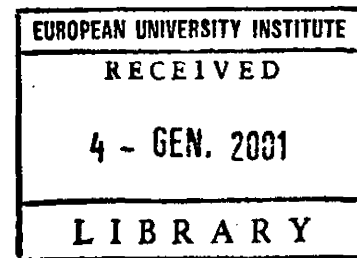


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**International Norms,
Transnational Human Rights Networks,
and Domestic Political Change in
Indonesia and the Philippines**

By

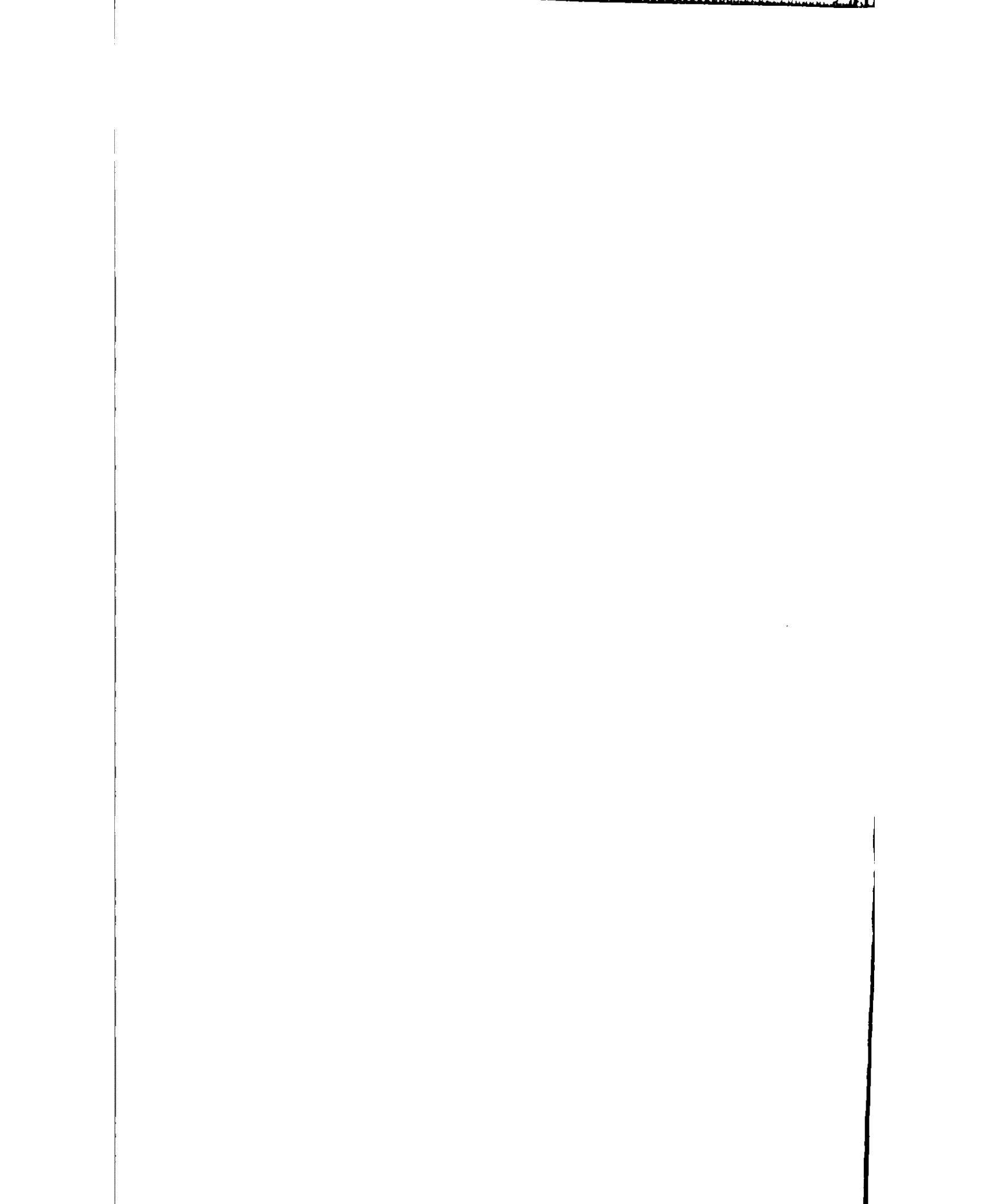
Anja Jetschke



Thesis submitted for assessment with
A view to obtaining the Degree of Doctor of the
European University Institute

