

# INTERNATIONAL HUMAN RIGHTS LAW: RESPONSIBILITY OF NON-STATE ACTORS FOR ACTS OF TERRORISM

## Abstract

The human rights law is criticised for providing more protection to the criminals and terrorists than the law abiding members of the public. The reason for this particular stance is that international human rights law applies primarily to states. As the states sign the covenants and the treaties pertaining to human rights, only they are bound by them. It does not describe the accountability of non-state actors like terror organisations or provide a solution to the crimes committed by them. The paper looks at the possibility of bestowing accountability on such non-state actors under international human rights law for committing crimes like terrorism.

## I Introduction

TERRORISM VIOLATES the human rights of the people of this world. It is an established fact that terrorists do not respect the rights of individuals. The most basic and fundamental of all human rights, the right to life from which all rights emanate, is the one under threat today from acts of terrorism. The rule of law seems to be gasping for breath in this atmosphere. Human rights have been recognised to be a part of society since the inception of man. These rights are inherent due to the very fact of one being born a human being. Therefore the only qualification for the applicability of these human rights is that you need to be a human being. Why is it then that certain human beings have a right to violate the rights of other human beings? Today in a world where it is accepted that *lex is rex*, the rights of the people are at stake.

International human rights law is said to be available only against the state. It is not available against non-state actors. With the increase in the violations of human rights by the non-state actors like ISIS (Islamic State of Iraq and Syria/Levant) and Al Qaeda in the arena of terrorism, it becomes imperative to redefine the status of international human rights law. Are these groups, organisations, private individuals who do not live by the rule of law, exempted from the applicability of the international human rights law? This proposal needs to be refuted with vengeance. The fact is that the vocabulary of rights inheres in all.

## II The dilemma

Human rights organisations have been accused of being two faced. This is due to the fact that these organisations are more concerned about the behaviour of the state in response to terror activities. The counter terror initiatives of the governments have been the target of the human rights activists as they only appear to advocate the protection of the rights of the terrorists. They seem to forget about the violations

committed by the terrorists themselves. The emphasis on violations committed by the authorities overrides the fact that the initial infringement of the rights of the people was by the perpetrator of the terrorist act.

They do not engage with the accountability of non-state actors, except by re-affirming the state's responsibility to protect the rights of its citizens. As a result, the position of human rights advocates can appear to be lop-sided. Their legal arguments and their advocacy puts onerous requirements on the state to protect the civil rights of those accused of terrorist crimes, but they appear to have much less to say about the obligations and accountability of those who commit terrorist acts, or the rights of those who are harmed by them. Human rights arguments look partial as a result: this is one reason why rights organisations are sometimes accused of double standards – even though their commitment to human rights principles does not imply in any way sympathy for violent acts or those who commit them.<sup>1</sup>

The role of governments as violators of human rights certainly exists but today the world over, the innocent citizens feel more threatened by the terrorists. The human rights law is therefore criticised for providing more protection to the criminals and terrorists than the law abiding members of the public. The whole purpose is defeated in this process.

The reason meted out for this particular stance of the rights organisations is that international human rights law applies primarily to states as they are the recognised subjects under international law. As the states sign the covenants and the treaties pertaining to human rights, only they are bound by them. It does not describe the accountability of non-state actors or provide a solution to the crimes committed by them. This paper explores the possibility of bestowing accountability on the non-state actors under international human rights law for heinous crimes like terrorism that they commit.

### III The applicability of human rights law

The human rights organisations take refuge in the current status of human rights law that it is an exclusive state responsibility to respect and promote human rights. The reason for this apparent paradox lies in the origin of human rights, which were primarily developed to create international minimum standards of rights designed to protect individuals against a state's excessive exercise of its legitimate monopoly of force. To a certain extent, human rights limit a state's freedom of action, especially

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1 “Talking about Terrorism: Risks and Choices for Human Rights Organisations” *Report of the International Council on Human Rights Policy* 37 (Switzerland, 2008). Available at: [http://www.ichrp.org/files/reports/35\\_129\\_report\\_en.pdf](http://www.ichrp.org/files/reports/35_129_report_en.pdf). (last visited on June 10, 2013).



