

1992

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Recommended Citation

Blaser, Arthur W. "How to advance human rights without really trying: An analysis of nongovernmental tribunals." *Human Rights Quarterly* (1992): 339-370.
DOI:10.2307/762370

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This article was originally published in *Human Rights Quarterly* in 1992. DOI: [10.2307/762370](https://doi.org/10.2307/762370)

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How To Advance Human Rights Without Really Trying: An Analysis of Nongovernmental Tribunals

Arthur W. Blaser

The greatest historical, philosophical, and psychological work of our time will be written by the commission of inquiry.

—Leon Trotsky¹

Statements such as Trotsky's have been frequent at the scores of non-governmental tribunals held in the twentieth century. Included among the accused have been the American, Soviet, Chinese, German, and Philippine governments, multinational corporations, and international financial institutions. While maintaining a focus on war crimes, nongovernmental tribunals have also condemned a full range of violations of civil, political, and economic rights.²

The tribunals, of which the best known are the Russell Tribunals, Permanent Peoples' Tribunal, and International Sakharov Hearings, were described in the *Handbook* for the Russell Tribunal on the Rights of American Indians as "international colleges consisting of well-known persons . . . [which] do not have legal power, but aim at contributing to the formation of international law."³ This paper is an assessment of that contribution.

This analysis necessarily relies on a selective and incomplete information

1. Letter from Trotsky to Suzanne La Follette (15 Mar. 1937), reprinted in *Writings of Leon Trotsky, 1936–37* 237–38 (2d ed. 1978).

2. Even the tribunals which examine issues of war and peace pay special attention to human rights issues. A case in point is former US Attorney General Ramsey Clark's efforts to try the United States for war crimes and crimes against humanity in the Persian Gulf War. The Charges, which will be reviewed at a 1992 tribunal, include "violations of human rights, civil liberties and the U.S. Bill of Rights." Ramsey Clark, *Complaint to The Commission of Inquiry for the International War Crimes Tribunal*, 48 Guild Prac. 33, 47 (1991).

3. Fourth Russell Tribunal, *Handbook: The Rights of the Indians of the Americas* 18 (1980).

base.⁴ With few exceptions tribunal deliberations are published by very small presses or are self-published.⁵ Analysis of tribunal activity must therefore draw on a range of sources: the tribunals' reports, coverage in the media, scholarly commentary, and correspondence or interviews with tribunal sponsors. The tribunals listed in Appendix A have published reports which form the basis of this study.

The purpose of this analysis is fourfold: first, to trace the development of nongovernmental tribunal activity; second, to identify and describe organizations and individuals who exemplify the visionary spirit of the tribunals; third, to analyze the tribunals as quasi-legal proceedings; and fourth, to assess the tribunals' present and potential impact.

I. THE ROOTS AND ROLE OF NONGOVERNMENTAL HUMAN RIGHTS TRIBUNALS

Contemporary nongovernmental tribunals on human rights reveal three influences: the 1937 Dewey Commission (Commission of Inquiry into the Charges Made against Leon Trotsky in the Moscow Trials); the Nuremberg and Tokyo War Crimes Tribunals which followed World War II; and the reluctance and inability of domestic and international courts to implement and enforce human rights standards.

A. The Dewey Commission

Although not fulfilling Leon Trotsky's prediction, the Dewey Commission set an impressive standard for nongovernmental tribunals and resembled later tribunals in its complex structure, multiple objectives, and politically controversial findings. Trotsky actively sought a nongovernmental hearing regarding the Moscow Trial charges against him and his son, Leon Sedov. Among the charges were espionage (as a German agent), sabotage, assassination, treason, and conspiracy.⁶ American and European Committees for

4. Some of the deliberations are never published, and very seldom are deliberations published in more than one language. Testimony is sometimes published without reference to verdicts or conclusions.

5. Reports from the First Russell Tribunal were published by Penguin; the Russell Foundation published reports of later sessions. Some other tribunals' proceedings are available only in typescript.

6. For an excellent discussion of the Moscow trials and of the Dewey Commission, see the memoirs of the Commission stenographer: Albert Glotzer, *Trotsky* (1989). On the Commission see also Alan B. Spitzer, *John Dewey, the "Trial" of Leon Trotsky and the Search for Historical Truth*, 29 *Hist. & Theory* 16 (1990).

the Defense of Leon Trotsky organized a Commission of Inquiry and three subcommissions. Commission members were liberal or socialist and were leaders in the fields of philosophy, journalism, and the social sciences. The American philosopher John Dewey, who agreed to chair the Commission, contributed greatly to its reputation. The tribunal's work took place at four levels: Trotsky and his adherents; the Defense Committees, whose membership included liberals who opposed the Soviet attacks on Trotsky; the subcommissions, which gathered information during lengthy meetings in Paris, New York, and Coyoacan, Mexico; and the ten-member Commission, which eventually issued the verdict of not guilty.⁷

Not surprisingly, Trotsky, Dewey, and other Commission supporters valued different aspects of the tribunal. Although all agreed that the proceedings should function according to Western liberal conceptions of the "rule of law," reasons for supporting the tribunal varied from a commitment to finding the facts to discrediting Stalin's rule to building the Trotskyite Fourth International.⁸ Quasi-legal deliberations were the means through which the disparate objectives might be attained.

The Dewey Commission was criticized by fellow liberals and socialists. Charles Beard declined to participate, arguing that there was no sense in acquitting Trotsky—the burden still lay with Moscow to establish guilt.⁹ The press was hostile, including the liberal periodicals *The Nation* and the *New Republic*.¹⁰ A Coyoacan subcommission member, Carleton Beals, challenged the tribunal's objectivity and resigned. Commission members suggested that Beals only joined the subcommission so that he could discredit it.¹¹ And

7. See Preliminary Commission of Inquiry, *The Case of Leon Trotsky: Report of Hearings on the Charges Made Against Him in the Moscow Trials* (1937); Commission of Inquiry into the Charges Made Against Leon Trotsky in the Moscow Trials, *Not Guilty* (1972); see generally Isaac Deutscher, *The Prophet Outcast: Trotsky 1929–1940* 368–82 (1963) (historian's account illuminating Trotsky's perception of the Commission).

8. Trotsky argued that the "greatest historical service" of the tribunal's verdict was that it increased "the chances for a progressive uprising." "Answers to Questions on Verdict," in *Writings of Leon Trotsky, 1937–38* 71 (1st ed. 1970). Dewey viewed the hearings as a means for "public enlightenment" and for effectuating the right to a fair trial. See Preliminary Commission of Inquiry, *supra* note 7, at 5; see also James T. Farrell, "Dewey in Mexico," in *John Dewey: Philosopher of Science and Freedom* 362 (Sidney Hook ed., 1950).

9. C. Beard, *quoted in* Deutscher, *supra* note 7, at 362.

10. See, e.g., Charles F. Howlett, *Troubled Philosopher: John Dewey and the Struggle for World Peace* 137 (1977) ("Dewey in time became so angry at *The New Republic* that he resigned from its editorial staff.").

11. Beals was suspected of being a Communist Party USA member, hence loyal to Moscow. See, e.g., Preliminary Commission of Inquiry, *supra* note 7, at xvii–xviii; Deutscher, *supra* note 7, at 374–76; compare John A. Britton, *Carleton Beals: A Radical Journalist in Latin America* 166–86 (1987) (sympathetic biography of Beals which rejects allegations of Beals' ties to Communist Party).

although proclaiming that “there are few lines in history which have such weight in the library of humanity”¹² as the Commission’s verdict, Trotsky was incensed that Dewey added personal comments critical of Bolshevism in reporting the Commission’s work.¹³

One of those who initially sided with Dewey Commission critics was Bertrand Russell. When, in 1959, Norman Birnbaum proposed a war crimes trial of Eisenhower, Khrushchev, and Macmillan, Russell balked; he doubted that “genuinely impartial people could be found” to conduct the trial.¹⁴ Less than a decade later Russell changed his perspective, creating an International War Crimes Tribunal based upon the Dewey Commission and Nuremberg precedents.

B. Post–World War II War Crimes Tribunals

The Nuremberg Tribunal prompted a search for new types of international legal proceedings to cope with the new horrors of the twentieth century. The Tribunal was designed not only to punish criminals, but also to deter future crimes. As Justice Robert Jackson, chief US prosecutor at Nuremberg, claimed in his opening statement, “The wrongs which we seek to condemn and punish have been so calculated, so malignant and devastating, that civilization cannot tolerate their being ignored because it cannot survive their being repeated.”¹⁵

Nongovernmental human rights tribunals proceed from a similar sense of urgency. They extend the “spirit of Nuremberg” to condemn a wide range of government repression as criminal. Nongovernmental tribunals resemble the Nuremberg proceedings with respect to the charges brought against government officials, the appeals to public opinion, and the claims of partiality levied by tribunal critics.

