question of universality, Ludger Kühnhardt, albeit sceptical about deep claims of universality, concedes that basic norms against abusive government are widespread throughout history and cultures. Ludger Kühnhardt, *Die Universalität der Menschenrechte* (1988).

[5] See, e.g., 'President Says Saddam Hussein Must Leave Iraq Within 48 Hours', Address of President George W. Bush, March 17, 2003, *The White House,* http://www.whitehouse.gov/news/releases/2003/03/20030317-7.html (visited 20/09/2006) (stating, 'Unlike Saddam Hussein, we believe the Iraqi people are deserving and capable of human liberty'). Cf., 'Iraq War,' *in Wikipedia,* http://en.wikipedia.org/wiki/Iraq_War#Human_rights_abuses (visited 20/09/2006) (noting rationales for invasion).

[6] See, e.g., Günter Grass, 'The War of Pretences', *in Iraq: War or Not – Writers, Artists and Civic Leaders on the War, Pt. I,* http://www.opendemocracy.net/debates/article.jsp?id=2&debateId=88&articleId=882#top (visited 20/09/2006) (distinguished author denouncing US hypocrisy). Cf. 'Iraq War,' *supra* note 5 (noting criticisms of invasion).

[7] See Section II.C *infra.*

[8] See, e.g., Save the Children, http://www.savethechildren.org/ (visited 20/09/2006).

[9] See Section II.B *infra.*

[10] See, e.g., Article 19, 'About Us', http://www.article19.org/about/index.html (visited 20/09/2006).

[11] 78 U.N.T.S. 277, *entered into force* 12 Jan. 1951.

[12] 1465 U.N.T.S. 85, *entered into force* June 26, 1987.

[13] Univ. of Minnesota Human Rights Library, 'NGO Links', http://www1.umn.edu/humanrts/links/ngolinks.html (visited 20/09/2006).

[14] See, e.g., Public Broadcasting System, Frontline, 'Behind the Mask: The IRA and Sinn Féin', 1998, http://www.pbs.org/wgbh/pages/frontline/shows/ira/ (visited 20/09/2006).

[15] For other writers who have raised similar concerns, see, e.g., Aryeh Neier, 'Not All Human Rights are Equal', *New York Times,* 27 May 1989, p. 22 (letter to the Editor); Kenneth Anderson, 'The Ottawa Convention Banning

Landmines, the Role of International Non-Governmental Organizations, and the Idea of International Civil Society', 11 *European Journal of International Law* 92 (2000). See also, generally, Henry J. Steiner & Philip Alston, *International Human Rights in Context* ch. 11 (2nd ed., Oxford: Oxford University Press, 2000)

[16] See, e.g., "Analysis: Defining Genocide," *BBC News,* 1 Feb. 2005, http://news.bbc.co.uk/2/hi/africa/3853157.stm (visited 20/09/2006) (discussing politicisation of the concept of 'genocide').

[17] Elsewhere I have taken an absolutist view on free speech. See Eric Heinze, 'Viewpoint Absolutism and Hate Speech' 69(4) *Modern Law Review* 543 (2006).

[18] Statute of Amnesty International (as amended by the 26th International Council, meeting in Morelos, Mexico, 16 to 23 August 2003), http://web.amnesty.org/pages/aboutai-statute-eng (visited 20/09/2006).

[19] *Id.* (emphasis added)

[20] On the concept of an 'issue mandate', see Section II.C *infra.*

[21] See note 18 *supra*.

[22] Cf., e.g., Peter Baehr, 'Amnesty International and its Self-Imposed Limited Mandate', 12 *Netherlands Quarterly of Human Rights* 5 (1994).

[23] Frankfurter

[24] See, e.g., Phylllis Bennis, *Calling the Shots: How Washington Dominates Today's UN* (2000).

[25] Cf., e.g., Section IV.A *infra.*

[26] That point is further explored in Section IV.A *infra.*

[27] John Rawls, *A Theory of Justice* 37 – 38 (2nd ed. 1999).

[28] Cf. generally, e.g., Convention on the Rights of the Child, 1577 UNTS 3, *entered into force* Sept. 2, 1990.