for the most serious crimes, including the requirement of strict observance of all procedural guarantees, including effective legal assistance and the right of appeal; alternatively for states that have ratified a relevant additional/optional protocol or otherwise abolished capital punishment, the exclusion of capital punishment even in cases of terrorism etc.<sup>5</sup>

### The interpretation

The assumption of many legal experts that human rights law applies only to governments, and not to non-state entities, is no longer a universally shared assumption. This is advanced by the fact that if criminals and terrorists have certain human rights under international law, they accordingly have obligations. The tone of conversation has changed over a period of time and the law has to take into account the increasing violent acts committed by such entities. The resolution adopted by the distinguished expert body the Institute of International Law, at its Berlin session in 1999, stated that “All parties to armed conflicts in which non-State entities are parties, irrespective of their legal status ... have the obligation to respect international humanitarian law as well as fundamental human rights.”<sup>6</sup> All parties are bound to respect fundamental rights under the scrutiny of the international community.<sup>7</sup>

It is increasingly understood, that the human rights expectations of the international community operate to protect people, while not thereby affecting the legitimacy of the actors to whom they are addressed. The Security Council has long called upon various groups that member states do not recognize as having the capacity to formally assume international obligations to respect human rights.<sup>8</sup>

Recently the Security Council in its meeting has passed Resolution 2170 (2014) condemning gross widespread abuse of human rights by extremist organisations in Iraq and Syria. Through the resolution, the Council demanded that ISIL, Al-Nusra Front and all other entities associated with Al-Qaida cease all violence and terrorist

5 *Supra* note 1 at 36.

6 “The Application of International Humanitarian Law and Fundamental Human Rights, in Armed Conflicts in which Non-State Entities are Parties”, resolution adopted at the Berlin Session, Aug. 25, 1999, art. II.

7 *Id.*, art. X. According to the commentary fundamental rights are assimilated to those rights that are applicable in states of emergency. Institute of International Law, *L’application du droit international humanitaire et des droits fondamentaux de l’homme dans les conflits armés auxquels prennent part des entités non étatiques: résolution de Berlin du 25 août 1999*—The application of international humanitarian law and fundamental human rights in armed conflicts in which non-state entities are parties: Berlin resolution of Aug. 25, 1999 (commentaire de Robert Kolb) Collection “résolutions” n° 1, Pedone, Paris, 43 (2003).

8 Footnote in the original reads: “SC Res. 1265 (1999), preamble; SC Res. 1193 (1998), paras. 12, 14; SC Res. 814 (1993), para. 13”.

acts, and immediately disarm and disband. Recalling that their attacks against civilians on the basis of ethnic or religious identity might constitute crimes against humanity, it stressed the need to bring those perpetrators, including foreign fighters, to justice.<sup>9</sup> The intention of the Security Council seems clear which is to classify such acts of terror as violations of human rights by these non-state actors.

There is a growing body of evidence that a new normative framework may be emerging within which armed group members have become common subjects of human rights discourse despite their status as non-state actors.<sup>10</sup> There is a rising consensus that individuals are bearers of rights and obligations, and not simply citizens of states that bear certain duties toward one another under international law. Although the principle of individual criminal responsibility for violations of international criminal law is now widely accepted,<sup>11</sup> there is no consensus about the degree to which non-state entities have positive legal obligations under international human rights law.

Andrew Clapham, in the most comprehensive analysis of the issue published to date, argues that the tide may have already turned, and that many actors – including representatives of international organizations – have begun to treat the violent acts of certain non-state actors as violations of international human rights. He notes for instance that the language of Security Council resolutions presume that non-state actors' use of child soldiers can constitute violations of international human rights obligations.<sup>12</sup> UN-supported human rights monitoring bodies, tribunals and UN special procedures mandate holders have found, without drawing ambitious conclusions about their legal status, that armed groups are bound by certain fundamental human rights principles.<sup>13</sup> International human rights monitoring organizations, such as Human

9 United Nations Security Council Resolution 2170 (2014), Aug. 15, 2014. Available at: <http://www.un.org/News/Press/docs/2014/sc1520.doc.htm>. (last visited on Aug. 22, 2014).

