

[note: The views expressed in this report are those of the delegates to this international conference and, as such, do not represent the views of Amnesty International]

Amnesty International
International Conference on
"Disappearances" and Political Killings
4-6 September 1992
Noordwijkerhout, The Netherlands

by Laurie S. Wiseberg, Rapporteur

I. INTRODUCTION

An International Conference on "Disappearances" and Political Killings was held from 4 to 6 September 1992 by Amnesty International (AI) in Noordwijkerhout, the Netherlands, hosted by the Dutch Section of AI. This conference -- a follow-up to the International Conference on Extrajudicial Executions convened by the same AI section in Noordwijkerhout, 30 April - 2 May 1982 -- brought together over 130 participants from 48 countries. Approximately half of the delegates came from AI sections or from the International Secretariat of AI; the rest were activists from national human rights organizations, representatives of international human rights non-governmental organizations, representatives of United Nations (UN) bodies and government agencies concerned with international human rights protection, and independent scholars, advocates and journalists engaged in the human rights struggle.

"Extrajudicial executions" is the term used by AI to denote killings carried out by order of a government or with its complicity. "Political killings" is a broader term, and more readily understood by the public, which recognizes that such killings may also be committed by armed opposition groups. "Disappearances" are cases of abduction committed or condoned by governments, where detention is denied and no information is provided on the fate and whereabouts of the victim. AI puts the term in quotation marks so as to stress that the victim has not really "disappeared", as some official knows what has happened to him or her. What the twin phenomena of "disappearances" and political killings have in common is that they assure the temporary or permanent elimination of the victims, and the perpetrators conceal or deny their accountability for the crimes.

Despite more than a decade of campaigning by AI and other organizations against "disappearances" and political killings, these abuses have not abated. As the conference met, there were continued reports of widespread killings in former Yugoslavia for the purpose of "ethnic cleansing" of controlled areas; reports of continued massacres in Somalia and reports of continued political killings in Iraq, Guatemala, Peru and South Africa among other countries.

Impelled by a sense of urgency, conference participants for three days focused their attention on developing strategies to combat and prevent such egregious human rights violations, guided by four core questions: how can we prevent "disappearances" and

political killings? how can we stop on-going "disappearances" and political killings? how can we break through the international indifference which makes it possible for the world to remain silent in the face of such brutality? and, relatedly, how do we make "disappearances" and political killings real for the public?

More specifically, the aims of the conference were:

1. To study new developments related to the phenomena of "disappearances" and political killings;
2. To assess the progress made in implementing the recommendations made by the 1982 International Conference on Extrajudicial Executions;
3. To discuss forms of action which have been developed to combat these human rights violations and to strategize about new initiatives that could be launched by non-governmental or intergovernmental organizations; and
4. To draft a program of recommendations and a declaration, so as to promote coordinated international activities.

The conference was structured around five working parties on the following themes:

1. Action through intergovernmental organizations
2. The responsibilities of governments: bringing the perpetrators to justice
3. Campaigning from abroad to increase the pressure
4. Action within the countries where the abuses occur
5. Political killings by opposition groups.

II. PLENARY SESSIONS

A. THE OPENING PLENARY

Martha Meyer

At the opening plenary session on Friday 4 September, Martha Meyer, Chairperson of the AI Dutch Section, welcomed the delegates, recalled the 1982 International Conference on Extrajudicial Executions, and noted that much has been done over the past decade: non-governmental organizations have carried out investigations into political killings; a large body of international standards have been elaborated; and mechanisms have been developed (including the UN Special Rapporteur on summary or arbitrary executions and the UN Working Group on Enforced or Involuntary Disappearances). But this has not been enough to halt the violations. Therefore, we need a new approach aimed at preventing "disappearances" and extrajudicial executions. We also need to find ways of dealing with political killings committed by non-governmental entities or armed opposition groups, and to confront the problem of impunity for the perpetrators.

Dr. Manorami Saravanamuttu

Dr. Manorami Saravanamuttu, the mother of Richard de Soysa, a Sri Lankan journalist and writer who was abducted from their home on February 18, 1990 by people believed by witnesses to include police officers, spoke of the intense pain of discovering the body of her son washed up from the sea soon afterwards. "It is the most devastating experience to have your child torn from your arms and then go to identify his mutilated body", she said. A medical doctor who has practised medicine for 30 years in a multi-cultural, multi-racial neighbourhood in the north of Colombo, she talked about the suffering of the women, and especially of the children, in Sri Lanka. You cannot replace the loss of a father, she said. "I never tell them that it is possible to forget, or that they should forget, because that is not possible."

A woman with her son had come to see her, Dr. Saravanamuttu said. The boy said he would like to become a soldier to revenge his father's death. Dr. Saravanamuttu told him: "I am a doctor; that means you save lives. As a soldier you have to kill. What do you think is better?" The boy replied: "I will think of it."

Governments must be pressed to respect human rights, otherwise people will take up arms, Dr. Saravanamuttu told the conference. The children of victims and the women want justice; ways must be found to provide it. She referred also to the relationship between development aid and human rights. Countries need economic development, but development must reach the people who need it. If people have to work all the time, they become slaves. To earn money is not enough; one must also be able to earn dignity. Aid projects must not violate the rights of people.

She spoke of working with the Mothers' Front organization in Sri Lanka, of organizing groups of women outside the Front, and also of the harassment she has been subjected to --

having her phone tapped, receiving death threats. When the Mothers' Front was first established, 30,000 joined because they did not know the fate of their loved ones. But another 20,000 to 30,000 did not join because they were afraid, she said. Yet all the women want justice. They say they know who has done these things and they want justice. Governments must be persuaded and pressured to accept responsibility and to see that these situations do not occur, she said.

Appealing to conference participants, Dr. Sarvanamuttu asked: Can we come up with relevant policies -- policies to make governments understand that the people of their country, of whatever political persuasion, are the most important participants in the peace process? Can we come up with policies so that it is possible "to have laughter, not tears; to have joy, not sorrow; to have children, not graves? What are the solutions you can give these people?"

Theo van Boven

Theo van Boven, Professor of Law at the University of Maastricht, Member of the UN Committee on the Elimination of Racial Discrimination, and formerly Director of the then UN Division of Human Rights, began his presentation by reflecting on how little awareness there has been of the scope of the human rights violations over the past 30 years. He referred in particular to the inventory of victims since World War II set out in the introductory conference paper by Daan Bronkhorst. Some recent conflicts had claimed enormous numbers of victims, according to the figures in that paper. While not all the victims fall under the definition of extrajudicial executions (since killings resulting directly from warfare are excluded from the definition), in some countries, the great majority of these victims fell in operations of security forces and para-military groups which were not combat-related and were not warranted by any legitimate military purpose.

In other cases large numbers of victims were extrajudicially killed by their own governments, according to Daan Bronkhorst's paper. Bronkhorst had also noted that the UN Working Group on Enforced or Involuntary Disappearances has recorded up to 25,000 cases since 1983, and the UN Special Rapporteur on summary or arbitrary executions noted in 1992 that cases had been reported from over a hundred countries, cumulatively, since 1982.

"What was our awareness of these killings reported in the introductory paper? Did we know what was really happening?" asked van Boven.

By way of reply, he noted that, in 1965-1966, when up to half a million people were liquidated in Indonesia, he was serving on a small human rights desk in the Dutch Ministry of Foreign Affairs. "I cannot recall this ever being an issue of concern to us", he said, despite the special relationship between the Netherlands and Indonesia. In the period from 1975 to 1979, when hundreds of thousands were slaughtered in Democratic Kampuchea, Mr. van Boven was still in the Ministry of Foreign Affairs, and he was later a member of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, but the killings were only of marginal concern, he said. "Human rights bodies were hardly dealing with that issue."

Van Boven then recounted an episode which took place when, as Director of the UN Division of Human Rights, he was on a fact-finding mission to Chile; this was in 1978, two years after the terror had begun in Argentina. Listening to the testimony of the relatives of the "disappeared", a secretary of the team, an Argentine, leaned over and said to him: "This is just like Argentina." "And I replied: 'What do you mean?' The fact that I asked this question showed my lack of awareness."

Finally, he noted that of the 1982 massacre in Hama, Syria, "I knew nothing, apart from an odd anonymous phone call, and hardly anyone knew of it."

Our information and awareness is still limited, said Mr. van Boven, because "some situations are more relevant to us than others, and some lives count for more than others in our perceptions."

Moreover, he said, in 1982, the situation seemed less complex than it is now because, at that time, the heads of state responsible were seen as symbols of evil -- heads of state practising state terror.

Today we must confront new patterns of violations such as those occurring in Colombia, Peru, the Philippines, the former Yugoslavia, the former USSR, Somalia and Mozambique. In many cases, we are dealing with violations taking place under elected democratic governments or in the complexities of civil war, where it may not be so easy to determine who is really responsible.

In such contexts, what can the UN and non-governmental organizations like AI do? he asked. He spoke briefly of the shift from human rights action to humanitarian action and the difficulties of applying international standards in the new circumstances. He also drew attention to the perspective of the victim, for many "an inconvenient and unwelcome perspective". Discussing his role as UN Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, he emphasized how little the plight of the victim is taken into account, despite the fact that reparation is an imperative of justice. Some, he said, are currently questioning the universality of international human rights standards; but: "When we listen to the victims, they give us the answers to the question of universality."