[29] American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992); American Convention on Human Rights, O.A.S.Treaty Series No. 36, 1144 U.N.T.S.123, *entered into force* 18 July 1978.

[30] Charter of the Organization of American States, Ch. III, 119 U.N.T.S. 3, *entered into force* 13 Dec. 1951; amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, *entered into force* Feb. 27, 1970; amended by Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527, *entered into force* Nov. 16, 1988; amended by Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005, *entered into force* September 25, 1997; amended by Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009, *entered into force* January 29, 1996.

[31] 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* 24 Oct. 1945.

[32] Cf., e.g., GA Res. 2734 (XXV) (16 Dec. 1970) (reaffirming the 'universal and unconditional validity of the Purposes and Principles of the Charter').

[33] G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

[34] See, e.g., *The Charter of the United Nations: A Commentary* 159 – 60 (Bruno Simma *et al.* eds., Munich: Beck, 1995).

[35] See, e.g., *id.* at 159.

[36] See note 18 *supra* (emphasis added).

[37] Kurdish Human Rights Project, 'About KHRP', http://www.khrp.org/about/about.htm (visited 20/09/2006).

[38] See, e.g., A.H. Robertson & J.G. Merrills, *Human Rights in the World* 26 – 27 (4th ed., Manchester, UK: Manchester University Press, 1996).

[39] See, e..g, Declaration on the Right to Development, G.A. res. 41/128, annex, 41 U.N. GAOR Supp. (No. 53) at 186, U.N. Doc. A/41/53 (1986); Draft Principles On Human Rights And The Environment, E/CN.4/Sub.2/1994/9, Annex I (1994). Cf., e.g., Health, Development, Information and Policy Institute, http://www.hdip.org/ (visited 20/09/2006); Weltwirtschaft, Ökologie und Entwicklung, http://www.weed-online.org/ (visited 20/09/2006); Centre for Human Rights and Environment, http://www.cedha.org.ar/en/ (visited 20/09/2006).

[40] Islamic Human Rights Commission (IHRC), 'Nigeria - Lawal appeal victory welcomed by Islamic group' [hereinafter 'Lawal'], press report of 25 September 2003, http://www.ihrc.org/ (visited 20/09/2006). See also IHRC, 'Injustice in the Name of Islam', press report of 22 August 2002, *id.*

[41] IHRC, 'Lawal', *supra* note 40.

[42] Cf. Section IV.A *infra.*

[43] Aboriginal Deaths in Custody Watch Committee of New South Wales (ACDCWC-NSW), http://www.justiceaction.org.au/actNow/Campaigns/Indig/adcwcnsw.html (visited 20/09/2006).

[44] The ACDCWC-NSW mission statement provides further insight into that choice: 'The Watch Committee was formed in June 1987 following concerns and voices about the rate of Aboriginal deaths in custody, the circumstances about the deaths, and the vague explanations offered by police and prison officials.' ACDCWC-NSW, *supra* note 43.

[45] International Lesbian and Gay Association (ILGA), http://www.ilga.org/aboutilga.asp (visited 20/09/2006).

[46] *Id.* at http://www.ilga.org/ (visited 20/09/2006).

[47] *Id.* Cf., generally, Eric Heinze, *Sexual Orientation: A Human Right* ch. 13 (Dordrecht: Martinus Nijhoff, 1995).

[48] IHRC, *supra* note 40.

[49] *Id.* (emphasis added)

[50] 'IHRC Condemns Attacks in New York & Washington', press report of 12 September 2001, in IHRC, *supra* note 40.

[51] See American Civil Liberties Union, http://www.aclu.org/ (visited 20/09/2006).

[52] See, e.g., Stanley Cohen, 'Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims', 18 *Human Rights Quarterly* 517 (1996). See also, generally, Steiner & Alston, *supra* note 15, at ch. 11.

[53] See press releases at IHRC, *supra* note 40.

[54] *Id.*

[55] I have been unable to ascertain, either from the IHRC website or elsewhere, and despite a query sent to the organization, whether the reference to a 'countries index' in the quoted passage is intended to have any precise content. Nowhere, however, is any expressly adopted territorial limitation in evidence.