The Nuremberg International Military Tribunal considered three charges against Nazi leaders: crimes against peace, war crimes, and crimes against humanity. Each of the charges, but especially the last, has important human rights implications. As noted in Article 6 of the tribunal’s Charter, crimes against humanity include “murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial, or religious grounds

12. Leon Trotsky, *Comment to Journalists on Dewey Verdict*, in *Writings of Leon Trotsky, 1937–38*, *supra* note 8, at 68.

13. See, e.g., J. van Heijenoort, *With Trotsky in Exile* 110 (1978).

14. Russell, *quoted in* Ronald W. Clark, *The Life of Bertrand Russell* 623–24 (1976).

15. Robert Jackson, *The Case Against the Nazi War Criminals* (1946), excerpted in Richard A. Falk, *Crimes of War* 78 (1971).

. . . whether or not in violation of domestic law of the country where perpetrated."¹⁶

Nongovernmental tribunals are tribunals of conscience, and their legitimacy depends upon public reaction. Lelio Basso's summary at the second session of the Russell Tribunal on Vietnam argued, "Our serious work, the evidence which we have accumulated, the testimonies which we have brought to the knowledge of the public, the search for the truth which we have together pursued, has, in the eyes of public opinion, legitimized our existence."¹⁷ Tribunal efforts, by documenting and condemning alleged crimes against humanity, seek to ensure that the public assumes legal and moral responsibility, thereby, in Richard Falk's words, [k]eeping Nuremberg [a]live."¹⁸

Nuremberg is kept alive through tribunals in which principles derived from war crimes proceedings are applied to cases of human rights violations. These principles include the imputing of responsibility to superiors of criminals, the obligation of individuals to obey international law (even if to do so conflicts with the orders of superiors), and a conception that international law is flexible and dynamic, rather than static. Due to the slow development of institutions which could implement such principles effectively, the primary target of the Nuremberg and post-Nuremberg appeals has been the public conscience.

Criticisms of the Nuremberg and Tokyo war crimes proceedings resemble those made of contemporary tribunals. Lawyers reared in the Western positivist tradition are often uncomfortable with the view that law has a moral component.¹⁹ If government should be one of "laws not 'men'," then moral judgments by self-appointed magistrates are suspect.

Judge Pal's dissent in the Tokyo War Crimes judgment claimed that the trial was "a sham employment of legal process for the satisfaction of a thirst for revenge. . . . Formalized vengeance can bring only an ephemeral satisfaction, with every probability of ultimate regret." Pal distinguished the war crimes tribunal from "genuine legal process," which alone could "contribute substantially to the 're-establishment of order and decency in inter-

16. Charter of the International Military Tribunal, 8 Aug. 1945, art. VI. See, e.g., Benjamin B. Ferencz, *An International Criminal Court: A Step Toward World Peace—A Documentary History and Analysis* 70–71, 453–68 (1980).

17. Lelio Basso, "Summing-Up of the Second Session," in *Prevent the Crime of Silence* 325 (K. Coates ed., 1971).

18. Richard A. Falk, *Human Rights and State Sovereignty* 195–201 (1981); see also Richard A. Falk, *Nuremberg: Past, Present, and Future*, 80 Yale L.J. 1501, 1525 (1971).

19. Difficulties in this regard were frequent in applying the Nuremberg norms to the Vietnam conflict. See, e.g., Professor Farer's expression of dismay "at the apparent discomfort of some of the [American Society of International Law] panelists" with his refusal "to clearly dissociate the moral from the legal issues involved." Tom J. Farer, *The Nuremberg Trials and Objection to Service in the Viet-Nam War*, 63 Proc. Am. Soc. Int'l L. 174 (1969).

national relations.'"²⁰ Many proponents of human rights and war crimes tribunals suggest, however, that a genuine legal order which goes beyond positive law does exist and has existed. To recognize and apply this law is a form of retribution, but not of vengeance. An unstated premise, which will now be considered, is that innovative proceedings are necessitated by failed governmental approaches.

C. The Insufficiency of Governmental Approaches

National and international governmental tribunals are often unable or unwilling to implement international human rights standards. In analyzing the World Court's difficulties, Richard Falk notes governments' "short-term cycles of accountability to their national electorates (or if they are authoritarian governments, to the equally short-term expectations of their elites or party-mechanisms)."²¹

Domestic courts implement human rights or Nuremberg principles only with great trepidation. In the United States this was manifest during the Vietnam war, leading many analysts to conclude that, at least in a wartime situation, relief on international law claims would never be forthcoming; "To that extent . . . the Nuremberg principles are without legal effect in domestic courts."²² With respect to human rights standards, the initial optimism spawned by the *Filartiga* decision²³ (in which a federal circuit court of appeal upheld the award of a tort recovery to a Paraguayan doctor whose son was tortured and killed by a member of the military police) was short lived.²⁴ Nicaraguan, German, and French citizens were unable to recover for *contra* brutality (including torture) because US officials and paramilitary organizations were extended sovereign immunity.²⁵ Victims of a Palestinian terrorist attack were unable to recover from the Libyan government (exempt as a sovereign state) or from the Palestine Liberation Organization (because

20. *Tokyo War Crimes Judgment*, excerpted in Falk, *supra* note 18, at 124.

21. Richard A. Falk, *Reviving the World Court* 19 (1986).

22. Jonathan M. Fredman, *American Courts, International Law, and the War in Vietnam*, 18 Colum. J.L. & Soc. Probs. 295, 346 (1984).

23. *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), *on remand*, 577 F. Supp. 860 (E.D.N.Y. 1984). For background and analysis, see Richard P. Claude, *The Case of Joelito Filartiga and the Clinic of Hope*, 5 Hum. Rts. Q. 275 (1983).

24. See, e.g., Karen Holt, *Filartiga v. Pena-Irala After Ten Years: Major Breakthrough or Legal Oddity?*, 20 Ga. J. Int'l & Comp. L. 543 (1990).

25. *Sanchez-Espinoza v. Reagan*, 568 F. Supp. 596 (D.D.C. 1983), *aff'd* 770 F.2d 202 (D.C. Cir. 1985). On appeal, Judge Scalia focused extensively on the separation of powers. *Sanchez-Espinoza*, 770 F.2d at 206-09. A noteworthy part of Scalia's argument is his extension of the executive branch's discretion in matters of foreign policy to the private organizations which supported and trained the "contras." *Id.*

human rights were said to be legally obligatory only with respect to sovereign states).²⁶

The primary reason for the failure of governmental approaches is the simplest: governments are often criminal. In part because of government established rules like the UN Charter's Article 2, Section 7, which exempts domestic affairs from interference by the UN, noncriminal governments are reluctant to raise human rights questions.²⁷ This reluctance is reinforced by the subordination of human rights to geopolitical concerns. Human rights initiatives are therefore more likely to come from individuals and nongovernmental organizations, rather than from governments.

D. Human Rights Tribunals: A Seldom-Discussed Approach

The Nuremberg principles and the rise of human rights NGOs have received extensive attention from scholars and the public; nongovernmental groups which attempt to use public hearings or trials to implement human rights standards, however, are generally ignored. A plausible explanation is that the latter groups are of interest more for their potential than for concrete achievements.

Nongovernmental tribunals differ from other human rights NGOs, such as the International Commission of Jurists and Amnesty International. Two distinguishing characteristics are that the proceedings are designed to publicly assess information already gathered by experts or brought to the tribunal by witnesses, rather than to provide new information, and that participants in and organizers of the proceedings usually have easily identifiable ideological commitments and motivations. Such commitments and motivations are usually, though not always, acknowledged.

Tribunals constitute a small proportion of nongovernmental activity. Nevertheless, each one catalyzes additional proceedings and activities. An International Tribunal on Crimes against Women, for instance, was influenced by the First Russell Tribunal's idea that "oppressed peoples have the right to dissociate themselves from those definitions of crimes which have been developed by their oppressors to serve their own interests."²⁸ The Permanent Peoples' Tribunal grew out of the Second Russell Tribunal. The

26. *Tel-Oren v. Libyan Arab Republic*, 726 F. 2d 774 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1003 (1985). Judge Bork's concurrence took issue with the *Filartiga* decision. *Id.* at 819–21. He argued that the Alien Tort Claims Act of 1789 was an antipiracy statute, not to be applied to human rights violations. *Id.*

27. "Governments still have not shed the attitudes that, even when they have promised to do better, how they treat their own habitants is their own business." Louis Henkin, *How Nations Behave* 235 (2d ed. 1979).

28. Diana Russell & Nicole Van de Ven, *Crimes Against Women* 219 (1984).

Sakharov Hearings fostered similar investigations of human rights in Cuba and East Germany, sponsored by other organizations. Tribunals have, in fact, become a popular strategy for implementing human rights.

II. THE ORGANIZATIONS AND INDIVIDUALS BEHIND THE TRIBUNALS

Nongovernmental tribunals that apply international legal standards to human rights violations are best understood by examining the perspectives of sponsoring organizations and of the individuals who played leading roles in the tribunals' creation.