Van Boven then discussed the changed context of the 1990s in terms of the end of the cold war. Yet the euphoria of the tearing down of the Berlin Wall has, he noted, been replaced by the frustration of attacks on immigrants at Rostock, Germany. "We are told that democracy is spreading, but that does not mean an automatic improvement of human rights." The rise of nationalism, racism and religious fundamentalism are leading to bloodshed and turmoil in Eastern Europe. The gap between North and South is wider than ever. The UN's limited resources are overstretched. If the UN is to pursue successfully an agenda for peace that is obedient to humanitarian concern and not merely to the *raison d'état*, the UN human rights program must be strengthened and invested with the necessary human and financial resources.

Specifically, he suggested a two-track approach: with respect to UN bodies in Geneva, strengthening the capacity for regular monitoring and independent assessment by means of treaty-based and charter-based mechanisms; and, with respect to the UN headquarters in New York, getting support for the creation of a high-level authority for human rights able to respond to emergencies at the highest political and diplomatic level. He emphasized the need for a preventive approach. "The challenges have not become less," said van Boven, "and the stakes are at least as high" as they were a decade ago.

Theo van Boven finished his speech with a story that illustrates the preventive effect that firm reactions can have. He recalled the case of the "disappearance" in Latin American countries of five exiles from Argentina in 1979-1980. It caused strong reactions from the UN and non-governmental organizations. The bodies were found. Later Mr. van Boven learned from a confidential source that there had been a plan to eliminate some 90 other Argentines living in exile. The five who "disappeared" were at the top of the list. Because of the strong international reaction the plan was cancelled and some 85 lives were saved.

José Zalaquett

José Zalaquett, a human rights lawyer, formerly Chairperson of AI's International Executive Committee and AI Deputy Secretary General and more recently a member of the Chilean Commission on Truth and Reconciliation, and Co-Chairperson of the conference, then spoke about the conference themes in the light of the developments of the past decade.

He noted that in 1980, when AI held its first expert seminar on the issue of "disappearances," and in 1982, when it organized the previous International Conference on Extrajudicial Executions, AI was approximately 20 years old and just emerging from its original focus on prisoners of conscience. National and local human rights organizations had been created since AI began, and new international non-governmental organizations were also coming to the forefront. We had the beginning of the crystallization of a human rights community working within a framework of common norms and basic assumptions.

Parallel to this, but not yet interacting much with human rights organizations, was a group of actors concerned with humanitarian issues, not in the sense of charity, but in the meaning of a concern for minimum humane standards. At the core was the International Committee of the Red Cross (ICRC) (which, at that time, was moving from its battlefield focus to visiting political prisoners) and the UN High Commissioner for Refugees (UNHCR).

Zalaquett then talked of the changes that have taken place over the past ten years in the human rights community: there are now non-governmental organizations in many countries where they did not exist before; there are many more governments openly committed to human rights; human rights is now an academic subject of study; new international norms for the protection of human rights have been elaborated; new implementation mechanisms have been created; and new campaign strategies have been devised.

Equally dramatic have been changes in the world order, partly produced by the human rights movement and, in turn, impacting on it. The 1980s saw the toppling of military dictatorships; the Cold War atmosphere is gone; and the human rights idea has gained legitimacy and has become a paramount issue.

The context in which human rights violations occur has also changed. A decade ago, violations occurred when dictators attacked dissidents. Today they occur in situations in which centralized governmental authority has broken down. The abuses are committed not only by governments but also by non-governmental entities which control territory and people. They occur in circumstances where new governments are not firmly enough in control to do what has to be done; where civilian governments have to contend with the military who are controlling from the wings.

Zalaquett concluded by noting that these changes have led to a change in expectations: on the one hand, there is the danger of people becoming complacent, believing that human rights problems have come to an end; on the other hand, because human rights organizations have gained legitimacy, greater demands -- to do more -- are now being made of organizations like AI. Thus, for example, AI's membership has now decided that the organization will deal with abuses by "non-governmental entities" (opposition groups) as well as those by governments. The argument about the need to monitor abuses by opposition groups is compelling, but it also poses dangers, especially for human rights organizations on the frontlines. It raises the possibility that the unity of purpose that has characterized the work of AI may fragment.

Following Jose Zalaquett's remarks, **Ian Martin**, Secretary General of AI and Co-Chairperson of the conference, spoke briefly of the aims and organization of the conference. Several participants then raised issues which they believed the conference should address. These included the problem of internally displaced persons, the independence of the judiciary, and the strengthening of regional non-governmental and intergovernmental organizations in Africa, Asia and the Middle East.

B. THE CLOSING PLENARY

At the closing plenary session on Sunday 6 September, the rapporteurs of the five working parties presented their reports, provoking considerable discussion. The views of conference participants expressed at the plenary session have been reflected in the working party reports as they appear in the present conference report.

The draft text of a Declaration was then presented to the conference. Drawing together the principal recommendations of the working parties, it had been prepared by a small drafting group which included the Co-Chairpersons and Rapporteur of the conference. Many comments were made on the text during the plenary session, and more comments were given to the Rapporteur after the session finished. These comments have been reflected in the final text of the Declaration appended to this report.

II. WORKING PARTY REPORTS

Working Party 1: Action Through Intergovernmental Organizations

Discussion

1. Progress since 1980

The discussion began with an assessment of developments over the last decade at the level of inter-governmental organizations. It was noted that a triad of mechanisms had been established, beginning with the UN Working Group on Enforced or Involuntary Disappearances in 1980, the UN Special Rapporteur on summary or arbitrary executions in 1982 and the UN Special Rapporteur on torture in 1985. (More recently, these three have been supplemented by a UN Working Group on Arbitrary Detention.)

Parallel to the thematic mechanisms is a system of country rapporteurs, although it was suggested that the decision to appoint a country rapporteur has not always been clearly related to the gravity of the situation in specific countries as outlined in the thematic reports. For example, while the entire non-governmental organization community was convinced of the gravity of the situation of Iraq in 1988, no rapporteur was appointed. It was only after the Iraqi invasion of Kuwait that governments decided to take up the situation of human rights in Iraq.

(A similar point is made in the AI conference paper, *Iraq: "Disappearances" and Extrajudicial Executions* which states: "the past 10 to 12 years have been marked by the brutal suppression of all forms of internal dissent Judging by the actions and reactions of the international community in the past 18 months, however, one cannot help forming the impression that Iraq's human rights record is a recent discovery. Until 2 August 1990 the political and other strategic interests of those states which were in a position to exert pressure on Iraq resulted in the international community effectively turning a blind eye to the atrocities being committed in the name of the Iraqi Government throughout the 1980s".)

The successful establishment of the thematic mechanisms for the first time enabled the UN to record and respond to allegations about human rights violations committed against individuals. And where it looks as if individuals may be at risk of or threatened with violations, the Working Groups or Special Rapporteurs may also act.

However, inasmuch as the UN is a club of governments, there were, and continue to be, shortcomings in these protective mechanisms. First, the mechanisms record violations -- they report annually on cases, country by country, on the basis of information received by non-governmental organizations and the families of victims, as well as official responses; but they do not draw conclusions. (The closest they come to drawing conclusions is when they carry out on-site visits). Second, each mechanism operates only in accordance with its own mandate, and there is a lack of coordination between them.

It was also pointed out that problems frequently arise with the capacity of the UN Centre for Human Rights to deal with all the information it receives. If information cannot be directly related (pigeon-holed) to a specific thematic procedure, the Centre may have difficulty in processing it.

Nor have the thematic mechanisms been designed to be able to act in large-scale emergency situations. Such initiatives as have been recently taken (with respect to Iraq or Somalia) have originated in the political organs of the UN, with their locus of power in New York and not Geneva. A cautionary note was added here: i.e., one must bear in mind that such emergency operations are short-term and dependent on the consent of governments. By contrast, the thematic mechanisms are long-term.

Recent initiatives by the UN Security Council, such as the 'no-fly' zone in Iraq, UN operations in Cambodia and El Salvador, and the unprecedented emergency session of the UN Commission on Human Rights (CHR) have, to a varying extent, been taken in response to very grave human rights situations. It was suggested that such initiatives should be assessed for their potential use in future situations, while recognizing that such operational initiatives take place in a political setting rather than only in the context of human rights.

In summarizing the discussion, the working party identified three areas of UN human rights activity: the procedural (Geneva-based) mechanisms; the operational (political interventionist, and New-York-based) actions; and the promotional (or training and educational) activities.

2.Fundamental restructuring of UN efforts: the proposal for a high level office for human rights

With the AI conference paper "Year of Challenge: The UN and Mass Human Rights Violations in 1993" as background, the working party acknowledged specific inadequacies of the current UN protection system in dealing with gross violations: the absence of a mechanism capable of responding rapidly between sessions of the Commission on Human Rights; the absence of a mechanism capable of responding impartially and conducting on-site monitoring; and the absence of a mechanism which is publicly accountable and accessible to non-governmental organizations. The need for a mechanism to respond to these lacunae was recognized.

There was no agreement on what such an authority should be called -- whether a UN High Commissioner for Human Rights, an Ombudsman for Human Rights, an Ambassador for Human Rights -- and a few members of the working party expressed reservations about the advisability of such a proposal. However, it was agreed that it was important to discuss the potential role and functions of such a high-level authority, bearing in mind the examples of both the UNHCR and the High Commissioner for Minorities recently established by the Conference on Security and Cooperation in Europe (CSCE) under Helsinki II.

