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BOOK REVIEWS

HUMAN RIGHTS MISSION: A STUDY OF THE FACT-FINDING PRACTICE OF NON-GOVERNMENTAL ORGANIZATIONS. By Hans Thoolen and Berth Verstappen. Dordrecht/Boston/Lancaster: Martinus Nijhoff Publishers, 1987. Pp. 192. \$47.50.

Reviewed by M. Cherif Bassiouni*

The range and extent of violations of internationally and regionally protected human rights vary extensively. They may occur either on a sporadic individual basis or they may be more widespread. In some instances, they are the product of deliberate state policy and conducted with some degree of openness by agents of the state.¹ In other instances they are condoned by state policy or its practices.² Most of the time they appear to be spurred by the "abuse of power" of public officials³ which are carried out in a concealed or secret fashion as in the case of torture.⁴

Experience indicates that whenever public opinion, both national and international, focuses on these policies and practices, enough pressure is brought to bear on governments to cause the cessation, or at least the significant reduction in the number of these violations or their intensity.

International and regional organizations do not have the machinery, personnel, and resources needed to monitor all suspected, reported or known incidences of such violations. Furthermore the deeply entrenched concepts of sovereignty and acute senses of national pride have only grudgingly permitted

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1. See Majodina, *A Short Backround to the Shooting Incident in Langa Township, Uitenhage*, 8 HUM. RTS. Q. 488 (1986); *Free South Africa's Children: A Symposium on Children in Detention*, 10 HUM. RTS. Q. 1 (1988).

2. *Free South Africa's Children: A Symposium on Children in Detention*, *supra* note 1, at 1.

3. See *Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power*, G.A. Res. 40/34, 40 U.N. GAOR Supp. (No. 53) at 213, U.N. Doc. A/40/53 (1985).

4. See *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984). See also Bassiouni & Derby, *An Appraisal of Torture in International Law and Practice: The Need for an International Convention to Prevent and Suppress Torture*, 48 REVUE INTERNATIONALE DE DROIT PENAL 23 (1977).

international intervention in the internal legal order. Even so, however, direct international intervention without the consent of the affected state is not yet part of international reality. Thus there are no established international or regional mechanisms for the identification and appraisal of human rights violations except for some modalities and procedures which permit complaints to reach certain international and regional bodies which can, in varying degrees of legal authority, hear, consider, or adjudicate these complaints.⁵ These structures vary. Within the United Nations there is no adjudicative system, only some opportunities for presentation of complaints by states or individuals and eventual finding by means of reports or resolutions are the outcome. The legal authority, competence, procedures, and processes of these structures differ.⁶

Conversely, the regional systems established under the European Convention⁷ and the Inter-American Convention,⁸ provide for a Commission to hear individual complaints and for a Court to adjudicate cases when presented by a member-state.⁹ The African Charter¹⁰ also provides for a Commission but no adjudication.¹¹

Lastly, some, usually more serious and numerically significant human rights violations may directly reach the United Nations General Assembly or even the Security Council if they threaten peace.

The problem however remains how to obtain facts and to

5. See, e.g., *International Convention on the Suppression and Punishment of the Crime of Apartheid*, G.A. Res. 3068 (XXVII), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1973); *International Covenant on Civil and Political Rights*, G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966).

6. Compare: *The Commission on Human Rights "Gross Violations" Procedures*, G.A. Res. 1503 (XLVII), 48 U.N. ESCOR Supp. (No. 1A) at 8, U.N. Doc. E/4832/Add.1 (1970); *Optional Protocol to the International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966); *Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*, *supra* note 4, at 145.

7. See *Fourth Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms*, Europ. T.S. No. 46, at 2 (1963).

8. *American Convention on Human Rights*, O.A.S. T.S. No. 36, OEA/Ser.K/XXVI/1.1, Doc 65, Rev.1, Corr. 1, reprinted in A. BLAUSTEIN, R. CLARK & J. SIGLER, HUMAN RIGHTS SOURCEBOOK 551 (1st ed. 1987).

9. *Id.* at 561-69.

10. *African Charter on Human and Peoples' Rights*, O.A.U. Doc CAB/LEG/67/3 Rev. 5, reprinted in 21 INTL LEG. MAT. 58 (1982).