A. Organizations Promoting Human Rights Tribunals

A diverse group of organizations has sponsored nongovernmental tribunals: the National Lawyers Guild (United States), the Green Party (Germany), Lawyers for Nuclear Disarmament (United Kingdom), the Indian Peoples' Human Rights Commission, the International Society for Human Rights (German chapter), and the International Commission of Enquiry into Violations of Human Rights in Chile (multinational, but headquartered in Finland) are but some of these organizations. Three such organizations have had series of tribunals or hearings probing human rights issues: the Bertrand Russell Peace Foundation, the Lelio Basso Foundation, and the International Sakharov Committee.

1. *The Bertrand Russell Peace Foundation (BRPF)*

The BRPF sponsored four tribunals: on the United States and its allies' war crimes in Vietnam, on repression in Latin America, on West German *Berufsverbote*, and on rights of indigenous peoples in the Americas.²⁹ The Foundation's tribunals were extensive and expensive. Following extensive

29. The first tribunal's deliberations are published as International War Crimes Tribunal, *Against the Crime of Silence: Proceedings of the International War Crimes Tribunal* (John Duffett ed., 1968), and *Prevent the Crime of Silence*, *supra* note 17. See also tribunal member Jean-Paul Sartre, *On Genocide* (1968). The Latin America tribunal's first session is reported in Bertrand Russell Peace Foundation, *Repression in Latin America* (1975/1976) and several pamphlets. The report of the tribunal on *Berufsverbote* is Third International Russell Tribunal, *Zur Situation der Menschenrechte in der Bundesrepublik Deutschland* (1978). On the most recent tribunal see Fourth Russell Tribunal, *supra* note 3. See also, generally, the Russell Foundation's Periodicals: *Spokesman*, *ENDpapers*, and the *London Bulletin*.

investigation, two week sessions were held (with two or three sessions per tribunal).

Tribunals are only one form of the Foundation's peace and human rights activity. The Foundation has an active program of publication, sponsors conferences dealing with theoretical issues, circulates statements of protest against a wide range of human rights violators, and assists Britain's human rights and disarmament movements. Its last major investigation of a human rights issue, dealing with Lebanon, Israel, and Palestine, was billed as a hearing rather than a tribunal.³⁰ The result of the investigation was not a hearing or verdict at all, but rather a compilation of testimony and reports from numerous organizations' inquiries. The left side of the tribunal field has therefore been occupied increasingly by the Basso Foundation.

2. *The Lelio Basso Foundation*

The Lelio Basso Foundation's Permanent Peoples' Tribunal (PPT) resulted from the Second Russell Tribunal, and has held sessions on the Armenian genocide, Guatemala, Nicaragua, the Philippines, Eritrea, Zaire, Afghanistan, and other topics.³¹ The tribunal sessions are publicized by the nongovernmental International League for the Rights and Liberation of Peoples. The PPT was designed to differ from the Russell Tribunal in two ways. First, as the name indicates, it is a permanent body of fifty to sixty individuals, from which small groups are selected to hear specific cases. Second, the PPT seeks to implement not only traditional international legal standards, but also the Universal Declaration of the Rights of Peoples (the Algiers Declaration).³²

The PPT follows detailed rules of procedure, set forth in its 1981 Statute. Unlike other tribunal sponsors, which make decisions on what the tribunal topics shall be, the Basso Foundation screens complaints from organizations, movements, and governments.³³ If the complaint is worthy, a jury is recruited

30. The Foundation periodical refers to "14 Tribunal Hearings held in many parts of the world." *Lebanon Tribunal*, 56 London Bull. 107 (1985). The book which resulted, *Israel's War with Lebanon* (F. Lamb ed., 1984), incorporates testimony from the Nordic and MacBride Commission hearings.

31. See Permanent Peoples' Tribunal, *A Crime of Silence: The Armenian Genocide* (1985); *Guatemala: Tyranny on Trial* (S. Jonas ed., 1984); Richard A. Falk, *On Trial: Reagan's War Against Nicaragua* (1985); Permanent Peoples' Tribunal, *Philippines: Repression and Resistance* (1980); Permanent Peoples' Tribunal, *Proceso a la Impunidad de Crimenes de Lesa Humanidad* (1989); and Permanent Peoples' Tribunal, *Proceedings: The Eritrean Case* (1980).

32. See *infra* notes 71–72 and accompanying text for discussion of the Algiers Declaration.

33. An example is the Permanent Peoples' Tribunal; see *Tribunal on the Policies of the International Monetary Fund and the World Bank, West Berlin, September 26–29, 1988: Verdict*, 20 Int'l J. Health Servs. 329 (1990) (meeting at the request of the American Association of Jurists).

for a two- to four-day session. Extensive research, sometimes including an on-site visit by an investigatory commission, precedes the hearing.

3. *The International Sakharov Committees and Hearings*

The International Sakharov Hearings, headquartered in Copenhagen, focused on Soviet and Eastern European violations of international human rights standards. The hearings were described as "one of the most established tools for informing the West about the situation with human rights in the USSR."³⁴ The hearings have varied considerably, however, in breadth and depth.

The Common Committee of East Exiles in Denmark (now the International Sakharov Committee) sponsored the first hearing, on human rights in the Soviet Union, in 1975. Soviet dissident Andrei Sakharov permitted his name to be used in conjunction with the hearings and suggested topics for deliberation.³⁵ The first hearing publicized violations of the Final Act of the Conference on Security and Cooperation in Europe (the Helsinki Declaration). The next hearings dealt with Soviet and Eastern European rights violations (Rome, 1977), labor questions in the Soviet Union and Eastern Europe (Washington, DC, 1979), and oppression of creative workers in the Soviet Union and the situation in Poland (Lisbon, 1983). The fifth hearing (London, 1985) returned to specifics of the Helsinki Declaration, drawing on human rights experts as well as witnesses who had experienced oppression.

Preparation for the Sakharov Hearings was often undertaken by groups other than the International Sakharov Committee. For the US hearing, the AFL-CIO was extensively involved.³⁶ The International Sakharov Committee coordinated additional human rights hearings (not considered "Sakharov Hearings") on Afghanistan, Raoul Wallenberg, and Cuba.

One source of the Sakharov Hearings' legitimacy was the involvement and support of American and European political leaders. The initial hearing was chaired by Ib Thyregod, Barrister of the Danish Supreme Court, and held in the Danish parliament building. Portuguese Prime Minister Mario Soares served as honorary Chair of the Fourth Hearing (held in Lisbon),

34. L. Alexeyeva, *Despite Pressure and Persecution: On the Sakharov Hearings, 1984 Russia* xx, 55 (1984). The first hearing is published as *The International Sakharov Hearing* (Marta Harasowska & Orest Olhovych eds., 1977); the fourth hearing as *Sakharovskie Slushania* (Seymon Reznik ed., 1985); the fifth hearing as *The Fifth International Sakharov Hearing* (Allan Wynn ed., 1986). For coverage of the Sakharov Hearings and of other hearings and tribunals directed at the socialist bloc, see generally the International Sakharov Committee's publication, *Danizdat*.

35. Andrei Sakharov, *Memoirs* 474 (Richard Lourie trans., 1990) (crediting son-in-law Efrim Yankelovich with "the exclusion of any false, unsubstantiated, or sensational testimony").

36. For excerpts see International Sakharov Hearings: Third Session—U.S.A., *Testimony on Violations of Human Rights, with Emphasis on Workers' Rights in the Soviet Union and Eastern Europe*, 34 AFL-CIO Free Trade Union News 1–15 (Nov. 1979).

delivered the closing speech, and invited the participants to a closing dinner at his home.³⁷

B. Tribunal Participants: World Order Activists, International Lawyers, and Policymakers

Individuals who play major roles in tribunal proceedings share a desire to reform or transform international law. Princeton Professor Richard Falk, Irish jurist Sean MacBride, the Italian legislator, lawyer, and sociologist Lelio Basso, and British physician Allan Wynn exemplify tribunal participants, as do the many creative artists who participate in tribunal activities.

1. An International Legal Scholar/Activist: Richard Falk

Scholar/activists who participate in tribunals are often accomplished experts in the fields of history and theology. Some have contributed to human rights scholarship, among them J.E.S. Fawcett (a former member of the European Commission on Human Rights who served on the Baltic Tribunal), Paul Sieghart (a British legal scholar who testified at the International Sakharov Hearing), and Richard Falk (who participated in the PPT, the MacBride Commission, and a Lawyers Tribunal on Nuclear War).

Many of Falk's writings convey a sense of despair. He claims that "the most important trend in the future, unfortunately, is the continuing deterioration of international law."³⁸ From this deterioration and "the decline of normative order," Falk maintains, comes the need for a "new Grotius" who will reconceptualize international theory and practice.³⁹ Nongovernmental tribunals may be an arena from which the new Grotius will emerge.