10 Federick Rawski, "Engaging With Armed Groups: A Human Rights Field Perspective from Nepal" *International Organisations Law Review* 601 (2009). Available at: <http://www.iilj.org/gal/documents/GALch.Rawski.pdf> (last visited on June 12, 2013).

11 Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006); P. Alston (Ed.), *Non-State Actors and Human Rights* (Oxford University Press, 2005), at 26; see also, J. Cerone, "Much Ado About Non-state Actors: The Vanishing Relevance of State Affiliation in International Criminal Law" (2008). Available at: [http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=john\\_cerone](http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=john_cerone) (last visited on June 11, 2013).

12 Clapham, *id.* at 283.

13 For instance, the Guatemalan Historical Clarification Commission concluded that "armed insurgent groups... had an obligation to respect... the general principles common to international human rights law..." UN Doc. A/53/928 Annex, 27 (Apr. 1999) paras. 127-128, cited in Clapham, *id.* at 37. A Sri Lanka country report by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions reads: "the LTTE... remains subject to the demands of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights." UN Doc. E/

Rights Watch and Amnesty International, have also turned their attention to armed groups, and now regularly call on them to abide by human rights principles – the scope of which are often left undefined but presumably include the rights to life, liberty and physical integrity.<sup>14</sup>

Further there are also situations to be accounted for, wherein a state is complicit with terrorist networks. For example the Al-Qaeda seems to have been intimately linked to the Taliban government, with some even describing the relationship as devolving into one of patron-client - Al Qaeda the patron, the Taliban the client.<sup>15</sup> Since it is difficult to pinpoint exactly as to who is liable for the rights violations, it is in the interest of the law to include non-state actors.

The gap is slowly being bridged as human rights theory shifts from a state-centred to a more individual-centred approach built around the concept of ‘human dignity’. That approach concerns itself less with the legitimacy that recognition may or may not bestow upon a group by addressing them as duty bearers (or ‘rights violators’), focusing instead on the victim as a ‘rights bearer’. Using this approach, the actions of armed groups and other non-state actors can more easily be scrutinized as infringements of the human rights of individuals.<sup>16</sup>

### The expansion of international law

International law has for some time served to tackle individual criminal responsibility for certain acts committed by individuals: slavery, war crimes, genocide, crimes against humanity, disappearances, and torture. International law can attach to certain non-state actors at all times and irrespective of their links to the state. Article

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CN.4/2006/53/Add.5 (Mar. 27, 2006) para. 25. In a particularly honest assessment of the confused state of law in this area, the Special Court for Sierra Leone found that common article 3 applied to armed groups notwithstanding a lack of consensus on the reasons why, stating that although there is “no unanimity among international lawyers as to the basis of the obligation of insurgents to observe the provisions of Common Article 3... there is now no doubt that this article is binding on States and insurgents alike and that insurgents are subject to international humanitarian law.” *Prosecutor v. Kallon & Kamara*, Decision on Challenge to Jurisdiction: Lome Accord Amnesty, Mar. 13, 2004, Special Court for Sierra Leone, Appeals Chamber, para. 45.

14 See examples at Z. Salzman, “Armed Groups in Peace Processes: Who Gets a Seat at the Negotiating Table?” *IIIJ Emerging Scholars Paper* 10 (2008) at 45, and R. Nair, “Confronting the Violence Committed by Armed Opposition Groups” 1 *Yale Human Rights and Development Law Journal* 1 (1998).

15 Dinah Pokempner, “Terrorism and Human Rights: The Legal Framework” in *Terrorism and International Law: Challenges and Responses*. Available at: <http://www.iihl.org/iihl/Album/terrorism-law.pdf>. (last visited on July 17, 2014).

16 *Supra* note 10 at 13.