In the debate on the role of a "high authority", it was suggested that such an authority might play a coordinating role, especially between Geneva and New York, but also between different Geneva mechanisms. In the absence of the capacity of these mechanisms to handle or distribute information, it could also assume an information and response function. It could play a role vis-a-vis regional mechanisms, keeping in mind the sensitivity of the South as continually being the object of central UN initiatives. It should deal with the right to development and the related issue of external debt. And it should have a promotional function as well as a protective one. Finally, it was suggested that such a body/office should not be merely reactive but take the initiative, identifying areas in need of attention before gross violations are manifested, and it should have the authority to authorize action on the part of existing UN bodies.

However, the central role of such a high authority should be rapid response to human rights crisis situations. The criteria for a UN system which could respond more promptly and adequately to serious situations are set out in the AI paper. Namely: (1) "it must be possible at any point in its annual cycle for the appropriate bodies of the UN to act rapidly to address any combination of grave violations in any country"; (2) the UN system must also be able to act with impartiality, on the basis of an independent appraisal of the human rights situation in countries of potential concern"; (3) "the UN must have the resources to undertake more sustained in-country monitoring and protection, as well as to deliver real assistance in situations where the political commitment to address the human rights situation has been attained"; and (4) "the UN human rights system must be publicly accountable, and accessible to non-governmental organizations."

A question was raised whether there would be political interference in the appointment of a person to such an office, thereby making that office ineffective. While this danger was conceded, it was pointed out that such practical problems should not deny the need for such a high authority to increase the effectiveness of the UN in protecting human rights.

In the course of the discussions, reference was also made to the possibility of developing or strengthening regional centres or mechanisms for the protection of human rights.

Others asked about the ability of the proposed office to deal with economic, social and cultural rights in addition to civil and political ones.

Particularly stressed was the need for integrating human rights concerns into the work of all branches and organs of the UN. Cited in this context were the recent efforts of the UN Development Programme to develop a "freedom index". It was noted that, at present, many UN offices, especially in the field, are unable or unwilling to receive or collect information on human rights because they do not see this as part of their mandate. It was suggested that the capacity of the UN to protect human rights would be increased by inserting human rights into the mandates of all UN offices, and by training UN staff to deal with human rights questions. However, one participant warned against trying to formalize a human rights mandate in every situation as this would tend to lead to restrictions and might undermine the scope of human rights work that is already being carried out informally by different UN officials.

It was also pointed out that the UN Centre for Human Rights is not adequately equipped to receive, process and document information on human rights. The vital importance of receiving and processing information has, by and large, been ignored by the UN system. The need to strengthen the information handling capacity of the UN was stressed while attention was drawn to the possibility of a central authority in human rights enhancing the information handling capacity of the UN in the field of human rights.

3.Incremental or partial reforms

Under the agenda item on incremental or partial reforms of existing mechanisms, an analysis of the work of the UN theme mechanisms on summary or arbitrary executions and "disappearances" was presented to the working party. It was agreed that incremental reforms could have a significant qualitative effect on existing mechanisms.

In respect of procedures, the UN Working Group on Enforced or Involuntary Disappearances is the most advanced of the thematic mechanisms and, notably, provides a way for complainants to receive and comment on responses from governments. The working party explored ways to impose higher political costs on governments which fail to cooperate with the mechanisms and, in this context, addressed suggestions to increase the publicity surrounding the publication of country reports after on-site visits and to publish a list of governments which consistently refuse to cooperate. In the case of the latter, it was suggested that consistent lack of cooperation could itself lead to the appointment of a country Rapporteur. There was also discussion on the question of whether, in the event of no reply from a government, a presumption of truth might be made about information in individual cases, or on emerging patterns of human rights violations in a country. The sensitivity of pressing for judgments in some situations, and the need to maintain access to a country was recognized.

One non-governmental organization from the South pointed out that the non-response of Southern governments might have to do with a lack of expertise on how to use the sophisticated and somewhat complicated procedures of the UN. It was also suggested that the UN should be made more accessible to the broader non-governmental organization community and popularized creatively for the general public.

On a practical level, the severe resource problem of the UN human rights procedures was illustrated when it was noted that only 11 officers worked in the UN Human Rights Centre in Geneva on 27 special human rights procedures. This, coupled with a remarkable absence of coordination and exchange of information between the mechanisms, greatly restricts their effectiveness. This was demonstrated by the lack of response from the Special Rapporteur on Torture, who was in Dili (East Timor) at the time of the November 1991 Santa Cruz massacre, on the ground that he believed that it was outside his mandate, and the suspension of activity by the Special Rapporteur on summary or arbitrary executions in the five months between the departure of Amos Wako and the appointment of Bacre Waly Ndiaye as Special Rapporteur. It was suggested that the development of a residual mandate for the thematic rapporteurs, providing them with the flexibility to take the initiative in response to urgent situations, would help, in addition to encouraging increased cooperation and coordination in general.

4.Strategy for building on UN on-site efforts (such as ONUSAL in El Salvador, UNTAC in Cambodia, or the UNHUCs in Iraq)

There was controversy surrounding the introduction of this item: there was, firstly, the suggestion that the UN had taken an unprepared leap with its on-site efforts to date; and, secondly, the suggestion that the UN has demonstrated in some cases that it lacks the capacity and will to carry out the human rights component of such initiatives. On the more positive side, it was noted that the UN, through these actions, has shown a capacity to become operational which in and of itself was an accomplishment, even when the human rights component of these operations was sometimes sacrificed in favour of political compromise.

Further problems with the on-site mechanisms -- relating to lack of coordination and planning -- were also noted by participants, as evidenced in the difficulties which had arisen between ONUSAL and local human rights groups in El Salvador, and in a failure to plan for, or consider what will happen, in a post-ONUSAL El Salvador.

An attempt was made to clarify the issue of on-site efforts by drawing a distinction between human rights as an essential part of peace-keeping activities, and the introduction into the field of human rights monitors for their own sake, with a clear understanding of their purpose and of the conditions under which they must operate.

It was noted that *de facto* monitoring was often carried out by UN troops and UN humanitarian agencies working on the ground, although this might not be publicly acknowledged. Some participants recognized that it might be dangerous to attempt to formalize such *de facto* monitoring, because formalization might simply result in the prohibition of the monitoring. Humanitarian bodies in particular could face considerable problems in attempting to combine a monitoring role (which could require condemnation of violations) with humanitarian assistance. Some participants questioned whether, in principle, a preventive approach could be implemented through a human rights agenda. It was agreed that such issues took on urgency in light of an apparent trend towards on-site operations in situations such as Somalia and Yugoslavia; and where, in such cases, competing *de facto* authorities have replaced a central government structure as the entities which have to be dealt with and to be addressed by international bodies.

5.Prompt response mechanisms

i. The role of the Security Council

The great debate on the issue of intervention by the UN, - or by other states- in the affairs of a particular state -- the so-called "humanitarian intervention" debate -- was summarized as follows:

The central issue is whether humanitarian intervention can or should be undertaken collectively under the UN Charter. Articles 2(1)(4) and 2(1)(7) of the UN Charter provide for the territorial integrity of the state and prohibit intervention into the domestic affairs of a state. While, for a long time, human rights were considered to fall within the purview of domestic affairs, this view has eroded over the years as witnessed by UN discussions on human rights in specific countries.

The exception to the domestic jurisdiction clause is found in Chapter 7 of the UN Charter (article 39), which allows the UN to take coercive action, but only when there is a threat to peace or in response to an act of aggression. The one case where this rule has been more broadly interpreted has been with respect to South Africa, where the Security Council imposed mandatory sanctions. In so doing, the UN referred specifically to the external factors of the situation. There has generally been a reluctance to define violations of human rights as a threat to peace.

More recently, however, in Resolution 688 of the Security Council on Iraq, the UN did go so far as to consider that the human rights situation in that country was a possible threat to peace, although the resolution did not invoke Chapter 7. The General Assembly's declaration on humanitarian assistance contains the caveat that such humanitarian assistance should be extended with the consent of the state, as was the case in Somalia; France, in particular, has been favourable to developing the concept of humanitarian intervention.

AI's view is that the organization should not get too deeply involved in discussions on the merits of humanitarian intervention. It is difficult to see clearly where human rights fits into the picture with humanitarian intervention, and there are obvious questions of how an initiative would work to protect human rights without the consent of a state. AI's view is that any effective on-site monitoring would need the consent of the government, even though the means to elicit consent and the nature of such consent, might vary. It was suggested that, any developments with respect to humanitarian intervention by the Security Council would really have to be accompanied by Security Council and UN reform. Exceptions might, however, be necessary for countries such as Somalia where there is no operating state or central authority to give or withhold consent.

One non-governmental organization participant from the South maintained that the recent activities of the Security Council in Iraq were politically motivated, not motivated by human rights or humanitarian concerns.

ii. The Austrian proposal

The Austrian proposal for emergency action, put forward at the 1992 session of the UN Commission on Human Rights but postponed until 1993, was overtaken in some respects by the calling in August 1992 of a Special Session of the Commission on Human Rights on Yugoslavia. At its Special Session, the Commission decided to appoint a Special Rapporteur on former Yugoslavia.

