THE FUTURE OF HUMAN RIGHTS FACT-FINDING

This panel was convened at 9:45 am, Thursday, April 4, by its moderator, Philip Alston of New York University School of Law, who introduced the panelists: Steven Ratner of the University of Michigan Law School; Brian Root of Human Rights Watch; Bradley Samuels of the Project on Forensic Architecture; and Margaret Satterthwaite of New York University School of Law.

Introduction: Third Generation Human Rights Fact-Finding

By Philip Alston[*]

For many decades, human rights fact-finding undertaken by intergovernmental bodies such as the International Labor Organization and later the United Nations, took a familiar and predictable form. A distinguished group of lawyers, diplomats, or experts undertook a systematic review of available information, ideally based on onsite inspections, and presented a usually rather colorless report to a political body that might or might take action in response to it. In the 1970s and 1980s a second-generation approach to fact-finding emerged, largely under the influence of innovations introduced by the major international human rights NGOs, and especially Amnesty International and Human Rights Watch. Over time, many of its characteristics were also adopted by intergovernmental organizations. But the careful honing of the model over several decades risked producing a somewhat formulaic and relatively inflexible style and format. The approach was heavily dependent upon the technique of witness interviewing, which had strong attractions in terms of first-hand and graphic accounting, but also has drawbacks including the time taken to conduct broad-based reporting, dependence upon the reliability of particular sources, and the ability of governments and others to frustrate the process. In addition, it was better suited to the mobilization of public opinion than to some of the other goals of producing fact-finding reports.

Today, however, the context in which fact-finding is taking place, as well as the objectives sought to be achieved, are changing rapidly. The proliferation of fact-finding bodies whose basic legitimacy is not convincingly contested, radical changes in information and communications technologies (ICTs), the growing range of actors ready to consider and perhaps act upon findings, and the role of the media and popular mobilization are all helping to transform the nature of the enterprise. The result is the gradual emergence of a third generation of fact-finding involving more innovative and diverse techniques, the better tailoring of approaches to reflect different target audiences, and recognition that a one-size-fits-all approach is not optimal.

This new generation has been embraced more rapidly, out of necessity, by those working in conflict, disaster, and post-conflict situations. In general, the humanitarian community has been fast to pick up on the opportunities offered by new technologies. In contrast, as I reported to the United Nations General Assembly in 2010:

> [l]ittle sustained work has been undertaken by the human rights community as a whole to apply existing technologies or to study their potential uses and problems, and far too little attention has been given to the research and development of ICTs with human

[*] John Norton Pomeroy Professor, New York University School of Law. The panelists are deeply grateful to Joanne Mariner, Senior Crisis Response Adviser for Amnesty International, for her efforts in devising this panel.

https://doi.org/10.5305/procannmeetasil.107.0061 Published online by Cambridge University Press

rights applications. As a result, the use of ICTs in human rights work is only at a nascent stage.[1]

But things have begun to change in the three years since that report was written. New social media, social networking sites, user-generated content sites or platforms, and a range of other ICTs make it possible for anyone with access to the necessary technology to share and report in real-time information concerning human rights violations. Technologies such as Facebook, Twitter, or crowdsourcing are relatively inexpensive and increasingly accessible and can be used to increase the speed, depth, and scope of human rights monitoring. Satellite imagery and other forms of surveillance technologies are also being more systematically exploited, albeit by human rights violators as much as monitors.

Because these new technologies are potentially widely available at the local level, even in poor countries, they also open up new opportunities for local groups to take more responsibility for and to assert greater control over the process of fact-finding. This in turn could mean less reliance upon intermediaries. The latter inevitably and not necessarily inappropriately bring their own interests and preoccupations to bear in monitoring and reporting, and these cannot always be assumed to be identical with those of the affected communities.[2]

As the stakes become higher, the incentives for governments to frustrate or undermine or just discredit fact-finding exercises become all the greater. Such scrutiny and criticism, in turn, help to raise the pressure on fact-finders to become more professional in terms of how they operate and the range of techniques that they employ. This may be a contentious process, but it is ultimately a virtuous cycle that compels all actors to raise their game well beyond the old technique of simple naming and shaming followed by governmental attempts to discredit the information gathered or the analysis proffered.

The challenge, however, is to explore what is meant by calls for enhanced ''professionalization,'' and to be more explicit about the principal shortcomings that the ''new'' fact-finders are being called upon to transcend or remedy. Each of the panelists in this session contributes in important ways to shedding light on these and related issues. The new technologies have immense potential but also limitations and drawbacks. All that is clear is that the field of human rights fact-finding is changing very quickly and that it is assuming an inter-disciplinary dimension that was largely lacking not so long ago. Anthropologists, information scientists, architects, forensic scientists, statisticians, and many other professionals are now increasingly involved in elevating fact-finding to a much more complex and sophisticated art and science.

Finding, Verifying, and Curating Human Rights Facts

By Margaret Satterthwaite[*]

The international human rights movement is known for its work to ''name and shame'' abusers by investigating and ''finding'' facts relevant to heinous acts and egregious omissions and expose them to the world.[1] Amnesty International, Human Rights Watch, and myriad

[1] *See Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,* para. 5, U.N. Doc. A/65/321 (Aug. 23, 2010) (by Philip Alston).

[2] Philip Alston & Colin Gillespie, *Global Human Rights Monitoring, New Technologies, and the Politics of Information*, 24 Eur J. Int'l L. 1089 (2012).

[*] Professor of Clinical Law, New York University School of Law.

[1] While the concept of ''naming and shaming'' is certainly under-inclusive of what human rights advocates do, it is widely used to describe the documentation and publication strategies of major NGOs. *See, e.g.,* Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming and the Human Rights Enforcement Problem*, 62 Int'l Org. 689 (2008).

https://doi.org/10.5305/procannmeetasil.107.0061 Published online by Cambridge University Press