I of the Convention on the Prevention and Punishment of the Crime of Genocide confirms that ‘genocide, whether committed in time of peace or in time of war, is a crime under international law’. Article IV reminds us that persons committing acts of genocide shall be punished ‘whether they are constitutionally responsible rulers, public officials or private individuals’. The key obligations under this treaty have clearly become customary obligations for all states, even regarding crimes committed outside their territory.<sup>17</sup> Furthermore, genocide ‘is a crime under international law for which individuals shall be punished’.<sup>18</sup> This means in effect that there are international obligations for every individual. In fact, although at one stage it was said that the broader category of crimes against humanity had to be pursued in furtherance of a *state* policy, this restriction is no longer applied. In the words of the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia ‘although a policy must exist to commit these acts, it need not be the policy of a state’.<sup>19</sup> The trial chamber relied on the work of the International Law Commission of the United Nations as well as practice from the courts of the United States in reaching this conclusion:<sup>20</sup>

Importantly, the commentary to the draft articles of the Draft Code [of Crimes Against the Peace and Security of Mankind], prepared by the International Law Commission in 1991, which were transmitted to governments for their comments and observations, acknowledges that non-state actors are also possible perpetrators of crimes against humanity.

With regard to the apparent absence to human rights treaties addressed to non-state actors one needs to look at three more recent treaties. First, let us consider one of the most relevant norms concerning child soldiers. Article 4 to the Optional Protocol to the Convention on the Rights of the Child (2000)<sup>21</sup> reads:

1. Armed groups that are distinct from the armed forces of a State, should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

17 See the International Court of Justice *Case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)* (Preliminary Objections), (1996) ICJ Reports para. 31.

18 Report of the Secretary-General Pursuant to Para 2 of Security Council Resolution 808 (1993) S/25704, May 3, 1993, para. 45.

19 *Prosecutor v. Tadic Case IT-94-1-AR72 and Case IT-94-1-T*, Judgment of May 7, 1997, para. 655.

20 Clapham, *supra* note 11 at 29-30.

21 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Available at: <http://www.un-documents.net/a54r263.htm>. (last visited on Aug. 24, 2014).

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

It has been suggested that the use of the word ‘should’ with regard to the injunction on the armed groups means that they have something less than a full immediate international obligation. States are said by some to be expressing a desire rather than a command.<sup>22</sup> Nevertheless, one could interpret the assertion that children should not be recruited or used ‘*under any circumstances*’ as a clear indication that the drafters intended to create (or crystallize) a meaningful obligation that allows for no delay or derogation.

The International Convention for the Protection of All Persons from Enforced Disappearance (2006)<sup>23</sup> includes an article which states that ‘Each State Party shall take appropriate measures to investigate acts defined in article 2 [enforced disappearances by state agents] committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.’ Of course the international crime against humanity (rather than the treaty crime defined in this Convention) can still be committed by an individual operating within an armed non-state armed group where the enforced disappearance is ‘part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’ and that group is considered a ‘political organization’ in the words of the Statute of the International Criminal Court.<sup>24</sup>

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009)<sup>25</sup> is perhaps the most explicit treaty to date with regards to what is expected of armed non-state actors. The first point to note is that two different types of actors are included in the scope of the

22 For references to different opinions over the effect of this provision of the Optional Protocol see Clapham, *supra* note 11 at 75; see also UNICEF and Coalition to Stop the Use of Child Soldiers, *Guide to the Optional Protocol on the Involvement of Children in Armed Conflict* 17 (New York: UNICEF, 2003).

23 International Convention for the Protection of all Persons from Enforced Disappearance. *Available at:* <http://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>. (last visited on Aug. 24, 2014).

24 See Statute of the International Criminal Court 1998 arts. 7(1)(d) and 7(2)(i).

25 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). *Available at:* <http://www.unhcr.org/4ae9bede9.html>. (last visited on Aug. 24, 2014).



treaty. According to article 1(d) of the treaty “‘Armed Groups” means dissident armed forces or other organized armed groups that are distinct from the armed forces of the state’; and under article 1(n) “‘Non-state actors” means private actors who are not public officials of the State, including other armed groups not referred to in article 1(d) above, and whose acts cannot be officially attributed to the State’. The obligations for the members of the *armed groups* and the *non-state actors* are distinguished.<sup>26</sup>