Tribunals also successfully avoid the "crackpot realist" traps which Falk condemns and reflect the criteria which Falk set forth for the "world order activist": a lack of humility, a "cosmic" sense of humor, a willingness to welcome contradictions, and an "erotic passion" for justice rather than power.⁴⁰ In commenting on Falk's criteria, Saul Mendlovitz noted that the only programs which can counter new problems of nuclear annihilation and global repression are those which have only one chance in fifty of achieving their objectives;⁴¹ thus the utopian aspect of tribunal activity need not militate against their study.

37. See Alexeyeva, *supra* note 34, at 56.

38. Richard A. Falk, *The Future of International Law*, 1981 Proc. Am. Soc. Int'l L. 8, 10 (1981).

39. See Richard A. Falk, *Introduction* to C. Edwards, *Hugo Grotius: The Miracle of Holland* (1981).

40. Richard A. Falk & Saul Mendlovitz, *A Code of Honor for World Order Activists*, 8 The Center Report 19, 19 (Oct. 1975).

41. *Id.* at 20.

Falk has reservations about popular participation which are reflected in the structuring of human rights tribunals; they are simultaneously elitist and a challenge to current elites. Falk stressed the latter aspect at the PPT on Nicaragua, indicating that the PPT "tries to reinforce this basic claim: that law belongs to all of us, and that we must reclaim it from the destructive forces that are crystallized in imperial power politics at this time."⁴² Tribunal participants are not the masses, however. Falk finds this fortunate, for the reason that "[t]he simplistic politics of 'power to the people' provides no normative assurance that a better civic order or more enlightened view of international relations would emerge."⁴³ Thus the hope is that tribunal members will be more enlightened than either governmental leaders or the general public.

*2. Policymakers, Advocates, and Critics:
Sean MacBride and Lelio Basso*

For several governmental policymakers, tribunal participation stems from a conviction that new international legal tactics and strategies are needed to counter persistent patterns of human rights violations. Tribunal members have served the governments of several countries, including Greece (Prime Minister George Papandreou), Germany (Petra Kelly, MP), the United States (Justice Arthur Goldberg), and Mexico (President Lazaro Cardenas). Sean MacBride and Lelio Basso exemplified extensively involved national and global leaders.

MacBride received the Nobel Peace Prize and served in many leadership positions, among them Irish Foreign Minister, UN Commissioner for Namibia, and Chair of Amnesty International's Executive Committee. His tribunal participation began with his appointment to the PPT. He was a juror at the PPT session on the Armenian genocide, chaired a commission investigating the Israeli invasion of Lebanon (often dubbed the "MacBride Commission"), was chief instigator of a hearing on the Irish penal system, and was Chair of the London Nuclear Warfare Tribunal.

MacBride shared Richard Falk's view of a world in crisis, seeing "a steady decline in all standards of public and private morality" since World War II, when "all the hitherto accepted rules of humanitarian law were violated."⁴⁴ The crisis is aggravated by a lack of leadership and is one which lawyers can have a major role in resolving.

42. Falk, *supra* note 31, at 20.

43. Richard A. Falk, *Solving the Puzzles of Global Reform*, 11 *Alternatives* 45, 55 (1986).

44. Sean MacBride, *Commencement Address at Suffolk University Law School, Boston, Mass.* (8 June 1980), 4 *Suff. Transnat'l L.J.* 243, 243 (1980). See also Sean MacBride, *The Enforcement of the International Law of Human Rights* 1981 U. Ill. L. Rev. 385 (1981).

Institutional reforms are especially important in MacBride's view. The aims of peace and recognition of fundamental rights and freedoms can be "most readily achieved by the development of international law and by the acceptance of its precepts by governments." MacBride bemoaned the actions of governments that have "brought international law and the rule of law into public contempt."⁴⁵

Lelio Basso was a committed socialist theoretician, and global equity was a central part of his socialism. He was a leader of the Italian Socialist Party (PSI), serving as its General Secretary. Basso's tribunal involvement began with the Stockholm Hearing of the First Russell Tribunal and culminated with his transformation of the Second Russell Tribunal into an ongoing structure for nongovernmental hearings: the PPT.

Basso felt that major legal initiatives emanate from human conscience. In his inaugural discourse at the Second Russell Tribunal, Basso argued that "every attack on basic human rights is an attack on mankind as a whole. . . . The entire international community has the right to see that laws dictated by the joint popular conscience for the respect of man shall be honoured everywhere, and by everyone."⁴⁶ The law which Basso would have enforced, therefore, was not positive law, but an evolving law which comes from a popular conscience.

The popular conscience must condemn imperialism (in the case of the Second Russell Tribunal, US imperialism in Latin America), Basso insisted. "The imposition of neo-colonialism as a way of life on all populations on the road towards development is an essential part of this imperialist system. Against a people which will not subordinate itself . . . torture, concentration camps, and imperialism are essential elements of world-wide neocolonialist wars."⁴⁷ To combat imperialism requires new forms of law, and Basso hoped to create a new form of law through the Universal Declaration of the Rights of Peoples (Algiers Declaration).⁴⁸

3. Scientists and Medical Professionals: Dr. Allan Wynn

Nobel Prize winners in Physics (Alfred Kastler) and Biology (George Wald) are PPT members. Among the most active International Sakharov Hearing members was an Australian-born heart specialist, Dr. Allan Wynn. Wynn was asked by Sakharov's son-in-law, Efrim Yankelovich, to organize the fifth session of the Hearings, held in London in 1985. Wynn formed the first Western committee protesting the political abuse of psychiatry. He later

45. See MacBride, *Enforcement*, *supra* note 44, at 389.

46. Lelio Basso, *Repression in Latin America* 8 (1976).

47. Basso, *supra* note 17, at 326.

48. See *infra* notes 71–72 and accompanying text for discussion of the Algiers Declaration.

became involved in committees for the release of Sakharov, Grigorenko, and Bukovsky.⁴⁹

Wynn's criticism of Soviet practices took many forms. He protested the awarding of the Nobel Peace Prize to the International Physicians for the Prevention of Nuclear War (IPPNW) because IPPNW Codirector Yevgeni Chazov signed a 1973 letter criticizing Sakharov.⁵⁰

Wynn is one of many nonlawyers participating in tribunal proceedings. The participation of nonlawyers in the global human rights discussion has the two effects of weakening the barrier separating law from humanitarian activity and helping to create a broad human rights constituency. Although some nonlawyers have been accused of subverting the legal procedures of tribunal sessions,⁵¹ others, including Wynn, have worked to return tribunals to a focus on law. The hearing which Wynn chaired was designed to supplement witnesses' personal testimony with expert documentation of violations of international law.

4. Creative Artists

Novelists, poets, and playwrights are an important part of the tribunal picture. The jury for the 1986 Paris Tribunal on Cuba was composed primarily of individuals from the creative arts, among them actors Yves Montand and Haing Ngor and authors Rene Tavernier and Susan Sontag. Playwrights, among them Peter Weiss, Eric Bentley, Eugene Ionesco, and Tom Stoppard, also are frequent tribunal participants.⁵²

III. COMPOSITION, EVIDENCE, LEGAL STANDARDS, AND VERDICTS

Some tribunals devote extensive attention to procedure and follow definitive rules. Others may merit critics' suggestions that they reached their verdicts

49. See Allan Wynn & Victor Fedoseev, *An Interview with the Chairman of the Fifth Sakharov Hearing*, 29 Radio Liberty Res. Bull. (3 Apr. 1985); Allan Wynn, *Notes of a Non-Conspirator: Working With Russian Dissidents* (1987); Obituary of Dr. Allan Wynn, *The Times* (London), 2 July 1987, at 14.

50. Wynn called the award "the greatest mistake the Nobel Committee ever made." *Nobel Selectors Embarrassed by Revelation of Sakharov Attack*, *The Times* (London), 7 Dec. 1985, at 5.

51. See, e.g. Anthony A. D'Amato, Book Review, 57 Cal. L. Rev. 1033, 1035 (1969), and Benjamin B. Ferencz, *War Crimes Law and the Vietnam War*, 17 Am. U. L. Rev. 403, 423 n.91 (1968).

52. All four of these playwrights have written works depicting authoritarian governmental officials abusing their power to the detriment of individual liberty. At the close of the Dewey Commission investigation, Trotsky compared the Moscow trials to "a play, with the roles prepared in advance. . . . The play can be performed well or badly; but that is

before deliberations began. The quasi-legal nature of tribunal proceedings is apparent in the selection of jurors who are advocates, as well as in the evidence, law, and verdicts of tribunal proceedings.

A. Selection and Function of Tribunal Jurors, Judges, and Questioning Panel Members

The composition of the tribunals varies greatly, as do the procedures by which the “jurors,” “judges,” or questioning panel members are appointed by tribunal organizers. The jurors’ role has not always been clearly separated from that of the prosecution, although the PPT addressed this problem in structuring its 1979 Statute.⁵³

1. Tribunal Sponsors and Participants

Tribunals generally separate the roles of sponsors, administrators (often a Secretariat with a Secretary-General), and tribunal members. Tribunal members are usually assigned the role of judges or jurors, but sometimes appear to act as prosecutors. They may, for instance, make presentations at the tribunal session.