[56] IHRC, *supra* note 40.

[57] See generally press reports on Turkey, *id*.

[58] See, e.g., 'Uzbekistan - Torture, the language of repression', press report of 13 January 2003, *id*.

[59] Cf., e.g., for Uzbekistan and Azerbaijan, 'IHRC condemns Andijan Massacre as Natural Product of Western Support of Uzbek Dictatorship', press report of 17 May 2005, *id.* 'Azerbaijan and the Hijab Ban: A new Kemalist nightmare?', report of 8 February 2003, *id.* (linking to http://www.ihrc.org.uk/show.php?id=527).

[60] See, e.g., Amnesty International, 'Turkey', in *Report 2005*, http://web.amnesty.org/report2005/tur-summary-eng (visited 20/09/2006).

[61] See, e.g., Amnesty International, 'Libya', in *Report 2005,* http://web.amnesty.org/report2005/lby-summary-eng (visited 20/09/2006).

[62] See, e.g., Amnesty International, 'Saudi Arabia', *Report 2005*, http://web.amnesty.org/report2005/sau-summary-eng (visited 20/09/2006).

[63] See, e.g., Amnesty International, 'Syria', *Report 2005*, http://web.amnesty.org/report2005/syr-summary-eng (visited 20/09/2006).

[64] See, e.g., Amnesty International, 'Turkmenistan', *Report 2005*, http://web.amnesty.org/report2005/tkm-summary-eng (visited 20/09/2006).

[65] See, e.g., 'Pakistan: Execution under Anti-Terrorist Act scheduled for Monday', press report of 31 August 1999, in IHRC, *supra* note 40; 'Pakistan: Fears for Human Rights in Pakistan', press report of 31 July 1997, *id.*.

[66] See, e.g., Amnesty International, 'Pakistan', in *Report 2005*, http://web.amnesty.org/report2005/pak-summary-eng (visited 20/09/2006).

[67] See generally reports of UN treaty-based committees at http://www1.umn.edu/humanrts/un-orgs.htm (visited 20/09/2006); Amnesty International, http://www.amnesty.org/ (visited 20/09/2006); Human Rights Watch, www.hrw.org (visited 20/09/2006).

[68] See, e.g., Amnesty International, 'Somalia', in *Report 2005*, http://web.amnesty.org/report2005/som-summary-eng (visited 20/09/2006).

[69] See, e.g., Amnesty International, 'Female Genital Mutilation', http://www.amnesty.org/ailib/intcam/femgen/fgm1.htm#a3 (visited 20/09/2006).

[70] Cf. Neil Hicks, 'Does Islamist Human Rights Activism Offer a Remedy to the Crisis of Human Rights Implementation in the Middle East?', 24 *Human Rights Quarterly* 361, 363 (2002).

[71] See, e.g., 'France urged to scrap headscarf ban', press report of 11 January 2004, in IHRC, *supra* note 40.

[72] See, e.g., Amnesty International, 'Justice, Not Excuses', http://web.amnesty.org/actforwomen/justice-3-eng (visited 20/09/2006) (reporting on several dozen schoolgirls who were killed or injured in a school fire when religious police prevented them from leaving, and prevented rescue attempts, because the girls were not wearing headscarves).

[73] IHRC, *supra* note 40.

[74] Prof. Evert Alkema of the University of Leiden brought this comparison to my attention.

[75] Hafez Al-Assad died in 2000. As earlier noted, however, the IHRC's regular press reports date back to 1997. See IHRC, *supra* note 40.

[76] See, e.g., 'Saddam War Criminal, What about Sharon?', press report of 26 April 2001, *id.*

[77] See, e.g., 'Sharon's Final Solution', press report of 2 April 2002, *id.*

'Holocaust Victims Forgotten', press report of 25 January 2001, *id.*

[78] See generally *id.*

[79] The states voting in favour of the original declaration in 1975, UN Gen. Assembly Res. A/RES/3379 (XXX), 10 Nov. 1975, amounted, at the time, to a *Who's Who* of totalitarian regimes, including some of the world's most egregious human rights abusers during the early 1970s: Afghanistan, Albania, Algeria, Bahrain, Bangladesh, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, China, Congo, Cuba, Czechoslovakia, Egypt, Equatorial Guinea, German Democratic Republic, Hungary, Indonesia, Iran, Iraq, Jordan, Kuwait, Laos, Lebanon, Libya, Malaysia, Mauritania, Mongolia, Morocco, Mozambique, Oman, Pakistan, Poland, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, Viet Nam, Yemen and Yugoslavia. Politics may have to tolerate strange bedfellows, but it is questionable whether the human rights movement should always do so.