The bigger point here is that these three human rights treaties have started developing their own terminology for armed non-state actors, and the terms are not dependent on the relatively demanding criteria set out in international humanitarian law.<sup>27</sup>

#### IV Refuting the argument

The argument put forth is that private non-state actors simply cannot incur responsibilities under international law. It is said that treaties are negotiated and entered into by states and these treaties cannot bind those who are not a party to them. It is admitted that some non-state entities, such as inter-governmental organisations, can

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- 26 The treaty under art. 7 (5) states that: Members of armed groups shall be prohibited from:
- a. Carrying out arbitrary displacement;
  - b. Hampering the provision of protection and assistance to internally displaced persons under any circumstances;
  - c. Denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family;
  - d. Restricting the freedom of movement of internally displaced persons within and outside their areas of residence;
  - e. Recruiting children or requiring or permitting them to take part in hostilities under any circumstances;
  - f. Forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children;
  - g. Impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons;
  - h. Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons and shall not destroy, confiscate or divert such materials; and
  - i. Violating the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such places.
- On the other hand states parties under the treaty shall:
- h. Ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;
  - i. Ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement.

27 Andrew Clapham, “The Rights and Responsibilities of Armed Non-State Actors: The Legal Landscape and Issues Surrounding Engagement”, Geneva Academy of International Humanitarian Law and Human Rights at 24-16. Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1569636](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1569636). (last visited on Aug. 22, 2014).

incur duties under international law through entering into treaties or through the application of customary international law. So, for example, the United Nations and the European Community can violate international law binding on them. The fact that they cannot be parties to case before the International Court of Justice does not mean that they do not have rights and obligations under international law; disputes have to be settled in a different forum.<sup>28</sup>

It is further admitted that international law creates international crimes for individuals in fields such as piracy, genocide, crimes against humanity, and war crimes. These are however explained away as explicit exceptions for individuals. Clapham responds to this by pointing out to situations where armed groups that cannot be compared to governments, such as rebel groups in Sierra Leone, have been investigated for committing human rights abuses. The Truth and Reconciliation Commission of Sierra Leone had a mandate which reads as follows:<sup>29</sup>

6. (1) The object for which the Commission is established is to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lome Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.

Today one can point to the international preoccupation with terrorism and suggest that it has opened the door even further to an approach which simply admits that insurgents, guerrillas, or terrorists do indeed violate human rights in the course of some of their attacks. A background paper for an expert meeting on ‘Human Rights, the United Nations and the Struggle against Terrorism’ explained the issue in the following way:<sup>30</sup>

The proposition that terrorism violates human rights should not be controversial. Yet classical interpretations of human rights hold that only states can violate human rights. Human rights treaties, not individuals, non-state actors or others, bind only states. Fortunately, human rights thinking and even jurisprudence has evolved and now

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28 For example, the treaty obligations of the European Community under the UN Convention on the Law of the Sea (1982) can be litigated before the Law of the Sea Tribunal or under some appropriate arbitration arrangement.

29 Supplement to the Sierra Leone Gazette, vol. CXXXI, No. 9, dated Feb. 10, 2000.

30 William G. O’Neill, “Terrorism and Human Rights”, *Human Rights, the United Nations, and the Struggle against Terrorism* 10 (7th Nov., 2003, New York). Available at: [http://www.ipinst.org/media/pdf/publications/human\\_rights.pdf](http://www.ipinst.org/media/pdf/publications/human_rights.pdf). (last visited on June 12, 2013).

certain non-state actors like rebel groups and multi-national corporations can be held responsible for rights violations. Certainly organizations like Al Qaeda would fall into this category...

Many governments of different countries including the United Kingdom have time and again reiterated the fact that terrorists are the violators of the human rights of the citizens. The Indian government in this regard has said:<sup>31</sup>

The Government also noted that it is inevitable that in tackling terrorism, some of the measures may impact on the unfettered exercise of human rights. The challenge is to get the necessary balance between the imperative of dealing with terrorism and safeguarding human rights. It has to be recognised that the terrorist is a violator of human rights. In finding the requisite balance, States are currently engaged in adopting new measures with built in safeguards to ensure that they are not abused or misused.