Florence, October 2000

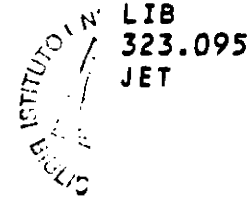
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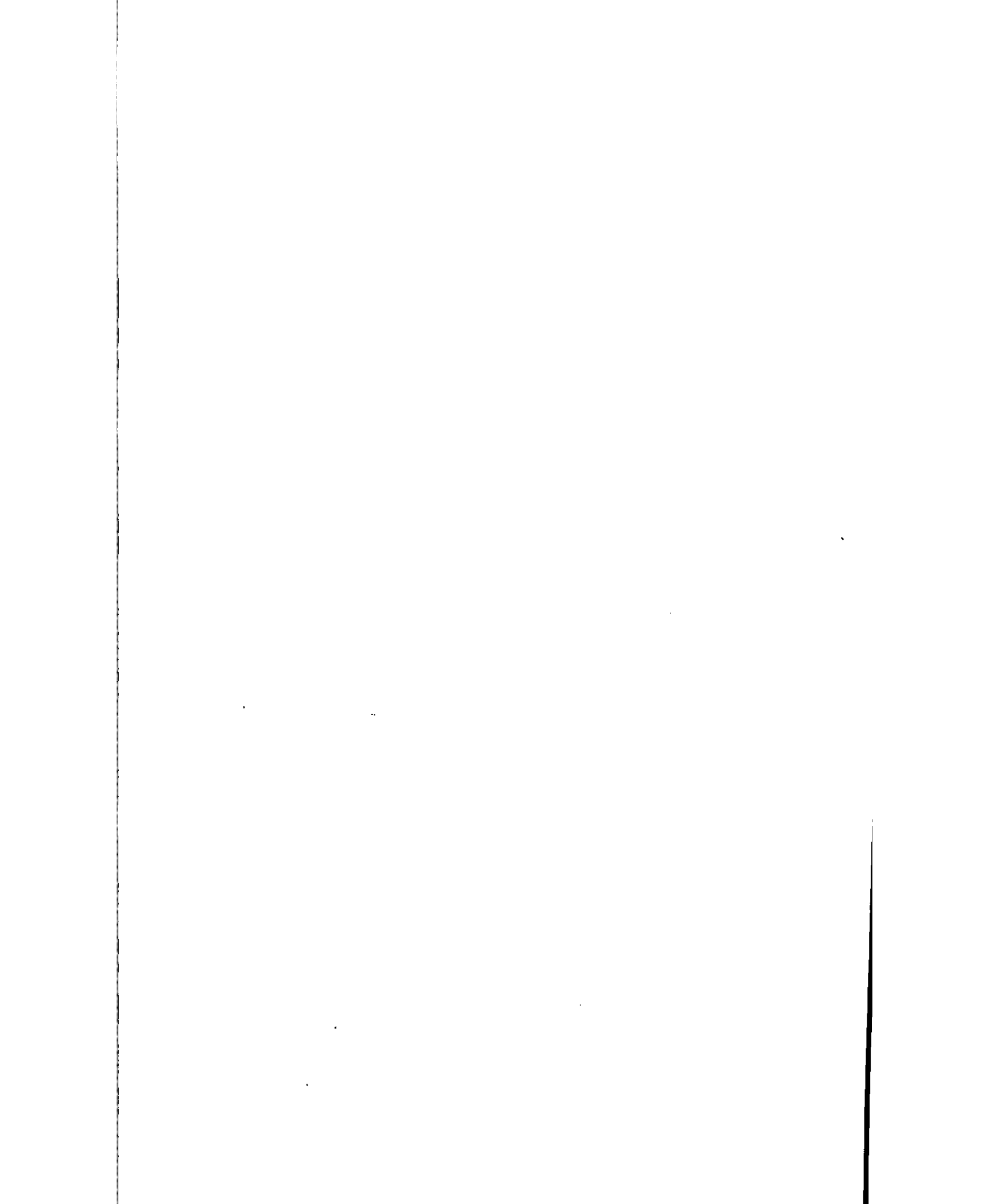
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Thesis Committee: Prof. Thomas Risse (Supervisor, European University Institute)
Prof. Philippe C. Schmitter (European University Institute)
Prof. Martha Finnemore (George Washington University, Washington)
Prof. Jürgen Rüländ (Albert-Ludwigs Universität Freiburg i. Breisgau)

Florence, October 2000



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LIST OF ABBREVIATIONS

<i>ABRI</i>	<i>Indonesian Army (Angatan Bersenjata Republik Indonesia)</i>
<i>AFP</i>	<i>Armed Forces of the Philippines</i>
<i>AI</i>	<i>Amnesty International</i>
<i>AKSI</i>	<i>Action in Solidarity with Indonesia and East Timor</i>
<i>AMRSP</i>	<i>Association of Major Religious Superiors in the Philippines</i>
<i>Apodeti</i>	<i>Associação Popular Democrática Timorese</i>
<i>ASEAN</i>	<i>Association of Southeast Asian Nations</i>
<i>Bakorstanas</i>	<i>Coordinating Board for Assisting the Consolidation of National Security and Order (Badan Koordinasi Bantuan Pemantapan Stabilitas Nasional)</i>
<i>CHDF</i>	<i>Civilian Homes Defence Forces</i>
<i>CHR</i>	<i>Commission on Human Rights (Philippines)</i>
<i>CLUP</i>	<i>Civil Liberties Union Philippines</i>
<i>CPP</i>	<i>Communist Party of the Philippines</i>
<i>EC</i>	<i>European Community</i>
<i>EDT</i>	<i>External Debt Total</i>
<i>ETAN</i>	<i>East Timor Action Network</i>
<i>FBSI</i>	<i>All-Indonesia Workers Federation (Federasi Buruh Seluruh Indonesia)</i>
<i>FD</i>	<i>Democratic Forum (Forum Demokrasi)</i>
<i>FEER</i>	<i>Far Eastern Economic Review</i>
<i>FFP</i>	<i>Friends of the Filipino People</i>
<i>FLAG</i>	<i>Free Legal Assistance Group</i>
<i>Fretilin</i>	<i>Revolutionary Front for an Independent East Timor (Frente Revolucionaria Timor Leste Independente)</i>
<i>GDP</i>	<i>Gross Domestic Product</i>
<i>GNP</i>	<i>Gross National Product</i>
<i>GOLKAR</i>	<i>Functional Group Centre (Golongan Karya Pusat)</i>
<i>GSP</i>	<i>General System of Preferences</i>
<i>HRW</i>	<i>Human Rights Watch</i>
<i>IBP</i>	<i>Interim National Assembly (Interim Batasang Pambansa)</i>
<i>ICCPR</i>	<i>International Covenant on Civil and Political Rights</i>
<i>ICJ</i>	<i>International Commission of Jurists</i>
<i>ICMI</i>	<i>Indonesian Association of Muslim Intellectuals (Ikatan Cedikiawan Muslim Indonesia)</i>
<i>ICSECR</i>	<i>International Covenant on Social, Economic, and Cultural Rights</i>
<i>IGGI</i>	<i>Intergovernmental Group on Indonesia</i>
<i>INFID</i>	<i>International NGO Forum on Indonesian Development</i>
<i>Inflight</i>	<i>The Indonesian Front for Human Rights</i>
<i>INGO</i>	<i>International Non-Governmental Organisation</i>
<i>KBL</i>	<i>New Society Movement (Kilusan Bagong Lipunan)</i>