It was agreed that the Austrian proposal should be supported to enable a response to situations when a full-blown session of the Commission on Human Rights was not required, while recognizing that it is a second best to the rapid response capacity of a new high-level political authority on human rights.

Among the shortcomings of the Austrian proposal, the following were noted: it needs a high degree of consensus among governments (the consent of a majority of states); and it needs a "grave" situation.

Earlier in 1992, the Arab states asked for an extraordinary session on the Occupied Territories. This was refused because it was argued that the situation was no more urgent than it was the previous year. On the other hand, the Austrian proposal could have been used at the time of the Dili massacre. The use of Special Sessions does not replace the Austrian proposal for an emergency response mechanism. (Also noted was the fact that the Dili massacre took place while the Third Committee of the UN General Assembly was in session; yet the Third Committee did nothing.)

6. Treaty bodies

It was noted that the treaty bodies provided an alternative to other mechanisms and that their greatest flaw was their lack of visibility, although some interesting initiatives had been taken in recent times with the Human Rights Committee set up under the International Covenant on Civil and Political Rights calling for an early report from Iraq and with the televising of meetings of the Human Rights Committee.

7. Reservations to treaties

There is a real problem with the number of reservations entered by some states, and it was suggested that the Human Rights Committee and the Committee for the Elimination of Discrimination against Women (CEDAW) should take on the role of commenting on and assessing reservations. There was a common agreement on the policy of AI to encourage states to ratify treaties and to discourage them from circumscribing their ratification with reservations. What is lacking now is a body that can ultimately decide on the compatibility of reservations. One suggestion put forward was to ask the Human Rights Committee to prepare a general comment on reservations.

8. The role of intergovernmental organizations on non-governmental entities

There was general consensus (also evident in Working Party 5) that it is not appropriate to bring abuses by non-governmental entities to intergovernmental organization fora, and that AI and other non-governmental organizations should resist any attempt to do so. However, it was recognised that there is already a political dimension to this issue, such as the resolution already passed by the UN Commission on Human Rights on opposition groups, the fact that the monitoring bodies had been involved in scrutiny and dialogue with non-governmental entities, and that some governments were exerting pressure on non-governmental organizations to include abuses by non-governmental entities in their reporting. It was also mentioned that the Special Rapporteur on summary or arbitrary executions is also monitoring on the basis of the Geneva Conventions.

9.Regional arrangements

Members of the working party pointed to the ineffectiveness of the African Commission on Human and People's Rights in coping with complaints and to the lack of publicity about the work and activities of the Commission. There was agreement that the effectiveness of the African Commission must be strengthened by initiatives from African non-governmental organizations. However, African non-governmental organizations need strong support from international non-governmental organizations. One suggestion made was the possibility of twinning an Africa non-governmental organization with an international non-governmental organization.

In general, it was suggested that greater visibility be given to the work of the African Commission, that the Commission be asked to focus on a particular subject such as extrajudicial executions, that it be called upon to act on specific cases, that it be called upon to recognize the important role played by non-governmental organizations in protecting human rights, and that the Organization of African Unity be asked to encourage such developments.

Also discussed was the need for the human rights bodies in the Middle East -- the Permanent Committee on Human Rights created in the 1960s by the Council of Ministers of the Arab League (comprised of government representatives) and the League's Committee on the Status of Women -- to play a stronger role in the protection and promotion of human rights.

In examining the Inter-American system, attention focused on its weaknesses: it is overwhelmed by complaints, in part because non-governmental organizations in Latin America have easy access to the mechanism. Also underlined was the fact that the newly-elected democratic governments in Latin America have been exerting a negative influence on the work of the Commission. Ironically, the Commission produced stronger reports and seemed more effective when dictators were in power. Currently, the Commission is under-funded, the debates over human rights in the Organization of American States have become highly politicized, and there has been a tendency for governments to try to get the Commission to focus on the violence of non-governmental entities as against the violations of governments.

Recommendations of Working Party 1

1.A fundamental initiative within the UN

1.1A high level office dealing with human rights should be established within the UN to respond effectively and promptly to situations involving serious violations of human rights, including widespread "disappearances" and extrajudicial executions. The office should be led by a single individual who can be a focal point for UN action and information in the field of human rights with sufficient authority, resources, and personnel. The office should increase the visibility, impact, and accessibility of UN human rights work without prematurely diminishing the functions of existing UN human rights mechanisms.

1.2A strategy should be developed to present this proposal to the World Conference on Human Rights and to pursue it thereafter. The proposal should be discussed with the leadership of the UN. In order to present this proposal, the broad support of non-governmental organizations and governments in various regions of the world should be sought.

1.3Since human rights is a fundamental purpose of the UN, every UN agency and employee should consider human rights as an aspect of their work and cooperate with existing UN human rights procedures as well as the new high level human rights office.

2.Rapid response and special meeting procedures of the UN Commission on Human Rights

2.1The UN Commission on Human Rights should be encouraged to develop and use procedures for special meetings and other mechanisms for responding rapidly to human rights situations of acute urgency, for example, by sending fact-finding rapporteurs.

2.2In certain grave situations of human rights distress, on-site human rights monitoring may be undertaken by the UN. With regard to human rights on-site activities, careful thought should be given to:

- a)the criteria for undertaking such activities;
- b)the purpose of the on-site presence;
- c)how the operation will be established;
- d)relations with local non-governmental organizations;
- e)cooperation with other humanitarian and international institutions;
- f)the long-term effect of the UN presence;
- g)the criteria for the completion of the UN presence; and
- h)preparation for suitable transition to those who will be responsible for human rights protection in the period following the completion of the UN's on-site work.

In any case, the on-site human rights presence should not be undermined by political and other considerations.

- 2.3 Important new approaches to human rights have been undertaken in connection with peacekeeping, election observation, and other field operations of the UN. The inclusion of human rights as a component in such field operations is a positive development. However, these initiatives also indicate that the UN Commission on Human Rights and other genuinely multilateral mechanisms directly related to protection of human rights should have been better utilized before the crisis necessitated such on-site field operations. In regard to such on-site activities, there should be an appropriate and pragmatic balance between the protection, monitoring, education, and other roles which might be played by staff engaged in the on-site activity. The various considerations mentioned in the paragraph above should apply also to these on-site activities.
- 2.4 The issue of the role of the UN Security Council led to a discussion of suggestions for the recognition of a collective *droit d'ingérence* or humanitarian intervention. It was agreed that the complex legal, political and structural problems associated with this notion made it inappropriate to obtain a consensus on this issue at the present time.

3. Thematic procedures

- 3.1 There is a need to increase significantly the effectiveness and impact of the thematic procedures of the UN Commission on Human Rights relating to summary or arbitrary executions, "disappearances", and other serious human rights violations. There is also a need to increase the visibility of thematic procedures, for example, by holding press conferences and issuing press releases on the occasion of the publication of reports about visits to countries or when an extrajudicial execution or 'disappearance' is threatened. The visibility of the thematic procedures could be further enhanced through visits by the Special Rapporteur on summary or arbitrary executions, by members of the Working Group on Enforced or Involuntary Disappearances, and by other rapporteurs to countries where their work might be publicized.
- 3.2 The thematic Special Rapporteurs and Working Groups should increase their willingness to come to judgments as to specific cases and situations where the facts are sufficiently clear or where the government fails to provide a satisfactory response to allegations. In cases in which a government is found responsible for summary or arbitrary executions or "disappearances," the thematic rapporteurs and working group should recommend compensation for victims and their families.
- 3.3 The thematic Special Rapporteurs and Working Groups should publicize the failure of governments to respond to individual cases, requests for visits, or other forms of repeated non-cooperation. Repeated non-cooperation and the continuation of serious human rights violations should eventually lead to the appointment of a country rapporteur by the UN Commission on Human Rights. Non-governmental organizations should also publicize such non-cooperation by governments.
- 3.4 The thematic Special Rapporteurs and Working Groups should be provided with adequate staffing and resources. At present, the staff is not adequate: only 11 professionals are employed to deal with 27 special procedures of the UN Commission

on Human Rights. The rapporteurs and working group should also be encouraged, in appropriate cases, to cooperate, coordinate, and share information, methods of work, visits and mandates.

3.5 The thematic Special Rapporteurs and Working Groups should inform national non-governmental organizations of visits which they may undertake so as to permit the organizations to prepare for the visits.

3.6 Reports of the thematic Special Rapporteurs and Working Groups should be readable, comprehensive and direct. The reports should be better disseminated, for example, by publishing additional versions for specific audiences, such as compilations of materials on specific countries or regions.

3.7 All-in-all, the thematic Special Rapporteurs and Working Groups should take other measures for increasing the accessibility of the procedures to victims, their families, and non-governmental organizations as well as for assuring the continuity and visibility of their work to prevent serious violations of human rights within their mandates.

4. Ratification of human rights treaties and reservations

States should be encouraged to ratify human rights treaties -- particularly those treaties which protect against extrajudicial executions, "disappearances," and other serious human rights violations. Reservations and other limitations on the ratification of human rights treaties should be discouraged.

The Human Rights Committee established under the International Covenant on Civil and Political Rights should seek to discourage reservations and limitations -- particularly relating to "disappearances," summary or arbitrary executions, and other violations of non-derogable rights. For example, the Committee should consider the preparation of a General Comment on this subject and should inquire about such reservations and limitations asserted by any state parties presenting reports.