11. *Id.* at 63-65. A commission is established within the Organization of African Unity "to promote human and people's rights and ensure their protection in Africa." *Id.*

present them to or before international bodies and structures. As stated above, the lack of systems, personnel and resources has impeded the accurate and effective processes of important fact-finding. At times, special committees or commissions are established by the United Nations for a single or specific purpose such as to investigate South African Apartheid practices, Israeli practices against Palistinians in the occupied territories, and Chilean practices.¹²

But most of the time inter-governmental and non-governmental organizations fill the vacuum and provide these necessary services. In these cases the question arises as to the impartiality and fairness of these international, inter-governmental, and non-governmental bodies which undertake such fact-finding. But impartiality, objectivity, fairness, and accuracy are such difficult subjective factors that what may be at best hoped for is some "procedural due process."¹³

Political or ideological considerations are however endemic in every type of fact-finding but the absence of alternatives makes such endeavors indispensable to the processes of observance and enforcement of human rights.¹⁴

Before assessing the usefulness of such bodies and the reliability of their output it is clear that a comparative empirical study of some of the fact-finding bodies and their reports must be made. That is what Hans Thoolen and Berth Verstappen have endeavored to do in the research published in this book.¹⁵ Their wealth of practical experience developed through years of active work in the field of human rights brings insight and credibility to the work they offer us, which focuses on non-governmental organizations (NGO's). This research is indeed the first systematic effort based on a uniform methodology of the largest sample of fact finding reports covering a span of almost fifteen years, 1970-1984.

The researcher's work is the result of a project conducted by the Netherlands Institute of Human Rights (SIM) aimed at exploring

12. See Franck & Fairley, *Procedural Due Process in Human Rights Fact-Finding by International Agencies*, 74 AM. J. INT'L L. 308 (1980). But see H. THOOLEN & B. VERSTAPPEN, *HUMAN RIGHTS MISSIONS A STUDY OF THE FACT-FINDING PRACTICE OF NON-GOVERNMENTAL ORGANIZATIONS* (1987). The authors note that the Frank and Fairley criticism may be excessive.

13. Franck & Fairley, *supra* note 12, at 309.

14. Weissbrodt & McCarthy, *Fact Finding by International Human Rights Organizations*, 22 VA. J. INT'L L. 1 (1981), at 20, 26, 29-30.

15. H. THOOLEN & B. VERSTAPPEN, *supra* note 12.

the possibility of developing more extensive procedures for NGO fact-finding missions.¹⁶ The SIM study concludes that NGO's need to develop more extensive procedural guidelines in order to increase the reliability and credibility of their fact-finding missions.¹⁷ The NGO's limitations are largely due to their lack of resources and their volunteer efforts.

The SIM study is based on the results of analyzing 187 reports received from NGO's fact-finding investigations conducted between 1970 and June 1984.¹⁸ Based on the questionnaires, a number of critical observations were made. Among them is that the purposes, objectives and goals of investigation were not sufficiently or clearly stated.¹⁹ Only one-half of the reports indicated the reason for sending the mission.²⁰ In a majority of the reports, however, the missions purpose was implicit in the "terms of reference," (terms of reference exist where the report contains an explicit and separate indication of the mission's objectives), while one-third of the reports in this group contained strictly formulated references.²¹ One-half of the terms of reference did however have normative standards.²²

Another critical observation made by the researchers is the absence of established criteria for selecting the members of fact-finding missions.²³ The SIM deduced that most members were probably selected based on their background and experience.²⁴ Most missions were found to have between one and three members.²⁵ The NGO's with the most experience sent the fewest number of mission members.²⁶ The reality may however be different since

16. *Id.* at 31-32. In June 1983 the Netherlands Institute of Human Rights organized a conference on fact-finding and specialized research in the field of human rights. The conference focused on fact-finding by NGO's.

17. *Id.* The author states that the credibility of the information provided "depends on the reliability of the facts . . . that reliability in turn depends on the methods used to obtain such information." *Id.*

18. *Id.* at 35.

19. *Id.* at 129.

20. *Id.*

21. *Id.*

22. *Id.* at 130. It is noted that the "normative standards, or specific human rights to be investigated . . . mostly concern standards of international human rights law or domestic legislation." *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

volunteer organizations have such limited resources and depend on the willingness of persons to go on these missions and prepare its reports. Obviously the longer the mission the more difficult it is to find knowledgeable experts to volunteer.

It is interesting to note how many such missions depend on government contact in the visited state. The study reveals 90 requests for some type of governmental assistance but that almost half of the requests were denied.²⁷ This reveals how difficult these missions are, and how little they can accomplish without the cooperation of the host country's government. Secondary sources of information are always a possible source, but they will surely be criticized when the report is published. What the book does not reveal entirely is the difficulties that such missions encounter with uncooperative and unfriendly host-country governments, which when added to NGO's limited resources and dependency on volunteer participants make their task very difficult indeed. To criticize the NGO methods and output considering their limitations is to add insult to injury to the benevolent and useful work they do. That is not, however, what these authors do in this book, but governments who do not want to see these missions gain too much credibility will surely misuse this study to such an end.