<i>Keterbukaan</i>	<i>Indonesian term for political "opening" or liberalisation</i>
<i>Komnas-HAM</i>	<i>National Human Rights Commission (Komisi Nasional Hak Asasi Manusia)</i>
<i>Kontras</i>	<i>Commission for Missing Persons and Victims of Violence</i>
<i>Kopkamtib</i>	<i>Command for the Restoration of Security and Order</i>
<i>LABAN</i>	<i>People Power Party (Lakas ng Bayan)</i>
<i>LBH</i>	<i>Legal Aid Institute (Lembaga Bantuan Hukum)</i>
<i>LP</i>	<i>Liberal Party (Philippines)</i>
<i>LPHAM</i>	<i>Institute for Human Rights (Lembaga Pembela Hak-Hak Asasi Manusia)</i>
<i>MBA</i>	<i>Military Base Agreement</i>
<i>MNLF</i>	<i>Moro National Liberation Front</i>
<i>MPR</i>	<i>People's Consultative Assembly (Majelis Permusyawaratan Rakyat)</i>
<i>NAM</i>	<i>Non-Aligned Movement</i>
<i>NDF</i>	<i>National Democratic Front</i>
<i>NGO</i>	<i>Non-Governmental Organisations</i>
<i>NP</i>	<i>Nationalist Party (Nacionalista Party, Philippines)</i>
<i>NPA</i>	<i>National Peoples Army (Philippines)</i>
<i>NU</i>	<i>Resurgence of the Islamic Scholars (Nahdlatul Ulama)</i>
<i>NYT</i>	<i>New York Times</i>
<i>Parmusi</i>	<i>Muslim Party (Partai Muslimin)</i>
<i>PCHR</i>	<i>Presidential Commission on Human Rights</i>
<i>PDI</i>	<i>Democratic Party of Indonesia (Partai Demokrasi Indonesia)</i>
<i>PGI</i>	<i>Indonesian Communion of Churches (Persekutuan Gereja-Gereja di Indonesia)</i>
<i>PLJAR</i>	<i>Information Centre and Action Network for Reform (Pusat Informasi dan Jaringan Aksi untuk Reformasi)</i>
<i>PKI</i>	<i>Communist Party of Indonesia (Partai Komunis Indonesia)</i>
<i>PPP</i>	<i>United Development Party (Partai Pembangunan Persatuan)</i>
<i>RAM</i>	<i>Reform the Armed Forces Movement</i>
<i>SBSI</i>	<i>Indonesian Prosperous Workers Union (Serikat Bekerja Sejahtera Indonesia)</i>
<i>Tapol</i>	<i>political prisoner (tahanan politik)</i>
<i>TDS</i>	<i>Total Debt Service</i>
<i>TFDP</i>	<i>Task Force Detainees of the Philippines</i>
<i>TNI</i>	<i>Indonesian National Army (Tentara Nasional Indonesia)</i>
<i>UDT</i>	<i>Timorese Democratic Union (Uniao Democrática Timorese)</i>
<i>UN</i>	<i>United Nations</i>
<i>UNIDO</i>	<i>United Nationalist Democratic Organization</i>
<i>US</i>	<i>United States</i>
<i>USA</i>	<i>United States of America</i>
<i>XGS</i>	<i>Export of Goods and Services</i>

EXECUTIVE SUMMARY

This study examines the role of international human rights norms and the achievements of transnational human rights networks in contributing to sustained changes in human rights practices in Indonesia and the Philippines. It proceeds from the observation that in both cases, the Philippines and Indonesia, transnational concerns for human rights have translated into visible improvements in governmental approaches toward human rights and ultimately human rights practices. This process has taken much longer in the Indonesian case than in the Philippine one. In the Philippines, a sustained change of human rights practices is observable since 1992, while in the Indonesian case important changes in human rights practices have only recently become visible. Although significant changes in human rights practices occurred only after regime change (Philippines 1986, Indonesia 1998) selective measures to improve the human rights situation were taken before these formal changes and can be considered as constitutive parts in an explanation of human rights change.

Given the empirical evidence, the study addresses the following questions: What accounts for sustained improvements in human rights practices in the Philippines and Indonesia? What accounts for the variation in time or the pace this process has taken or why has human rights change taken so much longer in Indonesia than in the Philippines? What is the process through which these changes came about? And why did repressive governments eventually implement measures to improve the human rights situation, after having committed gross and systematic human rights violations for decades?

In addressing these questions the study argues that changes in human rights practices come about as a result of *transnational* pressures for human rights change, which simultaneously submit human rights violating governments to pressures from "above" and "below". The process through which international human rights norms influence the behaviour of human rights violating states is best described by a phase model, the spiral model of human rights change. This model explains human rights change in terms of a mobilisation of other states, which pressurise authoritarian rulers and induce them to make tactical concessions to these international demands for human rights change. International pressure not only imposes constraints on the action repertoire of authoritarian governments, it actively supports the emergence of political space in which civil society can re-emerge and of a public sphere, in which opposition groups can discuss the collective alternative projects for the future. The interaction develops a dynamic, which can lead to marked changes in human rights policies, or the breakdown of authoritarian rule.

The study focuses particularly on the role of public deliberation in this process of human rights change. International reports focus attention on and politicise precisely those power structures which enable human rights violations, but are effectively removed from a public critique by the civil society because of the authoritarian nature of the target state. Transnational human rights networks engage authoritarian rulers in a discourse over human rights violations from an international level, demand justifications for authoritarian rule and hold authoritarian regimes accountable to these justifications. Transnational human rights networks can thus provide a legitimacy challenge to authoritarian regimes, but their effectiveness ultimately depends on their ability to convince opposition groups in the civil society of their claims.