Tribunal critics may focus on the sponsors, rather than the jurors and officers who conducted the hearing. The Israeli government chose to attack an MP who organized the MacBride tribunal, rather than the Commission.⁵⁴ Bertrand Russell proved to be a convenient target for critics of his Vietnam tribunal. In addition to *ad hominem* attacks from Dean Rusk and Charles de Gaulle, British journalist Bernard Levin said that Russell had “fallen into a state of such gullibility, lack of discrimination, twisted logic and rancorous hatred of the United States that he has turned into a full-time purveyor of political garbage indistinguishable from the routine products of the Soviet machine.”⁵⁵ As Russell Tribunal proponents pointed out, such criticisms are “red herrings,” diverting attention from the hearing panel and the quality of the proceedings.

a question of inquisitorial technique and not of justice.” Deutscher, *supra* note 7, at 377 (quoting Trotsky).

53. International Lelio Basso Foundation, *For the Rights and Liberation of Peoples* 19–20 (1984).

54. See The International Commission, *Israel in Lebanon: The Report of the International Commission to Enquire Into Reported Violations of International Law by Israel During Its Invasion of Lebanon* (1983); William Farrell, Book Review, 17 Colum. Hum. Rts. L. Rev. 121, 122 (1985).

55. Bernard Levin, *Bertrand Russell: Prosecutor, Judge, and Jury*, N.Y. Times Magazine, 19 Feb. 1967, at 57.

2. *Who Are the Jurors?*

Half of tribunal members generally have legal qualifications, and the other members are accomplished in the arts, religion, science, or education.⁵⁶ The lawyers involved include magistrates, advocates, and scholars (who may use the historical or sociological aspects of their legal training).

Among the regular contributors to the Russell Tribunals and PPT have been Nobel Laureate and Harvard biologist George Wald, Bishop Dom Sergio Mendez (of Cuernavaca, Mexico), German legal scholar and political scientist Wolfgang Abendroth, Yugoslav legal scholar/historian Vladimir Dedijer, Japanese lawyer and civil libertarian Makoto Oda, and French theologian George Casalis. Leaders of major human rights organizations may play important roles. Amar Bentoumi, Secretary-General of the International Association of Democratic Lawyers and Ex-Minister of Justice for Algeria, is a PPT member and was a juror for its Eritrea and Guatemala sessions. Simon Wiesenthal (Director of the Jewish Documentation Centre in Vienna), Jerome Shestack (President of the International League of Human Rights), and Daniel Jacoby (Vice-President of the International Federation for Human Rights) have served as Sakharov Hearing panel members.

3. *Political Justice*

Although tribunal organizers generally proclaim that their proceedings are "nonpolitical," members almost always have political tendencies in common. Not surprisingly, the members' ideology usually reflects that of the organizers. The Russell Tribunal and PPT members tend to be leftists, though usually not pro-Soviet.

Tribunal members and sponsors are very sensitive to charges of bias. For instance, West German *Berufsverbote* were a tribunal topic, but East German rights violations were not. The possibility of a Russell Tribunal on the East bloc was raised at the time of the tribunal on *Berufsverbote*, but rejected.⁵⁷ The Foundation and Tribunal members should not be perceived as apologists for East bloc repression, however. Many have taken active roles in campaigns against human rights violations in socialist countries.

The Sakharov Hearing members tended to be Soviet emigres, American, or European, and centrist or rightist. Simon Wiesenthal has been a member of every Sakharov Hearing panel, but the other questioners have varied greatly. Hearing location has played a factor, with a disproportionate number

56. Tribunals may change over time. Lawyers played a greater role in the later Sakharov Hearings. The Second and Fourth Russell Tribunals had more third world representation than did the Vietnam tribunal. Tribunal composition often reflects the session's topic.

57. See *A Tribunal on Eastern Europe?*, 45 London Bull. 175–76 (Spring 1990).

of questioners hailing from the country or region in which the proceedings are held.

Since implementing human rights depends on a coherent movement, one might hope that tribunals would have overlapping juries. This has not been the case, however. A lone exception to the rule against co-membership in the Russell/Basso Tribunals of the left and the Sakharov Hearings of the right is Danish Social Democrat MP and law professor Ole Espersen, a questioner for the Second (Rome) Sakharov Hearing and an International Advisory Council member for the Fourth Russell Tribunal. Espersen was also a member of the Nordic Commission, which conducted a nongovernmental hearing on Israel's involvement in Lebanon in conjunction with Sean MacBride's International Commission.⁵⁸

B. Forms of Evidence Considered

Tribunals' methods for acquiring evidence include onsite investigations, presentations by witnesses, use of other nongovernmental organizations' findings, and historians' accounts. The quantity of evidence produced depends on the length of the proceeding. No nongovernmental tribunal has approached the scope of the Nuremberg International Military Tribunal, which met for 216 working days, held 403 open sessions, heard testimony from 143 defense witnesses, and had close to 200,000 affidavits read into the record.⁵⁹ Two types of evidence merit discussion here: witnesses testimony, and the use of secondhand reports.

1. Witnesses: Firsthand and Expert Testimony

Firsthand and expert testimony is obtained from witnesses, with their number and qualifications varying from tribunal to tribunal. Often testimony is heard by only a subset of tribunal members, or by a special investigatory commission. The PPT session on the Philippines heard from only six witnesses: a worker, a peasant, a student, a writer and ex-government employee, a member of a tribal minority, and a doctor.⁶⁰ That tribunal's session on the Armenian genocide heard from four survivors of the massacres; its session on Nicaragua heard from eight witnesses; and its session on Eritrea from

58. See Nordic Commission (Oslo, Oct. 1982), *Witness of War Crimes in Lebanon* (1983); *Ma Ekkoet Af Vidernes Beretninger Fra Sakharov Horingen I Rom Ringe Ud Over Hele Verden*, 7 Danizdat x, 2 (Jan. 1978); Fourth Russell Tribunal, *supra* note 3, at 124.

59. Norman E. Tutorow, *War Crimes, War Criminals, and War Crimes Trials: An Annotated Bibliography and Source Book* 11 (1986).

60. Permanent Peoples' Tribunal, *Philippines: Repression and Resistance*, *supra* note 31.

eight. The First Sakharov Hearing heard from twenty-four witnesses, while an International Society for Human Rights Hearing on East Germany heard from twenty-one.⁶¹

Tribunals are sometimes criticized for their selection of witnesses. Although viewing the International Commission of Enquiry as contributing to a healthy dialogue about Israel's Lebanon invasion, one reviewer noted that "[t]he witnesses include five members of the PLO, none from the Israeli government," and that "evidence so produced remains uncertain because Israel has not cross-examined the witnesses."⁶² The reason for this weakness was, not surprisingly, that the Israeli government did not cooperate with the investigation.

The Sakharov Hearings were subjected to similar criticism. The Russell Foundation wrote to Sakharov expressing disappointment that he had lent his name to the Copenhagen hearing.⁶³ The Foundation criticized one key witness in particular, Avraham Shifrin, whose testimony to a US Senate Committee was described as "a stream of wild and totally unsubstantiated statements, liberally mixed with obscurantist prejudices."⁶⁴ Shifrin's rhetoric was strong: he referred to the "dark world which is preparing to slay you and your children," labelled all trade with the Soviets "suicide," and urged people "to impede the Soviet butchers and liquidate the terrible threat from the East."⁶⁵ Most of his testimony, however, was a firsthand account of his labor camp experiences, an account reminiscent of Solzhenitsyn.

2. Secondhand Reports and Historians' Accounts

Secondhand reports, including findings of other investigators, are usually considered. Documents and films may be used: the Second Russell Tribunal said a filmed interview with Chilean General Viaux proved "decisively" that the Chilean military coup was not an act of self-defense, but was instead planned from the start of the Popular Unity government.⁶⁶ The PPT Session on Nicaragua considered reports prepared by the Center for Defense Information, the Central American Historical Institute, the Nicaraguan foreign ministry, and US State Department, and reports prepared for the tribunal by Richard Falk (also a juror for the tribunal), Director of the Council on Hem-

61. *The International Sakharov Hearing*, *supra* note 34; International Society for Human Rights (German Section), *Internationale Anhoerung uber die Menschenrechtssituation in der DDR* (1984).

62. Harry H. Almond, Jr., Book Review, 78 Am. J. Int'l. L. 726, 726 (1984).

63. *Sakharov Letter: A Kick of Conscience*, 40 London Bull. 210 (Sum. 1976).

64. *Id.*

65. *The International Sakharov Hearing*, *supra* note 34, at 74.

66. Bertrand Russell Peace Foundation, *supra* note 29, at 155-56.

ispheric Affairs Larry Birns, international lawyer Joe Verhoeven, and others.⁶⁷ The reports which jurors have an opportunity to read are generally extensive. Indeed, they are so extensive that a juror who reads them all will spend more time in preparation than at the tribunal itself.