5.Non-governmental entities

There is a particular need for a new understanding of the phenomenon which is arising in several conflict situations in which no central authority exists, can be addressed, or is internationally responsible. Ways must be developed to make the relevant actors, including individuals and groups, aware of their human rights and humanitarian obligations.

In general, intergovernmental organizations and bodies responsible for monitoring and adjudicating human rights violations should not be expected to deal with abuses by non-governmental entities.

6.Standard-setting

6.1Draft Inter-American Convention on the Forced Disappearance of Persons: The present draft Inter-American Convention on the Forced Disappearance of Persons has been so weakened that it is considerably less protective than the draft UN Declaration on the Protection of All Persons from Enforced Disappearances and cannot be accepted in the draft Convention's present form. AI and others should work for the significant revision and improvement of the draft Inter-American Convention to bring it back to its original form and to accord with the draft UN Declaration.

6.2Proposed Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: AI should support the development of an optional protocol to the UN Convention against Torture as long as the optional protocol would assure that any authority to undertake visits to places of detention be adequately structured, staffed and provided with resources. The optional protocol should also be formulated so as to avoid interference with the work of international humanitarian organizations. As envisioned by the optional protocol, the regular visits to places of detention in order to help prevent torture would be a very time-consuming, expensive, and staff-intensive activity. Hence, significant staff and the resources to pay for such a staff must be assured before any such optional protocol is to be finalized.

7.Regional arrangements

7.1The existing regional arrangements such as the African Commission on Human and Peoples' Rights, the Permanent Commission on Human Rights of the Arab League, the Inter-American Commission on and Court of Human Rights, and the European Commission and Court of Human Rights should be strengthened by the respective governments in the region and their regional intergovernmental organizations by infusing them with efficiency, independence, and visibility. Also these institutions should be provided with sufficient staff and resources to undertake their functions effectively. In particular, regional human rights bodies should undertake promotional and protection activities to deal effectively with "disappearances" and extrajudicial

executions that occur in the various states in their respective regions, including action complaints submitted to these bodies concerning specific country situations.

7.2 In Asia where there are no regional mechanisms, the existing sub-regional intergovernmental forums such as the Association of South East Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC) should incorporate human rights concerns into their deliberations and in particular contribute to prevention of "disappearances" and extrajudicial executions that are prevalent in many countries in the region.

7.3 While recognising the responsibility of regional institutions to respond to serious violations, it should be stressed that their efforts should not in any way fall below or undermine the universality of existing standards.

Working Party 2: The Responsibilities of Governments - Bringing the Perpetrators to Justice

Discussion

Working Party 2 began by hearing brief presentations on the extent to which the issue of impunity has been addressed in Northern Ireland, Zimbabwe, Colombia, Sri Lanka, the Philippines and South Africa.

The working party then identified the main issues it wanted to address as follows:

1. Who is responsible for ensuring accountability?

- a) the government? if so, by what means? through intra-institutional investigations (within the military and/or security forces) or through the establishment of independent commissions?
- b) the judiciary? if the civilian judiciary, by what means? criminal investigation? administrative investigations (e.g., the Procurator General in Colombia)? or through the military justice system? can the civilian judiciary propose that perpetrators be removed from the military and security forces?
- c) the media?
- d) non-governmental organizations (including professional associations, trade unions, human rights organizations)? or
- e) intergovernmental organizations?

2. What legal norms must be considered and what are the prerequisites for an investigation?

- a) the constitution
 - b) national legislation
 - c) international human rights law and humanitarian law
- Is there a need for new norms on investigating abuses of past regimes?

3. Problems of evidence and methodology -- in this context, one should consider:

- a) witness protection
- b) identifying perpetrators
- c) deciding who investigates -- does the police investigate itself? does the military investigate itself?

4. Prevention -- in this context, one should consider:

- a) Training of the armed forces and police in human rights law and humanitarian law
- b) Witness protection
- c) Civilian control over the armed forces -- how is this to be achieved?
- d) How can one help the civilian judiciary to investigate?
- e) How can one ensure civilian rather than military jurisdiction?
- f) In cases where one can assume good intentions on the part of the government, should human rights organizations try to serve as a counterweight to the old military/security apparatus when deciding how to deal with past human rights violations?

g)Should one name the perpetrators of human rights violations?

5.Addressing abuses of past governments - the following questions should be taken into account:

- a)If the goals are truth and justice, should this not lead to reconciliation?
- b)Are truth and justice absolutes? if not, what are the minimum acceptable standards of truth and justice?
- c)When choosing between amnesty/pardon and justice, is it not important to be responsive to (i) the nature of the crimes, (ii) the victims, (iii) their relatives, (iv) general principles of justice, and (v) the need for prevention?
- d)Is there an obligation to punish under international law? under domestic law? What are the main legal, political, and ethical arguments that can be advanced?
- e)Which groups should be punished (the perpetrators, the superiors who gave orders, the civilian leaders who supported policies violating human rights?)
- f)Must there be symmetry between the accountability of governments and that of armed opposition groups?
- g)Does war make a difference in terms of the obligation to truth and justice?
- h)What remedies should one insist on? truth (fact-finding)? justice (punishment)? dismissal from military/security forces? compensation to victims and/or families?

The working party then heard a presentation by Jamal Benomar regarding some practical limitations on the efforts to achieve accountability. He noted that the debate has moved beyond the black and white choice between amnesty and justice. In some countries, the effort to attain perfect justice has been tempered both by a desire to avoid renewing a cycle of violence, where violations are followed by vengeance, as well as by a fear of jeopardizing democratization processes. Military violators have been brought to justice by successor civilian regimes in significant numbers only when the military has suffered a decisive defeat (e.g., Nazi Germany after World War II and, more recently, Greece and Argentina). What is achievable is often dictated by local circumstances, and each country will arrive at a different solution, depending on the peculiar balance of power prevailing in that society. In Ethiopia, for example, although the old security forces have been dissolved, the judiciary also has collapsed and no judges are available to try those accused of human rights violations.

Despite these limitations, it was noted that certain basic principles must be defended by the human rights community, including the importance of truth-telling, as well as bringing human rights violators to justice.

A brief discussion of the investigatory commission in Chad followed. The main issue which this discussion gave rise to was the desirability of human rights organizations publicly identifying perpetrators and publishing their photos.

Although the working party chose not to preclude completely this type of activity, many misgivings were expressed about this practice in the absence of due process protection for the accused. In particular, two concerns were identified: (1) the serious consequences of mistakenly identifying an innocent person, thereby exposing that individual to possible reprisals; and (2) the lack of clarity and consensus about the quality of evidence needed before identifying allegedly guilty parties. Some members of the working party also felt

that this approach distracted attention from the main issue: how to get governments to hold all responsible parties accountable, including senior officials -- already well known to the public -- who had ordered killings and "disappearances." It was agreed, however, that non-governmental organizations could play a useful role in presenting names of implicated individuals to government bodies responsible for bringing perpetrators to justice.

José Zalaquett, referring primarily to the Argentine and Chilean experiences, argued for the need to distinguish between what he termed the "ethics of conviction" and the "ethics of responsibility." The latter, he maintained, requires that one refrain from demanding something of someone who one knows lacks the resources needed to fulfil the demand. Taking this into account, he suggested four minimum rules regarding the obligation of governments to confront human rights violations by past regimes:

1. Clemency can be granted only if the truth is known. Acts that remain unknown cannot be pardoned.
2. The extent to which clemency is chosen over justice must be determined by democratic means (either by a decision of a legislative body or by popular referendum).
3. The human rights of the accused must not be violated.
4. A government must not forgive crimes it is obligated to punish under international law (i.e., crimes against humanity).

Initially, these principles were generally accepted by the working party. Others also argued that, regardless of whatever else happens or fails to happen, those accused of committing political killings and "disappearances" should, at a minimum, be discharged from any position in which they would retain the capacity to commit further abuses, and that civil suits against them should proceed.

When the working party was formulating recommendations regarding minimum standards of accountability for abuses under previous governments, a strong conviction emerged that the conference should not endorse minimum standards that implied a posture of resignation towards, or acceptance of, amnesty for perpetrators of extrajudicial executions and "disappearances." It was argued that the four "minimum rules" cited above might be interpreted in this way. Strenuous arguments were advanced that, even if we understand that what is possible may vary from country to country, human rights organizations have a clear responsibility to serve as advocates for the victims and their families. Therefore, we should not adopt *raison d'état*, the logic of the state. Accordingly, the suggested "minimum rules" were rejected.

The working party also discussed the relevance of international law regarding the responsibility of governments to hold perpetrators accountable, as well as the various mechanisms of impunity that governments employ. Also examined were the limited successes that non-governmental organizations have had in combatting impunity, including a tribunal on impunity established in Colombia, the revocation of military jurisdiction for human rights cases in the Philippines, and the use of the inquest procedure and civil lawsuits in South Africa.

Discussion of jurisdictional issues, i.e., universal jurisdiction and that of military courts, quickly resulted in consensus, which is reflected in the recommendations described below.

Recommendations of Working Party 2

1.Obligations of governments

With respect to both past and current human rights violations, governments have the obligation:

- a)To investigate and disclose the truth about what happened in general and to each victim;
- b)To bring the perpetrators to justice;
- c)To punish those found responsible according to due process standards;
- d)To dismiss perpetrators from the security forces;
- e)To make them liable for reparations;
- f)To compensate the victims as a matter of state liability.