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CHAPTER 1

Introduction

In the 1970s, several Asian countries gained international notoriety for their dismal human rights record, two of them Indonesia and the Philippines. Under the Philippine's dictatorship (1972-1986) and Indonesia's dictatorship (1959-1998) tens of thousands of people became victims of human rights violations such as torture, extralegal executions (euphemistically called "salvagings" in the Philippines) and disappearances. In the Philippines, more than 50,000 people were detained without trial for several years and held under life-threatening conditions following the proclamation of martial law in September 1972. Others were abused during the Philippine military's long struggle against a Communist insurgency, on mere suspicion that they might be members or supporters of Communist organisations. In the 1970s, the military regime under Suharto in Indonesia became internationally known as one of the world's worst human rights violators and the country with the greatest number of female political prisoners. According to estimates, half a million people suffered under military repression and were killed in country-wide pogroms between 1965-67, while others were detained in several detention centres under appalling living conditions. By the late 1970s, Indonesia still had more than 10,000 political prisoners. The Indonesian military invasion of East Timor in 1975 additionally produced hundreds of civilian casualties, who became not only victims of starvation and forced evacuations, but were tortured and arrested, and even disappeared. Equally appalling, but less known were the numerous human rights abuses committed against independence fighters in the Indonesian provinces of Aceh and Irian Jaya (West Papua).

In the early and mid-1970s, international human rights organisations, most importantly Amnesty International, began campaigning internationally against the human rights abuses the Marcos and the Suharto political regimes committed. Amnesty International, in a single-issue campaign, denounced the arbitrary detention of political prisoners in Indonesia and the Philippines alike. In each case, the campaign mobilised other state governments and international organisations and posed a major legitimacy challenge to the two governments. As a result, Suharto and Marcos decided to free at least some of the political prisoners. Yet, the political consequences of these tactical concessions to get rid of international pressure

introduction

were much greater in the Philippines than in Indonesia. In the case of the Philippines, international campaigning spurred a series of tactical concessions which eventually caused political liberalisation. Human rights issues, especially the summary execution ("salvaging") of innocent civilians and the prominent opposition figure Benigno Aquino, dominated the domestic political debate and served as important focal points for articulating opposition to and delegitimising authoritarian rule. When Marcos lost his most important international political ally, the US Government, Marcos was forced to resign in 1986, following a popular uprising by the Peoples Power Revolution. Upon coming to power, Marcos' successor Corazon Aquino made human rights a corner stone of her policy and institutionalised important human rights guarantees. As a result of subsequent efforts to implement these guarantees and public pressure, the Philippine human rights record has continually improved since 1992.

In contrast to the Philippine case, Suharto managed to get away with the release of the political prisoners at the end of the 1970s, and the Suharto regime became even more oppressive afterwards. It was not until the second half of the 1980s that a slow transnational remobilisation around human rights issues began and induced a similar political dynamic which slowly delegitimised the authoritarian rule of the Suharto regime. In the case of Indonesia, human rights violations in East Timor became a focal point of criticism against some key practices of repression of the Indonesian military. It was not until 1998, however, that the Asian financial crisis provided the last push to topple the Suharto regime. Since then, Suharto's political successors, Baharuddin Jusuf Habibie and Abdurahman Wahid have decided to introduce new political policies to improve Indonesia's human rights record.

In sum, three observations are relevant to this study: *First*, the Philippines and Indonesia have both seen significant changes in the area of human rights compared to the early 1970s. A change in human rights practices has been observed in the Philippines since 1992, while in Indonesia important changes in human rights practices have only recently become visible. Although significant advances in human rights practices occurred only after regime changes (Philippines 1986, Indonesia 1998), selective measures to improve the human rights situation were taken before these formal changes and can be considered essential parts in an explanation of human rights change. For example, President Suharto decided to establish a national human rights commission in 1993, five years before the regime change. *Second*, the Indonesian and Philippines cases vary with regards to the ability of authoritarian rulers to escape international pressures for change in the 1970s. Starting in 1975, international attention continually focused on the Marcos regime's human rights practices, while attention

on Indonesia's human rights practices waned considerably after 1979. *Finally*, there are obvious parallels between the Philippines in the period 1973-1986 and Indonesia in the period 1986-1998. In sum, the Suharto regime's ability to fight off international pressure in the 1970s seems to have prolonged the process of human rights change and the latter has taken much longer in the Indonesian case than in the Philippines.

Given the empirical evidence, the study addresses the following questions: What accounts for sustained improvements in human rights practices in the Philippines and Indonesia? What caused the variation in time and pace of this process, or more specifically, why has human rights change taken so much longer in Indonesia than in the Philippines? What is the process through which these changes came about? And why did repressive governments eventually implement measures to improve the human rights situation, after having committed gross and systematic human rights violations for decades?

In addressing these questions the study argues that changes in human rights practices come about as a result of *transnational* pressures, which simultaneously submit governments violating human rights to pressure from both an international level (from "above") and a domestic level (from "below"). The transnational structure, which helps bring about international pressure, consists of transnational networks of human rights organisations, which provide crucial connections between domestic human rights organisations and international non-governmental human rights organisations. By linking up with international actors, domestic human rights organisations are able to overcome crucial limitations which authoritarian regimes impose on their activities.¹

The model combining these features to explain sustained changes in human rights practices is the so-called "spiral model of human rights change".² It outlines a process model describing how the principles, norms, and rules embedded in international human rights regimes are conveyed by transnational human rights networks and create the political dynamics described above that lead to sustained changes in human rights practices. This model claims that implementing international human rights standards in states which have committed gross and systematic human rights violations depends on the establishment and the sustainability of networks among domestic and international actors who connect with international regimes to alert Western opinion and Western governments. Transnational human rights networks raise the consciousness of other liberal states regarding the human rights violations in the target state. They empower and legitimise the claims of domestic opposition groups and challenge

¹ Keck and Sikkink (1998) call this the "boomerang effect."

² Risse, Ropp and Sikkink (1999)

the norm-violating state by creating a transnational structure pressuring repressive states simultaneously "from above" and "from below." To describe this interaction over time the model is divided into five phases, which refer to dominant repertoires of action. They are called "repression", "denial", "tactical concessions", "prescriptive status", and "rule-consistent behaviour".