Historians' accounts are used to bring contextual accuracy to the deliberations. This was especially important for the PPT Session on the Armenian Genocide,⁶⁸ where only a few witnesses could offer firsthand testimony and revisionist accounts discounting the genocide were widely circulated.

C. The Legal Standards

Legal standards applied by tribunals include some conventional standards applied conventionally, some conventional standards applied unconventionally, and some unconventional standards. Burns Weston indicated that with regard to the nuclear threat, the legal profession must "be receptive to more than we find in the procrustean bed of Article 38 of the Statute of the International Court of Justice" and must "be receptive to seeing our profession as a noble undertaking as well as a vocational craft."⁶⁹ It is in this spirit that tribunals select and develop their legal standards.

1. Conventional Legal Standards: Treaties and Custom

Sections of the UN Charter and Human Rights Covenants are frequently applied. Since human rights problems in third world societies are often attributed to superpower intervention, anti-interventionist provisions of the Charter are cited regularly. General Assembly resolutions and UN conference proclamations are given greater weight than in other international fora. Extensive reference is made to the Universal Declaration of Human Rights as indicative of either custom or international law.⁷⁰

The Sakharov Hearings placed special importance on the Final Act of the Conference on Security and Cooperation in Europe (the Helsinki Declaration). The first Sakharov Hearing had witnesses offer firsthand testimony of human rights violations. The fifth Hearing used expert witnesses to assess Soviet rights violations during the first ten years of the Declaration.

67. Falk, *supra* note 31.

68. Permanent Peoples' Tribunal, *A Crime of Silence*, *supra* note 31.

69. Burns H. Weston, *Remarks: The Role of Lawyers in Preventing Nuclear War*, 76 Proc. Am. Soc. Int'l. L. 332, 341 (1982).

70. See, e.g. Bertrand Russell Peace Foundation, *supra* note 29.

2. New Sources of "Law"

New sources of "law" are invoked by tribunal members, most notably the Algiers Declaration (Universal Declaration of the Rights of Peoples) used by the PPT. That Declaration was prepared, discussed, and approved at a 1976 international conference of jurists, politicians, sociologists, and economists. It is "a framework of rights asserted by and for the peoples of the world over and against the claims and activities of governments, multinational corporations, and international institutions."⁷¹ The PPT regularly refers to the Declaration in its deliberations. The other tribunals do not draw on the Declaration, nor has it been used by governmental or nongovernmental human rights monitors.

The Algiers Declaration is even cited where conventional rights standards could be applied to the same violations. The PPT session on the Philippines concluded that "[t]he basic Marcos-US role in the Philippines contravenes virtually every provision of the Algiers Declaration."⁷² Among the provisions violated were Article 2 (every people has the right to the respect of its national and social identity), Article 6 (every people has the right to break free from any colonial or foreign domination), and Article 10 (every people has the right to a fair evaluation of its labor). Owing to their vagueness and aspirational character, such articles would be difficult to implement or enforce from a traditional international legal perspective. But since the Declaration's proponents view their work as part of a moral, legal, and political movement, it serves their purposes well.

3. Morality as a Legal Standard

Legal standards are frequently intertwined with political or moral standards. In part this reflects a dissatisfaction with the legal standards and a desire to build a political movement. It also reflects a realization that human rights monitoring must extend beyond merely distinguishing legal from illegal practices.⁷³ As was made clear at Nuremberg, repression is often bolstered by law, and human rights advocacy is often illegal.

71. Richard A. Falk, *Human Rights and State Sovereignty* 152 (1981). The Universal Declaration of the Rights of Peoples (Algiers Declaration) is reprinted in *Basic Documents in International Law and World Order* 413–15 (Burns H. Weston et al. eds., 1980).

72. Permanent Peoples' Tribunal, *Philippines: Repression and Resistance*, *supra* note 31, at 272.

73. See, e.g., Michael Stohl et al., *State Violation of Human Rights: Issues and Problems of Measurement*, 8 Hum. Rts. Q. 592, 596 (1986) ("There are . . . so many ways in which state policies involving violations can be made to conform to the country's legal code (and vice versa), as well as so many variations in legal codes across countries, that any definition of human rights abuse that includes the attribute of 'illegality' will probably create more problems than it solves.").

The "crimes" publicized by tribunals are often cited without reference to positive law: it is the inhumane character of certain practices which makes them criminal.⁷⁴ This raises questions of procedure, since where tribunals investigate the rights of indigenous peoples or superpower intervention practices innumerable inhumane practices might be condemned. The methods by which the tribunal selects and evaluates a small subset of governments' moral crimes merit careful scrutiny.

4. *Procedural Legal Standards*

Tribunal procedures conflict with many norms for legal proceedings. Jurors may play active roles in questioning witnesses, rather than relying on cross-examination by defending and prosecuting attorneys. Jurors may make presentations to the tribunal which become part of the evidence examined by other panel members. Questioners may ask legal questions of witnesses who have no legal training and are present at the tribunal solely to offer testimony of their personal experiences. Questioning may also extend to issues beyond the tribunal's mandate.⁷⁵

Procedural rigor, especially if interpreted in the light of rules comparable to those employed by the International Court of Justice or US domestic courts, is seldom a high value for nongovernmental tribunals. The tribunals exist in part because procedural rules or problems of jurisdiction are perceived as handicapping governmental tribunals. Nor are tribunal structures conducive to the imposition of procedural restrictions.⁷⁶ A presiding officer is unlikely to direct the questioning of a Nobel Laureate in literature whose participation was sought after by the tribunal.

Procedures evolve as tribunals progress. At the Coyoacan subcommission of the Dewey hearings, Carleton Beals pursued a line of questioning under which Trotsky would be presumed guilty until proven innocent, as

74. The International Tribunal on Crimes Against Women was based on "belief in the power of personal testimony to educate, politicize, and motivate" in ways that expert witnesses could not. In that tribunal "*all man-made forms of women's oppression were seen as crimes against women.*" Diana E. H. Russell & Nicole Van de Ven, *Crimes Against Women: Proceedings of the International Tribunal* 219 (1976) (emphasis in original).

75. See, e.g., D'Amato, *supra* note 51, at 1035 ("There was no sense of restraint about the hearings; everything was thrown in which could make the American forces look bad, including evidence of racial discrimination among American soldiers."). *But cf.* C. Julin, *The Judges Are Everywhere*, 204 *The Nation* 712 (1967) ("The sessions were characterized by unemotional and factual deliberation.").

76. Tribunal sponsors attempt to deal with this problem. See, e.g., Fourth Russell Tribunal, *supra* note 3, at 19 ("The president's . . . task is limited to conducting the session and to seeing that everyone sticks to the method."). A dispute among questioners at the First Sakharov Hearing led to a forcible ejection. See *Dr. Sakharov Appeals for Amnesty*, *The Times* (London), 18 Oct. 1975, at 4.

was the Soviet practice. Beals' colleagues criticized this approach.⁷⁷ The standard of proof in the full commission's deliberations evolved from "beyond a reasonable doubt" to "beyond all doubt";⁷⁸ Trotsky urged a requirement of "irresistible and crushing" evidence, not merely "convincing and sufficient" evidence.⁷⁹ As has happened with domestic courts, the standards are likely to become more certain with time and practice.

D. Verdicts and Findings

Verdicts and findings are generally unanimous and tend to show a common sense of purpose among tribunal members rather than compromise. The rhetoric of the verdicts and findings is stronger than the rhetoric in reports by such organizations as Amnesty International. The form may resemble that of a judicial proceeding, or it may be a legislated declaration or manifesto.

Verdicts and findings are often publicized with little description of the process which led to their composition or identification of "grey areas" in the law. They may resemble the programs of solidarity movements and include charges of "Nazi-like practices." Even tribunal sympathizers express wishes that tribunal rhetoric was more restrained.⁸⁰

The rare dissents address minor issues and are given little attention in tribunal publications. The identity of those who dissent or abstain is often not reported, since verdicts may be cast via an anonymous ballot. An exceptional instance of a question put to a jury failing to receive a majority verdict was at Third Russell Tribunal's First Session. Regarding one of the four questions put to the jury, the verdict was seven for, none against, one abstaining, and eight requiring more evidence.⁸¹ The other questions received unanimous votes.

Among the other tribunals in which dissent arose were the International

77. Preliminary Commission of Inquiry, *supra* note 7, at xvii–xviii, 52.

78. *Id.* at 6.

79. Trotsky, *supra* note 12.

80. See, e.g., Falk (1971), *supra* note 18, at 1501 (proceedings described as "one-sided" but consistent with more balanced assessments).

81. The question was, "Is the practice of Berufsverbote linked with discriminatory practices perpetrated by other bodies, especially, trade unions, professional organisations and in churches?" *The Third Russell Tribunal: West Germany—First Session Preliminary Report*, 43 London Bull. 140 (Summer 1978). Among the other three questions receiving a unanimous verdict was "Does the practice of Berufsverbote represent a serious threat to human rights?" At the Third Tribunal's second session one of thirteen jurors abstained on each of the eight questions. The only question on which there was strong dissent was whether there was "evidence of an overall trend towards greater censorship in the Federal German Republic which endangers the right of free expression of all kinds?" *Third International Russell Tribunal*, 44 London Bull. 163 (Spring 1979).