The study also indicates that the findings of the missions were too frequently based on oral information or information obtained from governmental sources.²⁸ Both, unfortunately, are inevitable. Most human rights violations in prisons, refugee camps, detentional centers and the like can only be obtained by work of mouth and most of the time governments are the only source of information that will withstand the scrutiny of criticism.

A most interesting aspect of the study is where the missions took place.

Figure 1.1 --- Continents where missions were sent.²⁹

<i>NAME OF CONTINENT</i>	<i>NUMBER OF MISSIONS SENT</i>
Central America/Caribbean	108

27. *Id.* at 132.

28. *Id.* at 133-34.

29. *Id.* at 122-23.

South America	56
North America	5
Europe	29
Middle East	27
Asia	62
Africa	49
Australia	1
Oceania	3
Total:	340

Thus, it can be seen that most missions were sent to Central America and the Caribbean. The second place with the most missions was Asia where sixty-two (62) missions were conducted. In third place and fourth place were South America and Africa with fifty-six (56) and forty-nine (49) missions respectively.

The reports also indicate which countries were visited most often:

Figure 1.2 --- Countries where missions were sent.³⁰

<i>COUNTRY</i>	<i>NUMBER OF MISSIONS</i>
Chile	19
El Salvador	29
Guatemala	19
Honduras	13
Iran	13
Nicaragua	25
Philippines	11
Turkey	11

El Salvador received the most visits with twenty-nine (29). Nicaragua came in second with twenty-five (25) total missions. Then followed Chile and Guatemala with nineteen (19) missions, and then Honduras and Iran with thirteen (13) missions. It is noteworthy that in the fourteen years of this study during which occupation of Palestinian territories existed, (it started in 1967) there have been

30. *Id.*

very few reported fact-finding missions. It is almost as if there is a blind spot by such NGO's in the field of human rights when it comes to Israeli violations of Palestinian rights.³¹

Since the research was aimed at developing new procedures for fact-finding missions in order to enhance their effectiveness and heighten their credibility, the concluding parts of the book are aptly devoted to these matters.³² Among the recommendations made is that NGO's reports should contain an explicit and separate description of the normative standards relied upon.³³ To increase the credibility of the reports, SIM suggests that more information about selection criteria should be contained in the reports, more details about the sending NGO's, and more disclosure of funding sources.³⁴ Clear and distinct conclusions and dissenting opinions should also be included to increase the reports' credibility.³⁵ Additionally, SIM recommended that the geographical distribution should be more balanced.³⁶ Finally, the study cautions against overlapping NGO missions.³⁷ This can be avoided through better cooperation and consultations among NGO's and by having a faster and more comprehensive circulation system so that proposed missions and mission reports can be disseminated more rapidly.³⁸

The authors are advocates of human rights. Their research and recommendations are designed to strengthen the NGO's contribution to the protection of human rights, and are therefore valuable to NGO's, and particularly useful to the preparation and conduct of fact-finding missions. They are to be congratulated on such a valuable effort. The publisher, Martinus Nijhoff, should also be congratulated as they have developed a special series on International Studies in Human Rights of which this book is the seventh.³⁹

31. See generally BASSIOUNI & CAINKAR, *THE PALESTINE INTIFADA - - DECEMBER 9, 1987 - DECEMBER 8, 1988: A RECORD OF ISRAELI REPRESSION* (1989).

32. H. THOOLEN & B. VERSTAPPEN, *supra* note 12, at 129-40.

33. *Id.* at 130.

34. *Id.* at 131.

35. *Id.* at 136.

36. *Id.* at 137.

37. *Id.* at 139-40.

38. *Id.*

39. See B. RAMCHARAN, *INTERNATIONAL LAW AND FACT-FINDING IN THE FIELD OF HUMAN RIGHTS* (1982); B. RAMCHARAN, *HUMANITARIAN GOOD OFFICES IN INTERNATIONAL LAW* (1983); P. ALSTON & K. TOMASEVSKI, *THE RIGHT TO FOOD* (1984); A. BLOED & P. VAN

DIJK, *ESSAYS ON HUMAN RIGHTS IN THE HELSINKI PROCESS* (1985); B. RAMCHARAN, *THE RIGHT TO LIFE IN INTERNATIONAL NORMS OF HUMAN RIGHTS* (1986); H. THOOLEN & B. VERSTAPPEN, *SUPRA* note 12.