This spiral model needs to be enriched, however, by a more coherent concept of deliberative processes. This seems to be more necessary, as it is rather odd that transnational networks of non-governmental human rights organisations are able to submit a state government to such a challenge. The spiral model basically describes how authoritarian rulers bow to a combination of moral and financial pressure from other states on the one hand, and their domestic constituency on the other. But what makes the claims of transnational networks who denounce alleged human rights violations so threatening that they help to change structural regime features, such as the predominance of the military as an institution? Why do authoritarian rulers start to justify their human rights violations if they could just as well react with silence to the allegations of human rights organisations? Do these justifications have behavioural consequences, and if yes, under what conditions? These questions make it pertinent to focus not only on the linkages between domestic and international human rights organisations and their linkages to individuals in governmental bureaucracies and international organisations, but also to pay attention to the substantial content of public allegations human rights organisations advance. Such a focus demonstrates that transnational networks tie allegations of human rights violations to more fundamental political questions of legitimate rule. They generally argue that human rights violations render political rule illegitimate and try to persuade others of their claims. This study draws on the general hypothesis that adaptational pressures for authoritarian regimes are the greater the more the transnational network is able to convince others of their claim that the target states conform with a dictatorship model based on systematic human rights violations and arbitrary rule.

Yet, it would be fairly unrealistic to assume that transnational networks can persuade authoritarian rulers to adopt human rights reforms and eventually more structural reforms (liberalisation). A combination of the spiral model and concepts of deliberation is thus necessary to explain the political dynamic which evolves. In brief, my argument will be as follows: International human rights norms as part of a larger world polity constitute a set of fundamental principles and models defining the nature and purposes of state actors.³ The gap between the prescriptions of international norms and actual practice of target states provides

³ Boli (1997)

transnational networks with the opportunity to challenge the legitimacy of human rights violating governments in a public discourse. Such public discourses serve three important functions: (1) They provide a political alternative to authoritarian rule (constitutionalism). (2) they constrain behaviour and (3) they legitimise action.

(1) By publishing human rights reports and providing that these reports acquire public attention, transnational networks not only focus attention on human rights violations *per se*, but they also use these violations to criticise domestic political structures, which allegedly cause human rights violations in the first place. Human rights violations thus present only a prominent peg to promote a more comprehensive world polity model of a legitimate state. This international model constitutes a state exercising its legitimate monopoly of power, whereas legitimacy is based on the rule of law and an independent judiciary. This model constitutes the crucial yardstick against which the dictatorships' human rights practices are judged. International human rights standards establish a *political alternative* to dictatorship based on an *international* model of a legitimate state and backed by a community of liberal states.

(2) Transnational human rights networks create international publicity for the human rights violations of authoritarian rulers. By focusing attention on and creating international awareness for some of the arbitrary features of authoritarian rule, such as torture, extralegal executions, disappearances and arbitrary detentions, and consciously linking these features to questions of legitimacy, transnational networks *constrain* the action repertoire of key institutions responsible for political repression: i.e. the military. International attention makes it more costly for the regime to continue some of the most repressive practices, such as disappearances. It thereby helps to open up political space in domestic realm of the target state, in which civil society can re-emerge. International attention and pressure therefore increase the political costs for authoritarian rulers, while simultaneously decreasing the political costs of the opposition voicing dissent towards the other. An example from Indonesia can illustrate this point: In their reports, human rights organisations had regularly targeted the Anti-Subversion Law as a repressive instrument, because most of the human rights violations, especially torture, occurred in connection with persons who had been charged with subversion. Because of international pressure, the Indonesian government completely abstained from applying the Anti-Subversion-Law to political dissidents between 1992 and 1996. The Law foresaw a maximum penalty of death for political activities aimed at disturbing the public order and had been regularly applied to cases of organised opposition.

(3) Legitimacy is mediated via international and domestic institutions, and it is the parallel and mutually reinforcing delegitimation on both levels, which contributed to human rights change. As transnational networks entrap authoritarian rulers in their own rhetoric in a public discourse, and thereby demonstrate that the latter abuse their power, networks are instrumental in *legitimizing* the moral intervention of other international actors, such as states and international organisations, and thereby induce international mobilisation. Transnational networks help to physically protect domestic human rights activists from the repressive actions of the state apparatus and legitimate newly emerging domestic organisations in the civil society of the target states that draw on human rights norms. International norms and transnational networks thus empower opposition groups and provide them with a moral force.

Transnational human rights networks thus not only set a critical standard for human rights practices, but also establish a model for political practice and try to hold human rights violating states accountable to this model. International human rights norms generate a kind of cultural power shaping international discourses, generating international pressure, echoing back into the domestic realms and translating into domestic political processes. Human rights violating states face an international legitimacy challenge, which – in combination with domestic pressure – prompts them to take decisions pointing to liberalisation in order to get rid of international pressure. The ensuing interaction between international actors, state governments, and civil society generated a political dynamic, which eventually contributed to regime change and a sustained shift in human rights practices.

Contribution of the study to existing research

The study is an attempt to explain systematically similarities and differences in the development of human rights practices in the Philippines and Indonesia in a comparative perspective. While scholarly literature on human rights in the Philippines is abundant but largely descriptive, the issue of human rights in Indonesia has only recently received more attention. The political transition in Indonesia provides an opportunity to view human rights developments in comparative perspective and evaluate some of the most salient propositions seeking to explain human rights change. The similarities refer to identifying a mechanism through which human rights change has come about in Indonesia and the Philippines, putting these cases into a broader interregional comparative perspective. The variation in the cases refers to the time this process has taken.

The study contributes to various theoretical and empirical debates in the area of international relations and comparative politics:

In *international relations*, proponents of rational and sociological institutionalism, as well as social constructivism, share an interest in the efficacy of norms and culture on state behaviour.⁴ Their research agenda centres on the question how international norms, embedded in an international social structure, translate into domestic outcomes and produce changes in behaviour. The study suggests an actor-centred institutionalism, namely transnational human rights networks seeking to mobilise other actors and structuring public debates, in order to explain the slow incorporation of international norms into domestic practices. The spiral model of human rights change is introduced as a bridge to sociological and rationalist institutionalism, which provide perspectives on why states do or do not follow norms, but do not explain the *process* by which states which exhibit a record of gross and systematic human rights violations change their practices over time and increase their compliance with established standards of behaviour in the area of human rights.