Commission to Enquire Into Israeli War Crimes in Lebanon (with two of six jurors dissenting from the finding of genocide), and the First Russell Tribunal, where disagreement arose regarding the degree of the allies' complicity in US war crimes.⁸² In no case has a minority or dissenting opinion been included in a tribunal publication.

IV. THE IMPACT AND POTENTIAL OF HUMAN RIGHTS TRIBUNALS

Although human rights tribunals seek to impose their findings on repressive governments, the effect is also directed at other targets: the legal community, the media, other opinion leaders, and the general public. Examination of human rights tribunals' impact thus far, the impact which their proponents anticipate, and their probable future impact indicates their idealist/utopian nature. Tribunal proponents emphasize not their current impact, but their potential contribution to a more humane world order.

A. The Impact Thus Far

The impact of human rights tribunals pales in comparison to the impact of other nongovernmental human rights efforts. Amnesty International and the World Council of Churches receive extensive media coverage for their human rights initiatives. Their conclusions are quoted in governmental assessments of human rights violations, and their officials are sometimes invited to testify before policymaking committees. In contrast, nongovernmental tribunals' conclusions are seldom quoted. Nevertheless, the tribunals have had an impact.

1. Reception From Scholars and the Media

Several international legal scholars refer to tribunals as interesting experiments but stop short of endorsement of the tribunal approach. Anthony D'Amato and colleagues relied extensively on testimony from the International War Crimes Tribunal in an analysis of Vietnam War Crimes.⁸³ With respect to the Tribunal's status, however, D'Amato argued that it "clearly got carried away with itself," and noted that "[m]embers of the panel often asked witnesses to make legal conclusions or to testify about irrelevant

82. The International Commission, *supra* note 54; International War Crimes Tribunal, *supra* note 29.

83. Anthony A. D'Amato et al., *War Crimes and Vietnam: The "Nuremberg Defense" and the Military Service Register*, 57 Cal. L. Rev. 1055, 1055 (1969).

matters.”⁸⁴ Nevertheless, as D’Amato noted, the tribunal procedures were not dissimilar to those of the Nuremberg and Tokyo War Crimes Tribunals.

Although some tribunals have fostered public discussion in selected countries, reaction has often been nonexistent or critical. Tribunals receive much more extensive coverage in Europe than in the United States; even the third Sakharov Hearing, held in the Senate Office Building with the participation of former Supreme Court Justice Goldberg, was covered more extensively by European correspondents than their US counterparts.⁸⁵ TASS reported favorably on a New York tribunal that investigated abuses by the Federal Bureau of Investigation⁸⁶ and unfavorably on the Baltic Tribunal. With respect to the latter, TASS’ reporting may have inadvertently focused attention on a proceeding which would otherwise have gone unnoticed.⁸⁷

2. Reception by Governments

Reaction of government officials is usually negative. The publishers of testimony from the first Sakharov Hearing complained that “the Hearing was largely ignored in the United States, possibly because Secretary of State Kissinger was still trying to expand his policy of detente.”⁸⁸ The Soviet government’s decision to hold a counterhearing, though, was interpreted as a sign of the tribunal’s success.

The Russell Tribunal received the most government reaction, virtually all of it negative. US Secretary of State Dean Rusk ridiculed the Vietnam Tribunal, saying that he had “no intention of playing games with a 94-year-old Briton.”⁸⁹ A copy of a letter that Russell sent to President Johnson was sent (by US officials) to an African head-of-state, who then resigned his post with the Russell Foundation.⁹⁰ French Premier Charles de Gaulle denied visas to Tribunal members in order to prevent a session from being held in Paris, complaining that it would exceed “the limits of international law and custom” and informing Tribunal member Jean Paul Sartre that “I have no need to tell you that justice of any sort, in principle as in execution, emanates

84. D’Amato, *supra* note 51.

85. See Dorothy Rabinowitz, *Notes on the Soviet System*, Wall St. J., 10 Oct. 1979, at 22. The US Radio Liberty, though, broadcast coverage of the Hearings to the Soviet Union.

86. See New York ‘Tribunal’ Accuses FBI of Suppressing Human Rights, 3 FBIS Daily Report, Soviet Union, No. 208, 6 (28 Oct. 1977).

87. See Toomas Ilves, *Soviet Propaganda Campaign Against Baltic Emigres Backfires*, Radio Free Eur. Res. 3–7 (26 July 1985).

88. *The International Sakharov Hearing*, *supra* note 34, at 9–10.

89. International War Crimes Tribunal, *supra* note 29, at 36.

90. Bertrand Russell, 3 *The Autobiography of Bertrand Russell, 1944–1969* 245 (1969).

from the State.”⁹¹ The West German Ministry of the Interior responded to the Third Russell Tribunal by preparing a secret report (now public) considering “the possibility of prohibiting the Tribunal, or its preparatory meetings,” and mentioned that “[a]liens residing in the FGR can be forbidden to participate in the Russell Tribunal by a prohibition concerning political activity.”⁹²

Governments’ criticisms and counterhearings are an acknowledgment that tribunals have an impact. Governments have yet to send individuals to participate in a tribunal, but the Marcos government prepared a lengthy response to PPT accusations regarding the Philippines.⁹³ The Fourth Russell Tribunal on indigenous peoples led to conflicting responses from the Brazilian government. A Tribunal juror, Indian leader Mario Juruna, was initially denied an exit visa. That country’s judiciary finally overturned a statute in granting the visa.⁹⁴

Government officials have sometimes been induced to take part in tribunal activity or to sponsor their own hearings. Some “unofficial” congressional hearings were held in the United States in the wake of the first Russell Tribunal.⁹⁵ Several members of Congress raised international legal issues in their questioning of witnesses.

B. Intended Impact

The impact intended varies among tribunals and, indeed, among participants in the same tribunal. Tribunals may be reformist or revolutionary in their attitudes toward existing governments. They may also intend to enforce or transform international law.

1. Reform

Some tribunals seek to remedy gaps in the current international legal regime. They promote reform, such as strengthening the United Nations, or adherence and accession to existing UN codes and covenants. Tribunals exist in part to complement the International Court of Justice, United Nations

91. International War Crimes Tribunal, *supra* note 29, at 28.

92. Bertrand Russell Peace Foundation, *For Official Use Only* 6–7 (Spokesman Pamphlet No. 60, 1978).

93. Permanent Peoples’ Tribunal, *Philippines: Repression and Resistance*, *supra* note 31, at 288–92.

94. *Indians Hail Brazil Court Ruling*, *The Times* (London), 29 Nov. 1980, at 5.

95. See *The Dellums Committee Hearings on War Crimes in Vietnam* (Citizens’ Commission of Inquiry ed., 1972).

Human Rights Committee, and other international governmental institutions. They may also encourage the creation of new international legal institutions, such as an international criminal court.

Tribunals may induce institutions to pay attention to human rights problems. Following the Russell Tribunal on *Berufsverbote*, for instance, German leaders who were critical of the Tribunal began to consider reforms.⁹⁶ The tribunal on indigenous peoples reinforced contemporaneous efforts at the United Nations.⁹⁷

The Sakharov Hearings are also reformist in nature. Their findings (rather than verdicts) refer to existing human rights standards—e.g., the International Covenant on Civil and Political Rights and the Helsinki Declaration—and offer suggestions for new standards. The panel of the first Sakharov Hearing urged a special international convention for the worldwide protection of political prisoners.⁹⁸

2. Transformation

The PPT, on the other hand, seeks to transform the current international legal regime. It and the related International League for the Rights and Liberation of Peoples would diminish the influence of the nation-state and accord legitimacy to liberation groups.

The international legal regime would be transformed by increasing the use of such nongovernmental tribunals to resolve legal questions. Tribunals are part of a popular movement which accords legitimacy to the tribunals and redefines the "rule of law." As the verdict in the session on the Philippines noted, the Algiers Declaration "challenges the idea that governments and their institutions enjoy a monopoly over law-making. The . . . Tribunal is committed to the notion that individuals, as citizens of the world as well as of their own country, have the right and obligation to shape emerging law in accordance with human needs and human values."⁹⁹ The PPT's verdicts and reports explain that it is not individuals acting alone who will create a

96. See, e.g., Gerard Braunthal, *Political Loyalty and Public Service in West Germany* (1990). Of course, causality is next to impossible to demonstrate, and tribunals are dwarfed in influence by other human rights organizations.

97. The tribunal was inspired by an earlier NGO conference on indigenous peoples held in Geneva. For a discussion of UN progress on this issue, see Russel L. Barsh, *Indigenous Peoples: An Emerging Object of International Law*, 80 Am. J. Int'l. L. 369 (1986).

98. *The International Sakharov Hearing*, *supra* note 34, at 301. While the Sakharov Committees emphasize the rights of the individual to be free from government repression, they see governments (rather than mass movements) as the rights guarantors.