Therefore there are numerous examples in everyday media reports of armed groups being described as abusers of human rights. Of course, claiming a human rights abuse does not generate a human rights duty in law; but the term 'human rights' has generated meanings and significance beyond the realm of international legal obligations owed by states. It is commonplace that government ministers from all over the world refer to rights carrying with them corresponding responsibilities.<sup>32</sup> Clapham emphasises that some governments may wish to restrict the meaning or understanding of the term 'human rights', but excluding any obligations for non-state actors through appeals to the 'definition', 'essence', or 'original sense' of the term 'human rights' are unconvincing.<sup>33</sup>

Ever since the Nuremberg Tribunal held individuals accountable for war crimes and crimes against humanity,<sup>34</sup> it has been clear that having international law obligations does not imply respectability, legitimacy, or decency. If this point holds with regard to the law of crimes against humanity, it can also hold for the law of human rights violations.<sup>35</sup>

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31 UN Doc. E/CN.4/Sub.2/2003/WP.1/Add.2, Aug. 8, 2003, Sub-Commission on the Promotion and Protection of Human Rights, Additional progress report prepared by Kalliopi K. Koufa, Addendum, para 19.

32 See, for example, letter from Keith Vaz MP, Minister for Europe, with regard to the EU Charter of Fundamental Rights stating that the Charter might 'Underline the fact that all rights carry with them a matching responsibility, on individuals as well as governments, to respect the rights of others'.

33 Clapham, *supra* note 11 at 41.

34 *Trial of Major War Criminals (Goering et al)*, International Military Tribunal (Nuremberg) Judgment and Sentence, Sep. 30 and Oct. 1, 1946 (London:HMSO) Cmd. 6964.

35 Clapham, *supra* note 11 at 53.36 *Id.* at 56.37 *Id.* at 58.

## V Conclusion

A traditional understanding of human rights prevents us from imagining a different set of qualities for human rights. Why can't one imagine a system where human rights obligations attach both to states and to non-state actors? Is such an attachment really as contradictory and impossible? The world has changed drastically in the great part of the last century. It is time for the emergence of a new vocabulary.<sup>36</sup>

In sum, all of the arguments outlined above boil down to two claims: first, that an application of human rights obligations to non-state actors trivializes, dilutes and distracts from the great concept of human rights. Second, that such an application bestows inappropriate power and legitimacy on such actors. The counter-argument is that one can legitimately reverse the presumption that human rights are inevitably a contract between individuals and the state; one can presume that human rights are entitlements enjoyed by everyone to be respected by everyone. Once we accept that human rights obligations can apply in this way, the idea of legitimizing non-state actors by subjecting them to human rights duties becomes illogical.<sup>37</sup>

The message is that international human rights obligations can fall on states, individuals, and non-state actors. Different jurisdictions may or may not be able to enforce these obligations, but the obligations exist just the same. One is witnessing a shift in emphasis. In the words of the distinguished British academic lawyer, the late Sir William Wade:<sup>38</sup>

It is true that the original purpose of the human rights Convention was to prevent the emergence of dictatorial and oppressive governments such as that of Nazi Germany. But in the intervening half century a new culture of human rights has developed in the Western world, and the citizen can legitimately expect that his human rights will be respected by his neighbours as well as his government.

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38 H.W.R. Wade, 'Horizons of Horizontality' 116 LQR 224 (2000). See also H.W.R. Wade, 'paradoxes in Human Rights Act'. Letter to *The Times* Sep. 1, 2000. See also, from a comparative law perspective, the comment by B. Markesinis and S. Enchelmaier, 'Nowadays, therefore, the new paradigm of a human right violation may be that of an "individual" (to be understood here as referring to any natural or legal person which is not acting with public authority) encroaching upon the freedom of another individual in their chapter, 'The Applicability of Human Rights as between Individuals under German Constitutional Law' in B.S. Markesinis (Ed.), *Protecting Privacy: The Clifford Chance Lectures Volume Four* 192 (Oxford: Oxford University Press, 1999).

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