The thesis tries to push research on the effects of norms a little bit further, however, by exploring in greater detail the role of public deliberation which human rights norms provoked in these cases. The cases of the Philippines and Indonesia will demonstrate, that even authoritarian rule can be legitimated in normative terms. Indonesia in the 1970s is a case in point: The Suharto regime successfully justified authoritarian rule by arguing that a democratic system would only engender an Islamic state. As a result, the transnational public sphere enabling a discourse, and subsequently the transnational network broke down. These developments enabled the Suharto regime to expand its system of repression. Campaigns of transnational human rights organisations precisely aim to undermine justifications for authoritarian rule or general repressive practices. The focus of this study is how and under what conditions they are able to convince others in a public discourse of the viability of their claims.

In *comparative politics*, democratisation theories would explain sustained shifts in human rights practices as an outcome of regime change. As such, democratisation theory presents one of the most compelling approaches to explain these changes in the case of the Philippines and Indonesia as well as the time variation. In both cases, political regime changes occurred, in the Philippines in 1986 and in Indonesia in 1998, and significant changes in the human rights situation only became visible afterwards. Evidence will demonstrate, however, that demands for changes in human rights practices constituted a central *movens* legitimating regime change, which came on the agenda because the political regime's rationales for gross

⁴ Wendt (1999), Katzenstein (1996). For excellent overviews on social constructivism in International Relations see Adler (1997) and Checkel (1998).

and systematic human rights violations were effectively questioned by transnational networks of human rights organisations, and the interplay of international and domestic pressure enabled a legitimacy challenge. The role of human rights in the deligitimisation of authoritarian regimes warrants some attention, as democratisation theory lacks a compelling explanation to account for why and how the legitimacy of authoritarian regimes erodes and contributes to the breakdown of authoritarian rule.⁵

Moreover, democratisation theories have recognised the importance of international factors in the transition to democratic rule. Largely undisputed is the role of the European Community (EC) in the democratisation of Portugal, Spain, and Greece.⁶ Structural approaches focused on the influence of integration into the world market or the role of commodities on democratisation,⁷ while actor-oriented approaches have included the role of other state governments or non-governmental organisations.⁸ In sum, there are attempts toward a more systematic evaluation of international contextual variables of democratisation.⁹ Still, there is only little empirical research exploring systematically how international influence shape the process of democratisation and outcomes. Early efforts to search for guidance within theories of international relations were quickly frustrated by the perceived neglect of IR theories for domestic processes.¹⁰

For this research agenda, the study adds two dimensions to an explanation of domestic political regime change: an *international* and a *normative* dimension. International human rights norms challenged domestic logics of appropriateness especially established norms constituting limits to opposition and military intervention, by introducing a set of behavioural standards, which were reinforced by international pressure. They thereby helped undermining the strength of authoritarian rule and enabled a domestic mobilisation. Human rights norms thus contributed to shifts in the power balance among authoritarian rulers and civil society.

In *international legal studies*, the argument that international norms and rules shape the actions of state is less controversial than in comparative politics. For international legal scholars, "norms are their bread and butter."¹¹ This is especially true for human rights norms,

⁵ This focus effectively pits this approach against the one of Adam Przeworski (1992), who denies that the breakdown of legitimacy contributes to an explanation of regime change. See also Przeworski (1986).

⁶ Pridham (1991b)

⁷ Karl (1997)

⁸ For a comparative politics perspective, see Diamond (1997: 314-342) Schmitter (1996) and Whitehead (1986); for an international relations perspective, see Krasner (1993) and Rittberger (1994).

⁹ For a selection of approaches see, Whitehead (1986); Whitehead (1996); Collier (1993); Huntington (1991) and Schmitter (1996).

¹⁰ Pridham (1991a: 10-18)

¹¹ Finnemore (1996: 139)

some of which, such as the right to freedom from torture, may be regarded as *ius cogens*, i.e. law which is recognised by the international community of states as a whole. International law sees no conflict between the investigation, discussion and condemnation of human rights violations in a state and the sovereignty of that state.¹² Yet, the legal literature remains silent on how these international rules and norms translate into the domestic practices of states. It explains states' lack of conformity with international law by reference to the legal loopholes of the contemporary international human rights regime and the weakness of enforcement mechanisms. Legal scholars thus fail to account for the cases of Indonesia and the Philippines, too, where improvements in human rights practices occurred despite the lack of institutional mechanisms and the existence of these loopholes. For this research agenda, the study shows how international norms as part of a horizontal legal order create opportunities for non-state actors to contribute to the enforcement of international law.

In the literature on *social movement organisation* (SMO), there has recently been a trend to study transnational social movements and their impact on global politics.¹³ For this research agenda, the study provides insights into how and under what conditions transnational social movements affect state behaviour. By comparing the varying successes of transnational human rights organisations, the study contributes not only to the endeavour of designing comparative case studies for SMO research, but contributes also to a better understanding of the art of creating persuasive frames.

Research Design and Execution

In terms of *research design*, the thesis explains positive changes in the human rights practices of the Indonesian and Philippine governments. Sustained improvements in the human rights situation are the *dependent variable*. The *independent variable* is international human rights norms, as institutionalised in the international human rights regime. I will particularly refer to those rights which are related to personal integrity rights and which are promoted by transnational networks of human rights organisations. Transnational networks are networks of domestic and international human rights organisations which exchange information on a regular basis and share a common discourse and values.¹⁴ By focusing on international norms and transnational networks, the study tries to systematically integrate international variables into a study of human rights change. The key question is: how and through which mechanism this international social structure translates into domestic outcomes.

¹² Malanczuk (1997: 57, 220)

¹³ Alger (1997); Clark (1995); Smith, Pagnucco and Romeril (1994)

¹⁴ Keck and Sikkink (1998)

Comparative political scientists will object to my case selection on the ground that there seems to be a clear selection bias. If my dependent variable is the variation in the time human rights change has taken, the coding of the Philippine and Indonesian case offers no puzzle, either for proponents favouring domestic level explanations or for those favouring international ones. The Philippines is a predominantly Catholic country and has had a long history of democratic experience, before martial law was declared in September 1972. Indonesia, in contrast, had almost no experience with democracy and is a predominantly Muslim country. Moreover, the Philippines' long historical relationship to the US seems to favour an international explanation right from the start. The study addresses these valid claims by dividing the Indonesian case into two separate case studies.