2.Identification of perpetrators

2.1Every effort should be made to identify perpetrators of "disappearances" and extrajudicial executions, the functionaries who gave the orders, as well as civilian political leaders who instigated such acts. The names of the perpetrators should be communicated to the government concerned with the demand they be brought to justice. Only in special circumstances should such information be forwarded to international bodies and made public. (The working party expressed reservations about a proposal to "name names" on a wide scale).

2.2Human rights non-governmental organizations should establish an informational network concerning the movement of perpetrators to countries in which they can be prosecuted.

3.Prosecution and trial

- 3.1 Specific steps should be taken by governments to impart a knowledge and deepened understanding of international and national human rights standards, including human rights education for judges, lawyers, military and police.
- 3.2 Special emphasis should be placed on ensuring that trials for human rights crimes be conducted with full respect for internationally-respected standards of due process. To that end, non-governmental organizations should support efforts to enhance the capability of domestic courts to provide an efficient administration of justice under the principles of impartiality, independence and professionalism.
- 3.3 Perpetrators should not be tried under military jurisdiction, but by civilian courts. Military jurisdiction should be restricted to purely military offenses.
- 3.4 In addition to legal steps, moral tribunals should be used to publicize human rights violations and to emphasize state accountability.

4.Universal standards

- 4.1 Universal jurisdiction should be broadened to include "disappearances" and extrajudicial executions where such universal jurisdiction is currently absent in existing international instruments or those under development (e.g., the UN draft Declaration on the Protection of All Persons from Enforced Disappearance, the UN draft Code of Crimes against the Peace and Security of Mankind).
- 4.2 Governments should be held responsible for ensuring that domestic human rights standards are made consistent with the obligations of the state under international human rights law.

Working Party 3: Campaigning from Abroad to Increase the Pressure

Discussion

The working party began with country reports intended as background to the discussion. Although seven papers had been prepared for this working party, only three were formally presented because of time constraints.

The first paper, on continuing extrajudicial executions in Uganda, asked how the international community should relate to a government that comes to power after a period of human rights trauma. How much leeway on new human rights violations should a new government be given? Is it possible to identify criteria for the implementation of human rights safeguards which could be used to judge a government's commitment to human rights improvements?

A discussion ensued on the value or desirability of linking aid and human rights. Such conditionality raises North-South issues. In the case of Uganda, for example, cutting aid on the grounds of human rights violations might lead to short term improvements with long term costs (if the economy breaks down, human rights abuses may increase). At the very least, it is important to investigate whether conditionality will have a negative or positive effect.

The second paper, on Morocco, pointed to the interweaving of internal and external pressures leading to the release of prisoners who had been "disappeared" for many years, while the third paper, on Chile, suggested the importance in campaigning of distinguishing between governments where the concept of state unity and institutional responsibility for human rights violations is obvious, and those such as civilian governments initiated after long periods of military rule in countries where the judicial tradition is weak, where the government may have no effective control over the military and police forces. This paper proposed that a multiplicity of officials and institutions be addressed in campaigning against "disappearances" and political killings.

In the ensuing discussion, it became clear that in cases such as Peru and Colombia, identifying the perpetrators may be difficult as tactics have been developed for keeping the identities of perpetrators secret.

There was some consensus on the following points:

1. Campaigns directed towards countries where the abuses occur should not aim to put pressure solely on the head of state. The most appropriate campaigning strategy has to be found for each country.
2. Before deciding on strategies, campaigning organizations should make an assessment of the forces for change in the society.

3. There is a need to pinpoint the institutions and individuals responsible for human rights violations. However, it is important to be specific in the campaigning approach and to take into account the situation in each country.

The working party then dealt with the main questions put forward for the working party in the introductory conference paper by Daan Bronkhorst, specifically:

1. The responsibilities of governments in their relations with other governments that commit "disappearances" and extrajudicial executions.
2. The use of development aid programs to promote the prevention of "disappearances" and extrajudicial executions.
3. The use of trade relations including bilateral aid and multilateral aid by the World Bank and the International Monetary Fund.
4. The structure and character of non-governmental organization campaigns for publicity and awareness.
5. The role and responsibilities of the media in the area of "disappearances" and political killings.

On the basis of the discussion on these five areas, the working party drafted the following recommendations.

Recommendations of Working Party 3

1. In a changing world environment, action to end "disappearances" and extrajudicial executions needs to be strategically based on a socio-political and cultural analysis of particular country situations.
2. In a fluid environment where change can occur rapidly, close and continual monitoring of the human rights situation is particularly important for assessing both the type and timing of a campaign to achieve maximum effectiveness.
3. A range of opportunities exist for the international community to assist individual governments to protect and promote human rights and prevent gross human rights violations. These opportunities represent a new challenge for the human rights community in a changed and emerging world order. They include: providing human rights education to deepen understanding within specific institutions (e.g., the judiciary, the police, the military) and in society at large; providing resources for investigating violations; strengthening the institutions of civil society; supporting a free and independent press; and supporting front line human rights organizations.
4. Governments remain legally responsible for human rights violations; however, other institutions and individuals directly responsible for human rights violations may be the best targets for campaigning action.

5. Campaign strategies must look at the potential for change in both the long and short term.
6. The issue of impunity for human rights perpetrators needs to be looked at in moral, political and legal terms if "disappearances" and extrajudicial executions are to be stopped and prevented in the future.
7. Governments should make human rights an integral part of foreign policy. In this regard, the following should be noted:
 - a) Governments have an arsenal of instruments at their disposal to address human rights in their foreign policy including quiet diplomacy, diplomatic or symbolic actions, the conditioning of military or economic aid on human rights performance, and trade relations;
 - b) If there are reliably attested reports of extra-judicial executions, "disappearances" and torture, governments should particularly consider cuts in military aid, embargoes on arms transfers and ending all common defence exercises;
 - c) Domestic and international human rights non-governmental organizations are urged to lobby for arms legislation which incorporates the above principle.
 - d) Radical measures, such as total embargoes or total cuts in aid, should only be used selectively with due consideration for the long term implications of such actions. The opinion of concerned non-governmental persons and organizations in the target country -- about the likely impact of these measures -- should be taken into account.
 - e) Governments within a region and regional level structures should be at the forefront of action to rectify the human rights situation in countries within their region; they should also act to break down or prevent the formation of regional solidarity between human rights violators. This does not, however, relieve the wider international community of its responsibility to take action as deemed appropriate.
8. AI's proposed X-Point Programs for the prevention of "disappearances" and extrajudicial executions can be important campaigning tools, and should be based on the recommendations of this conference, including those relating to the planned strategy at the intergovernmental organization level.
9. Non-governmental organizations should urge governments to use, individually or in cooperation with other governments, and to the maximum extent possible, the mechanisms for the promotion and protection of human rights within the UN and within regional organizations.
10. Where it is appropriate and possible, non-governmental organizations should themselves use these mechanisms and educate themselves about the wide-ranging, although not always effective, possibilities for redress within the UN system and within regional organizations.
11. Attention should be given to work in regional organizations and in intergovernmental organizations outside the UN which have afforded protection to governments violating human rights. In particular:

- a) In their campaigns, human rights organizations should target the governments and officials of member countries in regional governmental groupings to raise the issue of violations of the offending government.
- b) Regional structures should be encouraged to set up their own human rights mechanisms for protection and promotion of human rights.
- c) Where appropriate, non-governmental organizations should take the initiative to develop regional networks of human rights organizations for lobbying and mobilising support within their countries and with respect to regional intergovernmental organizations.
- d) Human rights organizations should hold parallel conferences alongside regional intergovernmental meetings to highlight human rights violations, in particular extrajudicial executions, "disappearances" and torture, and to make concrete recommendations to the participating governments.

12. International human rights organizations should establish an international organization to monitor the progress of litigations and prosecutions of those suspected of "disappearances" and extrajudicial executions and also to:

- a) provide assistance to local human rights groups in the legal, medical and technical fields;
- b) provide protection to lawyers, witnesses and families of victims.
- c) give wide publicity to prosecutions.

13. Where appropriate, non-governmental organizations should urge aid agencies to include human rights related projects and concerns in their programmes (e.g., support of legal aid schemes, land rights, and human rights education, and evaluations of the human rights implications of specific projects).

14. Non-governmental organizations should provide information to the media on incidents and patterns of violations as well as on the causes underlying these violations. Non-governmental organizations should also directly address international news networks on these issues.

15. In particular circumstances and at particular times, it may be appropriate to name individual perpetrators of violations. Great care and consideration needs to be exercised in doing this.

Working Party 4: Action within the Countries where the Abuses Occur

Discussion

The first part of the session was devoted to presentations by participants working with domestic human rights organizations who discussed their experiences in dealing with cases and patterns of "disappearances" and extrajudicial executions. The country presentations included Sudan, Mauritania, Argentina, Chad and Brazil. They led the working party to conclude that patterns of violations vary as between situations where: (a) dictatorships exist and there is no rule of law; (b) there is internal conflict (e.g., ethnic or religious) and public servants are responsible for violations, but without the explicit consent of the government; or (c) no government is in control and human rights violations are perpetrated by armed gangs and private armies of warlords. Strategies and priorities for non-governmental organizations to react to and remedy "disappearances" and extrajudicial executions will have to take into account these different situations.