[80] 'Robsinson's attack on NGO Declaration misleading', press report of 8 September 2001, IHRC, *supra* note 40.

[81] Only the views of the Irish Anti-War Movement in support of Ahmadinejad are expressly stated, but in a favourable vein, and with no critical or contrasting view. 'Dunuciations of Iran Laced with Double Standards', article of 28 October 2005, *id.*

[82] See, e.g., Elie Wiesel, *La Nuit* (Paris: Editions de Minuit, 1958) (recounting the author's experiences in Auschwitz and Buchenwald).

[83] 'Aren't you ashamed', article of 7 May 2005, in IHRC, *supra* note 40.

[84] IHRC, letter to correspondent (signed 'Margaret') of 17 March 1998, *id.* (document located through IHRC internal search engine request on 'female genital mutilation').

[85] The said letter, for example, asserts that '[a]ll major faiths and ideologies believe that their belief system is the correct one'. *Id.* That is a highly unusual (and, of course, simplistically monotheistic) position for a human rights organization to take, and certainly not one which credible scholars of comparative religion would adopt.

[86] The theme of Islamaphobia is frequent in IHRC articles and reports. See, e.g., 'End Islamaphobia in the British Educational System', press report of 28 October 1999, *id.*; 'Media Islamaphobia in the Wake of Recent Tel-Aviv Bombing', press report of 1 May 2003, *id.* 'IHRC announces winners of "The Annual Islamaphobia Awards', press report of 30 May 2003, *id.*; 'Winners of Islamaphobia Awards 2004 Announced', press report of 26 June 2004, *id.*.

[87] But, regarding international responsibility for human rights violations during legitimately declared states of emergency, cf. text accompanying notes 99 - **Error! Bookmark not defined.** *infra.*

[88] That, of course, is the meaning of a higher law right. Cf., e.g., Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977).

[89] See, e.g., Kühnhardt, *supra* note 4 (conceding that basic norms against abusive government are widespread throughout history and cultures, but doubting that the panoply, and the intellectual assumptions, of contemporary international human rights can plausibly be said to recapitulate pre-modern or non-Western belief systems).

[90] See, e.g., Office of the United Nations High Commissioner for Human Rights, 'Word Programme for Human Rights Education', http://www.ohchr.org/english/issues/education/training/programme.htm (visited 20/09/2006).

[91] IHRC, *supra* note 40.

[92] See generally Palestinian Non-Governmental Organizations' Network (PNGO), http://www.pngo.net/pngo.htm (visited 20/09/2006). See also the PNGO's 'Values and Principles', *id.*

[93] *Id.*

[94] *Id.*

[95] *Id.*

[96] See, e.g., 'Palestinian civil society organizations condemn PLC decision to drop Article No. 24 of the Local Council Law which is to ensure fair representation along gender lines', statement of 25th October 2004, at PNGO, *supra* 92.

[97] See, e.g., 'Statement by the Palestinian NGO Network (PNGO) condemning the recent string of honour killings', statement of 3rd May 2005, at PNGO, *supra* 92.

[98] Cf., e.g., Amnesty International, 'Palestinian Authority', in *Report 2005*, http://web.amnesty.org/report2005/pse-summary-eng (visited 20/09/2006).

[99] 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

[100] It is plausible to assume a norm admitting legitimate derogations under genuine states of emergency for a non-state or quasi-state actor like the Palestinian Authority. It would be ludicrous to imagine that, say, an international judicial or quasi-judicial body, or indeed a credible NGO, would deny some principle of derogation to an internationally responsible entity solely on the grounds that the entity was not a state and therefore not a party to a human rights instrument containing a derogations clause. The character of the Palestinian Authority suggests that the very existence of a non-state entity may result from the unrest characteristic of states of emergency.