In a first case study, I will explain the development of Indonesia's human rights practices between 1986 and 1998 and compare it directly to the Philippine case. This can be justified on the ground that I am interested in demonstrating that a *similar mechanism* accounts for human rights change among dissimilar actors. The second case will focus on human rights developments in Indonesia in the 1970s and presents a case of failure. Transnational mobilisation for human rights did not lead to a sustained change of human rights practices. This case study serves two purposes. First, it presents a case of failure in the sense that international human rights norms transmitted by transnational networks did not bring about sustained changes in human rights practices in Indonesia. This failure can be attributed to the lack of consensus on human rights, which triggered a political dynamic ultimately leading to the breakdown of the spiral model's dynamic. This case study, secondly, challenges the dominant explanations with regard to human rights changes in Indonesia, political culture and democratic experience, and thus can temper the initial objection with regard to selection bias. Therefore, the overall argument that can be made on the variation between Indonesia and the Philippines is that the time lag of Indonesia is mainly because a transnational mobilisation for human rights failed in the 1970s, while it succeeded in the case of the Philippines. This splitting in cases is depicted in figure 1-1.

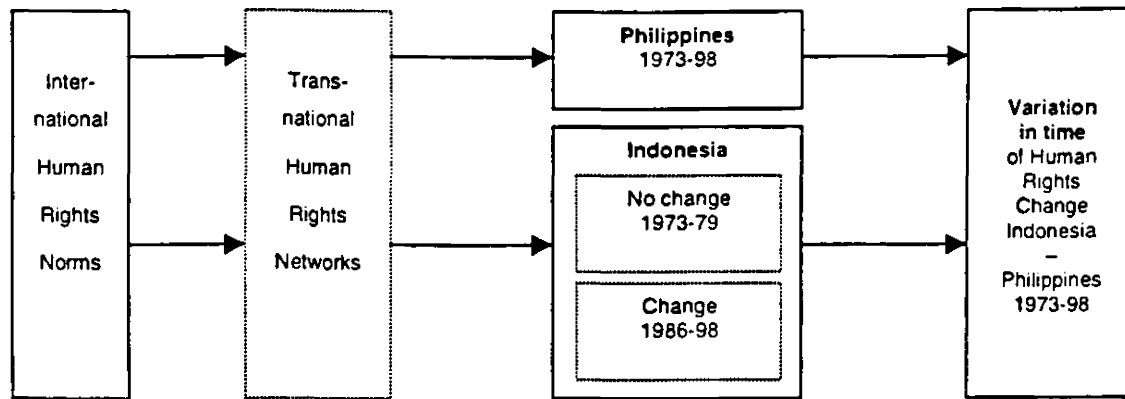


Figure 1-1: Research design

This case study design allows me to address two other methodological problems, which have occurred in research on the efficacy of international norms. Critics claim that focusing on the diffusion of human rights norms faces a “good norms problem”. Analysts tend to focus on issues that are normatively desirable and neglect the rise of “bad norms”. Moreover, many studies focused on a single, specific norm and did not allow for much variation in the outcome, such as success and failure, existence or obsolescence of norms.¹⁵ The case study on Indonesia’s human rights development in the 1970s presents a case of failure for human rights norms. It can thus demonstrate the difficulty of reaching a consensus on even such obviously “good” norms as human rights. In methodological terms, cases of failure are fruitful for theory-building as they allow evaluation of the hypothesised causal relationship.¹⁶

Both countries are located in a world region in which international or regional institutions for the promotion of human rights are absent. There are no regional organisations similar to the Organization of African Unity (OAU) or the Organization of American States (OAS). The United Nations has been engaged in attempts to set up a regional mechanism for the promotion and protection of human rights standards since the 1970s, yet, these efforts have not yielded any tangible results. As such, the international institutional environment of the two countries does not favour an explanation arguing for the efficacy of international human rights norms.

¹⁵ Kowert and Legro (1996: 485f.).

¹⁶ King, Keohane and Verba (1994: 129)

This lack of regional institutionalisation of human rights corresponds with the ratification practice of Asian states in terms of international human rights treaties. Southeast Asia exhibits very little institutional density. Intergovernmental organisations there have been established under the prerogative of guaranteeing the sovereignty of its members and strengthening the principle of non-intervention. The primary example is the Association of Southeast Asian Nations (ASEAN), established in 1967, of which both states were founding members. Finally, unlike in the cases of Spain and Portugal, or some Eastern European and Maghreb states, intergovernmental organisations such as the European Community/European Union (EC/EU) do not exert a "socialising influence" inducing measures toward human rights change. In sum, there is no convincing *prima facie* evidence for international influences on human rights change.¹⁷

With regard to the *dependent variable*, I selected four indicators (as mentioned in chapter three) which reflect pragmatic considerations (availability of data). There are some impediments to measuring the indicators because of varying access to data. In Indonesia, human rights organisations' access to provinces with a pattern of human rights violation has been severely curtailed, and a comprehensive domestic monitoring system has only recently emerged. However, the cases documented by human rights organisations since the early 1970s are conclusive inasmuch as a distinct pattern of human rights abuses emerges.