99. Permanent Peoples' Tribunal, *Philippines: Repression and Resistance*, *supra* note 31, at 265.

new "rule of law"; it is instead individuals acting through movements of solidarity with oppressed peoples.

C. Likely Impact: Tribunals as an Impetus to Incremental Change in the Human Rights Regime

Tribunals will continue to be used by groups seeking to promote human rights standards and may lead to incremental changes in the human rights regime. Accused governments face a difficult choice of three alternatives: ignoring the tribunals, attempting to refute their findings, and changing their activities in response to tribunal findings. Tribunals will contribute to the creation of new norms and a change in how we think about international law. In the process they may contribute to a new world order in which governments will face increasing pressure from popular movements.

The tribunals' impact is, however, dependent on their members and leaders. Among the changes that would help tribunals in promoting a moral conception of law are closer adherence to their mandates, greater care in the development of the accused's case, and changes in the procedures by which jurors are selected. Use of a variety of tribunal formats would enhance their contribution. Occasionally, selecting a representative sample of the population (or of a sector of the population, such as trade unionists) to serve as jurors might be productive. So too might be the use of a leading scholar who believes in the accused government's case.¹⁰⁰

New ways to report findings should also be considered. Sponsors could encourage concurring opinions by jurors who share in the verdict of the tribunal¹⁰¹ but may not share the majority's reasoning. Points of disagreement among tribunal members could be publicized to identify puzzles to be solved by future analysts.

Tribunals are worthy of continued scholarly attention, especially with regard to the tendencies and imperatives which tribunals reflect. The tribunals publicize governmental activities which violate international law, such as genocidal practices, war crimes, forced labor, cultural imperialism, and

100. Recent tribunals indicate some improvement in this regard. Professor Harry Almond delivered a defense of the Reagan Administration at an International Progress Organization tribunal. See Harry Almond, "Defence," in *The Reagan Administration's Foreign Policy* 432 (Hans Kochler ed., 1984). A former International Monetary Fund economist, Robert Triffin, offered a defense at the PPT Session on International Financial Institutions. See, e.g., Leslie Colitt, *World Bankers Accused of Harming Poor*, Financial Times (London), 27 Sept. 1988, at 4.

101. See *Abortion in Northern Ireland: The Report of an International Tribunal* (1989) (in which panel members provide "feedback" on the event's significance).

torture. They highlight the danger of leaving implementation of international law and international morality to governments. Most importantly, they point out that all of the world's citizens (playwrights, scientists, theologians, labor leaders, lawyers, and international relations scholars alike) must make an important choice: either witness the further denigration of international law or contribute to its revitalization.

APPENDIX: List of Tribunals

1991

January 7–9, Panama City

Permanent Peoples Tribunal, Session on the Panama Invasion.

Complaint filed: Tribunal on US War Crimes during the Persian Gulf Conflict.

1990

April 5, New York

Voices of Panama Town Meeting.

June 22–24, Asuncion

Permanent Peoples' Tribunal, Session on Paraguay.

December 7–8, New York

Permanent Peoples' Tribunal, Session on Political Prisoners in the United States.

1989

January, Barcelona

Permanent Peoples' Tribunal, Session on Puerto Rico.

September, Lima

International Tribunal against the Debt.

November 4–6, Bogota

Permanent Peoples' Tribunal, Session on Processes of Impunity and Crimes of Humanity.

1988

July, London

International Commission of Inquiry on the Famine in the Ukraine.

September 26–29, West Berlin

Permanent Peoples' Tribunal, Session on the World Bank and International Monetary Fund.

1987

January 17, Los Angeles

"In re: More than 50,000 Nuclear Weapons, The People of the Earth v. China, France, USSR, United Kingdom, US, et.al." Provisional District World Court, organized by Federation of Earth.

June 10, Bonn

Tibet Forum: organized by Green Party leaders, Petra Kelly and Gert Bastian.

July 30, New Delhi

Indian People's Human Rights Tribunal on Arwal Massacre.

October 7–8, Belfast

International Tribunal of Enquiry on Abortion in Northern Ireland (sponsored by the Northern Ireland Abortion Law Reform Association).

1986

April 11–12, Paris

"Luz Sobre Cuba," Resistance International investigation of torture and political imprisonment.

August 18–19, Copenhagen

Afghanistan Tribunal, cosponsored by the International Sakharov Committee—examined a variety of issues, including torture.

1985

January 3–6, London

London Nuclear Warfare Tribunal, organized by Lawyers for Nuclear Disarmament.

April 10–11, London

Fifth Sakharov Hearing: to provide evidence of Soviet violations of human rights in the context of the Helsinki Final Act—evidence and findings sent to delegates to the May review conference in Ottawa.

July 25–26, Copenhagen

Baltic Tribunal, organized by the Baltic World Conference.

1984

Various dates

Russell Hearings on Lebanon and the Occupied Territories.

April 13–16, Paris

Permanent Peoples' Tribunal Session on the Armenian genocide.

September 28–30, Brussels

International Tribunal on the Reagan Administration's Foreign Policy, sponsored by the International Progress Organization.

October 5–7, Brussels

Permanent Peoples' Tribunal Session on US intervention in Nicaragua.

October 8–9, New York

War Crimes Tribunal on Central America and the Caribbean.

December 6–7, Bonn

International Hearing on the Human Rights Situation in the German Democratic Republic (International Society for Human Rights).

1983

January 27–31, Madrid

Permanent Peoples' Tribunal Session on Guatemala.

February 18–20, Nuremberg

Tribunal against First-Strike Weapons and Other Instruments of Mass Destruction (Petra Kelly, Hermann Verbeeck, Greens).

February 28–29, Geneva

International Commission of Enquiry into Israeli Crimes against the Lebanese and Palestinian Peoples, Second Session.

March 18–21, Tokyo

International People's Tribunal on the Israeli Invasion of Lebanon.

October 12–14, Lisbon

Fourth International Sakharov Hearing—sponsors included Portuguese section of the International Commission of Jurists.

Cuba hearing, arranged by the International Sakharov Committee, in collaboration with the Comité Pro-Derechos Humanos en Cuba (Armando Valladares, President).

1982

August 15–16, Nicosia (Cyprus)

International Commission of Enquiry into Israeli Crimes against the Lebanese and Palestinian Peoples, First Session.

September 18–20, Rotterdam

Permanent Peoples' Tribunal Session on Zaire.

August 28–November 29, London

International Commission to Enquire into Reported Violations of International Law by Israel During its Invasion of the Lebanon.

October, Oslo

Nordic Commission, "Witness of War Crimes in Lebanon," convened by Palestinafronten Support Group.

December 16–20, Paris

Permanent Peoples' Tribunal, Session on Afghanistan (II).

1981

January 15–16, Stockholm

Raoul Wallenberg Hearing, arranged by the International Sakharov Committee in Collaboration with the Raoul Wallenberg Association.

February 9–11, Mexico City

Permanent Peoples' Tribunal, Session on El Salvador.

May 1–3, Stockholm

Permanent Peoples' Tribunal, Session on Afghanistan (I).

June 19–21, Lisbon

Permanent Peoples' Tribunal, Session on East Timor.

1980

May 3–4, Geneva

Permanent Peoples' Tribunal, Session on Argentina.

May 15, London

Public Hearing on the Cases of V.I. Bakhmin and L.B. Ternovsky.

May 24–26, Milan

Permanent Peoples' Tribunal, Session on Eritrea.

October 30–November 3, Antwerp

Permanent Peoples' Tribunal, Session on the Philippines.

November 24–30, Amsterdam

Fourth Russell Tribunal: "The Rights of the Indians of the Americas."

1979

January, Harheim (Frankfurt)

Russell Tribunal on the Federal Republic of Germany (second session).

September 26–29, Washington DC

Third International Sakharov Hearing: Economic and Social Rights; Freedom of Movement; Socialist Legality.

November 10–11, Brussels

Permanent Peoples' Tribunal, Session on the Western Sahara.

1978

March-April, Harheim

Russell Tribunal on the Federal Republic of Germany (first session).

1977

November 25–28, Rome

Second International Sakharov Hearing: Human Rights Violations in the USSR and Eastern Europe.

1976

March 4–8, Brussels

International Tribunal on Crimes against Women.

1975

January, Brussels and Rome

Russell Tribunal on Repression in Latin America (2d, 3d sessions).

October 17–19, Copenhagen

First International Sakharov Hearing, organized by the Common Committee of East Exiles in Denmark.

1974

April, Rome

Russell Tribunal on Repression in Latin America (first session).

1967

May 2–10, Stockholm

First Session, International War Crimes Tribunal.

November 20–December 1, Roskilde, Denmark

Second Session, International War Crimes Tribunal.

1966

November 13–15, London

Formation of the International War Crimes (Bertrand Russell) Tribunal.

1937

New York, Paris, Coyoacan (Mexico)

Commission of Inquiry into the Charges Made against Leon Trotsky in the Moscow Trials.