[101] See, e.g., UN Human Rights Committee, 'General Comment 29: States of Emergency (article 4)', U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).

[102] Sinn Féin, 'Provisional Sinn Féin', http://sinnfein.org/index.html (visited 20/09/2006). Cf. Sinn Féin, http://sinnfein.ie/ (visited 20/09/2006).

[103] *Id.*

[104] *Id.* (emphasis added)

[105] See G.A. Res. 60/251, U.N. Doc. A/RES/60/251 (March 15, 2006) (establishing the Human Rights Council); C.H.R. Res. 2006/2, U.N. Doc. E/CN.4/2006/L.2 (March 27, 2006) (closing the work of the Commission).

[106] See, e.g., Robertson & Merrills, *supra* note 38, at 88. See generally, *id.* at 83 – 89. See also, e.g., Steiner & Alston, *supra* note 15, at 611 – 40.

[107] See, e.g., University of Minnesota Human Rights Library, 'Human Rights Committee Comments on Country Reports', http://www1.umn.edu/humanrts/hrcommittee/hrc-country.html (visited 20/09/2006).

[108] See, e.g., 'U.N.: New Rights Council Offers Hope for Victims: Better Members and Procedures Needed for Effective Action', *Human Rights Watch,* http://hrw.org/english/docs/2006/03/15/global12991.htm (visited 20/09/2006).

[109] Now replaced by the African Union under the 2000 Constitutive Act of the African Union.

[110] See, e.g., African Charter on Human and People's Rights, OAU doc. CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982) (*entered into force* 21 Oct. 1986).

[111] See, e.g., *id.* at preamb. paras. 4, 9.

[112] In June 2006, the AUT merged with the University & College Lecturers' Union to form the University and College Union. Cf., e.g., 'About UCU', *in* UCU, http://www.ucu.org.uk/index.cfm?articleid=1685 (visited 20/09/2006). See generally, UCU, http://www.ucu.org.uk/ (visited 20/09/2006).

[113] See, e.g., Association of University Teachers (AUT), 'News: Israel universities - statement by AUT general secretary Sally Hunt', 22 April 2005, http://www.aut.org.uk/index.cfm?articleid=1201 (visited 20/09/2006).

[114] See, e.g., the extensive memoirs of Sue Blackwell, University of Birmingham, a leading advocate of the boycotts, at Sue Blackwell, 'Sue Blackwell's pages on Palestine and Israel', http://www.sue.be/pal (visited 20/09/2006).

[115] Eric Heinze, 'Institutional Anti-Semitism?', in *Engage,* June 6th, 2005, http://liberoblog.com/2005/06/06/institutional-anti-semitism-eric-heinze/ (visited 20/09/2006).

[116] AUT, 'Policies: Cuba', http://www.aut.org.uk/index.cfm?articleid=106 (visited 20/09/2006).

[117] See, e.g., Amnesty International, 'Cuba', *Report 2005*, http://web.amnesty.org/report2005/cub-summary-eng (visited 20/09/2006).

[118] See Heinze, *supra* note 115.

[119] See, e.g., Association of University Teachers (AUT), Events, Special Council Voting, http://www.aut.org.uk/index.cfm?articleid=1262 (visited 20/09/2006).

[120] *Id.* (successful motion brought by the University of Southampton). As to the issue of academic freedom and exchange, a companion motion was also carried, stating that the Council 'believes that freedom of expression, open debate and unhampered dialogue are prerequisites of academic freedom and that the academic boycott motions carried at the AUT council constitute a significant threat to the free communication of ideas, and thus to the fundamental principles of academic freedom to which the membership subscribes.' *Id.* (successful composite motion).

[121] UN Charter arts. 39 – 51 (setting forth conditions for use of force under UN authority).

[122] 75 U.N.T.S. 287, *entered into force* Oct. 21, 1950.

[123] See, e.g., 'Regan and Guatemala's Death Files', *The Consortium,* 26 May 1999, http://www.consortiumnews.com/1999/052699a2.html (visited 20/09/2006).