In a second round of presentations of country situations, the focus was not so much on patterns of human rights violations but on the strategies, tactics and techniques used by domestic human rights non-governmental organizations, and on the problems they faced in implementing these.

In the case of Zimbabwe two techniques to fight extrajudicial executions were tried. One was an attempt to use the media to generate pressure for an investigation into killings by the police. Since domestic non-governmental organizations have no means to directly force prosecution of the police, a way had to be found to overcome the indifference, and even obstruction by the government. However, since the media are weak and government-controlled, this method could not guarantee success.

Generating pressure by raising awareness about a situation by reporting the facts to the press can, however, be an effective technique. International pressure forces the government to react to the situation. International pressure and attention is also needed to protect human rights workers who are victims of intimidation or violations themselves.

A second, and more successful tactic, was to provide human rights education to law enforcement personnel. This seemed to have a direct impact on the behaviour of the police. After police personnel were made aware of human rights standards, the police resorted less frequently to excessive violence (resulting in "accidental deaths").

In Guatemala, in efforts to protect street children from extrajudicial executions, local groups pursued a strategy that involved stimulating the prosecution of perpetrators of the violence. A number of difficulties emerged. While it is the responsibility of the judicial system to investigate violations, judges have no independent investigators at their disposal and therefore use the police -- the principal perpetrators -- to gather the evidence. Consequently, non-governmental organizations have had to conduct their own investigations in order to present the facts to the judiciary. In many instances, even when

presented with clear cases, judges still do not do their job. Indeed, domestic non-governmental organizations were forced to call for the prosecution of seven judges.

In the Guatemalan context, human rights training of police and members of security forces is deemed a useless tool, because the political will is lacking on the part of the government to actually enforce respect for human rights.

In the case of Northern Ireland, when a killing by the security forces has occurred, non-governmental organizations try to gather eyewitness testimony as quickly as possible, since the police are not considered to be sufficiently serious and thorough in gathering the facts. A number of other tactics are under consideration. Families of victims are discussing the possibility of arranging for private post-mortem examinations, since they often receive the post-mortem reports only two or three years after the killing. They are also considering the possibility of private prosecution; until now, they have had to refrain from this course of action because of the huge costs of such a procedure.

Good and thorough media coverage of cases of alleged extrajudicial executions often results in prosecution. Such media coverage is, however, rare due to media self-censorship. One of the problems domestic non-governmental organizations are faced with is how to break through this media self-censorship.

In summary, the techniques used by domestic non-governmental organizations include the following:

- gathering information
- enforcement of human rights through legal procedures
- human rights education / awareness building among the general public as well as special target groups, such as the police and members of security forces
- using the media to generate pressure on the authorities
- using international attention to generate pressure on the government.

As stated above, the use of different techniques may differ according to the specific country situation.

Problems domestic non-governmental organizations are faced with in using these techniques include the following:

- non-governmental organizations lack the means and the skills needed to gather the necessary information;
- non-governmental organizations are forced to deal with judiciaries which are not willing to live up to their responsibilities because judges are afraid or do not have the necessary means and/or skills to process human rights cases;
- human rights education, especially education directed at the police and other law enforcement personnel does not fall on fertile soil if there is no political will and determination on the part of the government to uphold human rights;
- the media are either not interested in covering human rights cases or exercise self-censorship;
- generating international attention is expensive in human and financial resources; and

-human rights workers are on the front-line and therefore often fall victim to human rights violations themselves.

Conclusions and Recommendations of Working Party 4

1. Gathering and distributing information

1.1 Accurate, verifiable and comprehensive information is the basis of action against human rights violations at both the national and the international level. Domestic non-governmental organizations play an important role in gathering and distributing information. In order to avoid omitting important data, improving on the accuracy of the data collected, and enhancing the speed of processing information (especially in cases of "disappearances") a system of standard formats should be used for recording and distributing information on human rights violations.

1.2 Systems for standardizing the recording of information should be tailored to the needs and capabilities of domestic human rights organizations, rather than to the latest state of the art of modern technology.

1.3 For the rapid distribution of information, the fax can be a useful tool, but it should be remembered at the same time that operating a fax may be a costly business for a domestic non-governmental organization (costs of paper, telephone costs). Donors should be aware of this and not just provide non-governmental organizations with the purchasing money for faxes but also money to use the machine.

2. Targets for domestic action: foreign embassies

2.1 Rapid intervention by diplomatic representatives, can be helpful in preventing people becoming victims of extrajudicial executions or "disappearances" and such representatives should be approached when violations are threatened.

2.2 Domestic non-governmental organizations should not wait until there is a concrete case of a violation before getting in touch with foreign embassies, because triggering a rapid response may then prove difficult in the absence of prior contact. Non-governmental organizations should try to develop regular contacts, especially with the officer(s) in charge of human rights, a standard post in many embassies. Non-governmental organizations should also coordinate their actions with "friendly" embassies.

2.3 International agencies within the UN system, such as UN Development Programme, should be stimulated to appoint human rights officers in their local offices, so that domestic non-governmental organizations can turn to them as well as to the embassies and not depend solely on the diplomatic representatives of governments, especially since the latter may be dangerous for domestic non-governmental organizations in some cases.

2.4 Domestic non-governmental organizations should report to international human rights organizations about the human rights "performance" of embassies in their countries so that, in cases where the human rights function is not performed properly, this can be reported to the government of the embassy concerned.

3. Targets for domestic action: the news media

3.1 The news media (print and electronic) are important. Approaching the media with well documented human rights information provides a multitude of opportunities for follow-up action in terms of lobbying, for exerting pressure on authorities to investigate "disappearances" and extrajudicial executions, and to prosecute the culprits.

3.2 It may be preferable to approach the domestic media after awareness has been generated through the international media and after international non-governmental organizations (such as AI) have been alerted, because international attention can provide some measure of protection to the staff of the national human rights non-governmental organizations who divulged the information and to the witnesses who made statements and gave testimony about the violations.

3.3 Careful thought should be given to how best to use the media in action strategies since the media and the journalist are not necessarily interested in human rights as such (they may be more interested in a "good" story which boosts ratings or helps sell newspapers). Using the media can even be counter-productive -- e.g., where "bad" stories lead to public acceptance of violations, as in the case of the killing of petty thieves. Non-governmental organizations should be trained in how to deal with the media.

3.4 Domestic and international non-governmental organizations have a role to play in educating journalists how to write responsibly and without prejudice about human rights and victims of violations. Furthermore, non-governmental organizations based in countries which send foreign correspondents abroad should brief these correspondents on the human rights situation in the country that they are being posted to. Stimulating the press helps to counter the effects of planted, one-sided articles.

3.5 Media coverage can be especially helpful in triggering a government into starting an investigation or a prosecution. A useful angle to suggest to the media is that they should spotlight the record of a country when it is under scrutiny by a UN or other intergovernmental body such as the UN Human Rights Committee set up under the International Covenant on Civil and Political Rights. An embarrassed government is likely to act more quickly than one which is safely out of the limelight.

3.6 In many countries -- especially where literacy rates are low -- people rely on radio and television for their information, not on reports or newspapers. It was suggested that AI might consider setting up its own regional radio and/or television stations.

4. Training of the military and police

- 4.1 Educating police and military personnel, as well as the judiciary, about the meaning and effective application of internationally recognized human rights standards is a useful strategy to help to prevent future violations of human rights. Education is an especially useful tool for breaking the habit of violations. It will, however, only be effective if the authorities demonstrate that they have the political will to prevent abuses. Otherwise, training may become mere governmental window-dressing.
- 4.2 Non-governmental organizations engaging in training should ensure their control of the program from beginning to end, although they may bring in other people as resource persons or trainers. Training should preferably be done by teachers who are culturally as close as possible to the target group.
- 4.3 In the basic agreements covering development assistance, donor countries and countries receiving development assistance should include funds to provide human rights training to the judiciary and law enforcement personnel. Donor countries could even make this a condition for the disbursement of aid.

5. Forensic science as a tool in investigations

- 5.1 In countries where extrajudicial executions have occurred or are occurring, pressure should be brought to bear on those governments to adhere to the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Coroners must be independent of the judicial system. Experts must be enabled to conduct on-site visits.
- 5.2 There is a need to train doctors in the field of forensic medicine in countries in which "disappearances" and extrajudicial executions occur.
- 5.3 In cases of alleged human rights violations, there is a need for trained experts to be present as observers at autopsies. Organizations of the medical profession, in cooperation with human rights non-governmental organizations, should establish a system which can rapidly mobilize experts for this task.
- 5.4 Domestic non-governmental organizations should exert pressure on the medical profession to ensure that medical personnel do not falsify medical documents and that they refuse to cooperate with authorities who require them to do so.

Working Party 5: Political Killings by Opposition Groups

Discussion

The discussion in Working Party 5 was organized under four main headings:

1. The moral, legal and political basis for acting against abuses by opposition groups

It was noted that common Article 3 of the Geneva Conventions of 1949 provides a norm forbidding the deliberate and arbitrary killing of civilians that applies to both governments and armed opposition groups engaged in armed conflict. Many of the situations in which opposition groups commit killings are covered by these provisions; no control of territory is needed. The official Commentary of the International Committee of the Red Cross (ICRC) states that common Article 3 should be applied as widely as possible. The more detailed norms of Additional Protocol II to the Geneva Conventions (aimed at civil-war-like situations with more organized opposition forces) can be applied to common Article 3 situations as well.

Participants questioned the logical basis of AI only tackling killings in the course of warfare that are clearly and directly aimed **specifically** at civilians. It was argued that leaving out the killing of civilians as a result of indiscriminate attacks when combatants fail to differentiate between civilian and military targets means leaving aside a much greater problem in modern (civil) warfare. This would make it easy for opposing parties to commit mass killings without getting AI's attention.

Participants noted that, at present, human rights organizations have too little knowledge of the relevant provisions of international humanitarian law (the laws of armed conflict).

The working party felt it important to stress that action against abuses by an opposition group does not imply issuing a blanket condemnation of such a group or condemning their use of violence, just as criticizing the human rights record of a government does not mean condemning the government as such.

It was suggested that deciding whether a group is in fact a political actor and therefore subject to monitoring and consideration by human rights organizations can sometimes pose difficulties: on the one hand, a criminal organization may assume such power that it can actually influence governmental decisions; on the other hand, a political group may slide into pure banditry.

The working party suggested that, in addition to examining situations of confrontation between government and armed opposition groups, we should also pay attention to situations where central government has completely, or nearly completely, broken down.

The working party recognized that, in situations where human rights groups report on the "two sides" of a civil conflict, the mainstream media may nonetheless only report on the

criticism directed at opposition groups, ignoring the criticism made of the actions of governmental forces. Since there is always the danger of such misrepresentation of human rights information, human rights non-governmental organizations should search for ways to minimize it (e.g., by ensuring as much direct distribution of reports as possible, or by thinking very carefully about the wording of press releases).

2. Should (all) human rights groups take on abuses by opposition groups and, if so, to what extent?

It was noted that a remarkable degree of consensus has been achieved among human rights groups, a part of the public (including the membership of AI) and governments on the content of human rights standards. Many governments and large parts of the public accept the impartiality of human rights monitors and the premise that international human rights monitoring centres on the obligations of governments to respect the rights of the governed. It was argued that these achievements could be jeopardized if the legitimacy of human rights groups applying these accepted norms, particularly local ones, was questioned because AI and some other organizations had moved to deal also with international humanitarian law and the abuses of opposition groups. The working party suggested that, in particular, human rights organizations should ask themselves:

- a) how do we avoid lessening the present pressure on governments if we start tackling opposition abuses?
- b) how to build on what we have achieved till now?
- c) how to enable different human rights groups to use different approaches? For example, many local groups with a traditional focus on the human rights obligations of governments, will need support for this position from international non-governmental organizations like AI which have assumed a broader, international role. It was agreed that a concerted effort was needed to promote the legitimacy of human rights groups that choose to focus **only** on governmental obligations under international human rights law.
- d) whether the physical danger of investigations might not be too high in some cases? For local human rights groups in particular it may be very difficult to collect information; information collection by an international human rights group may, in many cases, be easier.
- e) how to provide human rights groups that opt to take on work concerning opposition abuses with necessary technical, legal training?
- f) how to handle the wish of governments that we fully condemn opposition group abuse but do not enter into talks with them in a manner similar to the way in which we talk with governments? The suggestion that such talks might be construed as formal "recognition" of an opposition group should be fought through publicity and by educational efforts. In particular, local groups might get into awkward positions, as

talks with such groups might be clandestine. In response to this, it was suggested that addressing opposition group abuse can be done at different levels of intensity:

- i. general condemnation of deliberate and arbitrary killings by opposition groups (stating that nothing more can be done because of lack of resources and/or the possibilities of gathering information;
- ii. report on patterns of abuse without detailing cases;
- iii. report on cases;
- iv. engage in actual approaches to armed opposition groups.

Governments and armed opposition groups do not have the same responsibilities under international human rights law. Government pressure to replace discussion of government abuse with attention to opposition abuse at the UN and other international fora should be resisted; the effectiveness of the present human rights mechanisms should not be diminished.

An authoritative international forum that can hold armed opposition groups accountable publicly does not exist. The possibilities for establishing such a mechanism or forum (a panel of international eminent persons was mentioned as a possible example) should be explored.

Such a mechanism could conceivably also apply to situations where central governmental authority has nearly or completely broken down.

3.Problems of investigation - the ability to gather information

In a civil war or insurgency, it is often difficult to establish whether the victim of a killing was a civilian or someone taking an active part in hostilities in the terms of international humanitarian law. In such situations, nominal civilians can take on combatant roles for limited periods of time. The assertion by one of the parties that a person they killed was a "collaborator" is not in itself to be taken as determining whether he/she was a combatant.

It is often even more difficult to determine whether combatants were actually killed when they were no longer taking part in hostilities (e.g., after surrendering).

When one wants to focus on describing **patterns** of abuse, these questions will usually be less relevant.

Problems of checking information about the abuses of opposition groups are similar to the problems encountered when researching government abuse, but they are often of a more acute nature. Local human rights groups in a number of countries have been and are researching abuses of "both sides". This presupposes training in aspects of abuses that are relevant under international humanitarian law and the possibility of operating under threat from both government and opposition forces. Efforts should be made to press for the granting of free passage into conflict zones to enable independent investigations by both intergovernmental organizations and non-governmental organizations into violations of humanitarian law.

4.Campaigning activities and issues

Discussion focused mainly on preparations and plans for AI's 1993 campaign against "disappearances" and political killings. It was understood that taking up action against opposition group abuse should in no way undermine the original focus on governmental responsibility.

AI's proposed X-Point Programs for the prevention of "disappearances" and extrajudicial executions, the drafts of which focus exclusively on government action, should refer to the minimum standards of humane behaviour that all sides in armed conflict are required to abide by.

Reporting about patterns of opposition group abuse and publicizing information about relevant international humanitarian law standards and their application, with a view to raising awareness about these, were mentioned as minimum tasks for AI in the campaign.

In countries where internal armed conflicts exist, great care should be taken in the preparation of publicity strategies and early contacts should be made with other human rights groups regarding the campaign and its attention to opposition group abuse.

One participant suggested that in civil-war-like situations, the best way to stop human rights violations may be to stop the war. Experience (for example in the Philippines) has shown that the efforts of citizens -- in facilitating dialogue, formulating and promoting standards, bringing in international organizations, and starting to organize an "infrastructure for peace" -- can be helpful in mediation between governments and insurgents.

Recommendations of Working Party 5

- 1.To stress recognition of the diversity of options open to human rights groups, and to defend the legitimacy of human rights groups which work only on government violations within the framework of international human rights law.
- 2.To oppose deliberate and arbitrary killings by political actors (whether governments or armed opposition groups) as acts which are contrary to basic rules of humane behaviour.
- 3.Such standards should derive from both human rights law and international humanitarian law as well as from the dictates of public conscience.
- 4.Common Article 3 of the Geneva Conventions of 1949 should be accepted as a minimum norm of humane behaviour.
- 5.It should be emphasized that applying humanitarian law to all parties in the conflict in no way diminishes the state's responsibility for the enforcement of human rights law.

6. There is a need for further discussion and exchange of views among national and international human rights groups in order to:
 - a) educate human rights workers on basic principles of humanitarian law;
 - b) conceptualize guidelines for the implementation of humanitarian norms, drawing upon the experience of grass roots human rights organizations; and
 - c) share findings and other information so that human rights organizations work in a complementary fashion.
7. It is important to make clear that calling attention to abuses or patterns of abuses by armed opposition groups, does not imply either a condemnation or a legal recognition of these groups.
8. In order to be able to conduct independent investigation, efforts should be made to press for safe access to areas where abuses are reported to have occurred.
9. Efforts should be made to ensure that the human rights mechanisms of the UN and of other intergovernmental organizations maintain their focus on governmental abuse.
10. The possibility of an alternative international forum or mechanism to address violations of international humanitarian law should be explored.
11. Efforts should be made to continue to work in situations of disintegrating, disputed or multiple authority, regardless of the uncertain legal status of such authority, and to press for an effective role for the UN and international organizations in these cases.
12. Efforts to promote mediation between warring parties for the purpose of seeking peaceful solutions to armed conflicts should be welcomed.

APPENDIX

Conference chairs: Ian Martin, José Zalaquett
Conference rapporteur: Laurie Wiseberg
Conference secretaries: Elisabeth Löfgren, Daan Bronkhorst

Working Party 1

Chairperson: David Weissbrodt
Rapporteur: Daniel Ravindran
Secretary: Jane Cooper
Secretary: Jaap van Vredendaal

Working Party 2

Chairperson: Juan Mendez
Rapporteur: Wolfgang Heinz
Secretary: Gay Gardner
Secretary: Marja van Galen

Working Party 3

Chairpersons: Cees Flinterman, Dick Oosting
Rapporteur: Jóhanna K. Eyjólfsdóttir
Secretary: Patrick Earle
Secretary: Peter van der Horst

Working party 4

Chairperson: Edy Kaufman
Rapporteur: Marcel Zwamborn
Secretary: Anne-Berit Krohn
Secretary: Anneloes van Waning

Working Party 5

Chairperson: Maria Serena Diokno
Rapporteur: Harry Hummel
Secretary: Peter Archard
Secretary: Arie Ringnalda