Plan of the study

The next chapter (chapter two) will offer a brief historical overview of the Philippine and Indonesian experiences with democracy and authoritarian rule. Chapter three describes the dependent variable, changes in human rights practices in Indonesia and the Philippines. Based on an evaluation of several indicators for human rights performance I will argue that there has been a substantial improvement in the area of human rights in the Philippines, and a partial shift in the Indonesian government's human rights practices. The study proceeds, in chapter four, with an evaluation of conventional explanations for human rights change in Indonesia and the Philippines. Briefly, three alternative explanations will be discussed. Modernisation theory embeds processes of human rights progress in a broader framework of socio-economic and democratic development. The more developed a state, the more likely is it that democracy emerges and can be sustained. Given the close interrelation between democratic rule and

¹⁷ Critics might again object that in the case of the Philippines there is *prima facie* evidence for international influences. I will reject the hypothesis that the US was the prime mover for human rights change in the Philippines in chapter four.

human rights protection, one would, by extension, also expect a positive development in human rights practices.¹⁸

This proposition will be rejected on the ground that neither the Philippines nor Indonesia was prepared to democratise and develop a positive human rights record according to most statistical thresholds. Moreover, the causal mechanism, which modernisation theory specifies, the development of an independent economic middle class, fails to explain the democratisation process in Indonesia and the Philippines alike. In both cases, middle classes only played a minor role during the transition to democratic rule, and certainly did not initiate it. In the case of the Philippines, class-based analysis fails to explain the sustained improvement in human rights practices after 1988, as class relationships did not change, but the human rights situation did. Even if statistically, economic development significantly correlates with democratisation, the change of human rights practices in Indonesia and the Philippines did not come about automatically as a result of long-term socio-economic change.¹⁹

It could be argued that improvements in the human rights practices of the Indonesian and Philippine governments are the result of regime change, hence determined by domestic factors and independent of international human rights norms. My major argument in this regard is that regime change was itself shaped by the activities of transnational human rights networks and that both explanations complement each other. A transnational network perspective logically precedes a democratisation perspective. International human rights norms rendered human rights violations a matter of international concern, and enabled pressure on authoritarian rulers by international actors. During the transition to democratic rule transnational mobilisation for human rights change not only created a public sphere in which authoritarian rulers had to justify their rule, but a state model based on constitutionalism provided the very political alternative to dictatorship.

Finally, realist approaches view state actors as primary enforcers of international human rights norms and would predict changes in the human rights practices of another state if these are supported and administered by greater powers. Neither in the Philippines nor in Indonesia did other states take the lead in enforcing the principles of the human rights regime, however. In the case of the Philippines, the close relationship between the US and the Philippines and the

¹⁸ In contrast to such a linear conception, Arat (1991: 9) emphasises that democratic experiments in developing countries tend to fail because increasing political awareness and participation caused by modernisation, in combination with poor government performance and perceived social injustice leads to more protests and social unrest. "Thus, democratic experiments suffer reversals principally as a function of rather complex linkages between repressive civil and political rights policies, encouraged by social and political unrest, stimulated by ineffective economic performance that ignores social and economic rights of citizens."

strategic importance of the Philippines for greater powers impeded rather than facilitated the implementation of human rights norms.²⁰ If sanctions influence the process and timing of sustained human rights change, one should see a quicker change in human rights practices in the Indonesian case, as only in this case did other states consider and temporarily apply sanctions.

Little is understood about the causal mechanisms through which human rights norms produce sustained shifts in human rights practices. In chapter five, therefore, I suggest that the spiral model of human rights change provides a theoretical framework for explaining the efficacy of international norms in Indonesia and the Philippines. In order to arrive at the model, however, it is necessary to explore the theoretical debate over international norms and transnational advocacy networks, which inform this model. The basic premises of the spiral model, especially its reliance on non-state actors as primary promoters of human rights norms, are only discernible if one acknowledges that transnational human rights networks do not rely on material or financial power capabilities. They draw their power from acting within an international public sphere in which the exchange of rational arguments influences the way actors perceive their opportunities and calculate the costs and benefits of their action. Argumentation generates a cultural power structuring the interactions of transnational human rights organisations, target governments and civil society, developing a dynamic which can lead to sustained changes in human rights practices.

Chapter six will substantiate my claims by explaining human rights changes in the Philippines and Indonesia. I will basically hold that despite marked differences in socio-economic development, culture and experiences with democracy, the dynamic described in the spiral model applies to both observations. International norms and transnational networks as promoters of these norms have induced substantial changes in human rights practices. Due to the quicker success of transnational networks, the Philippines case is in a higher stage of the model than the Indonesian one. The Philippines case can be located in a stage where international human rights norms are undisputed and comprehensively institutionalised in the domestic structure. Both have led to a substantial increase in compliance with human rights norms, or a sustained improvement in human rights practices, although human rights violations still occasionally occur. In contrast to the human rights practice of the Marcos regime, however, these violations can by no means still be regarded as official government policy anymore. The internalisation of human rights norms in the Indonesian case, in contrast,

¹⁹ For a recent critical treatment, see Mackie (1999) and Mackie and Villegas (1999).

²⁰ This topic is more comprehensively discussed in Kessler (1989) and Bello and John (1989).

has just moved to a stage where the prescriptions of the norm are acknowledged (phase 4). Human rights violations still occur, but the government has taken important steps toward a greater respect for human rights.

In concluding this chapter, I will note that the spiral model explains both cases, but that it fails to account for the variation between Indonesia and the Philippine in the first phases of the model. Indonesia has taken much longer to reach a phase where it reacted with tactical concessions to increasing demands for a change of its human rights policy. This observation will provide the basis for a separate (third) case study in chapter seven, which asks why early efforts of transnational networks in Indonesia failed. I basically argue that a combination of the network's inability to maintain a public sphere enabling the continued discourse on the Suharto government's human rights practices, and the subsequent breakdown of network activities themselves, account for the failure of challenges to authoritarian rule. The time lag of human rights progress in Indonesia and the Philippines is thus to be explained by the breakdown of the spiral model's dynamic at the end of the 1970s.

The summary in chapter eight will review the argument about the role of international human rights norms, transnational networks and the role of argumentation. Transnational human rights networks can contribute to a better understanding of human rights change, but their effectiveness depends on the willingness of the domestic opposition to establish links to the institutional structure, which transnational networks offer.

CHAPTER 2

The Philippines and Indonesia: Historical Background

Indonesia and the Philippines vary greatly with respect to religion, social stratification, colonial experiences, and geographical size. Yet, in the early 1970s, both political regimes developed into corporatist states with authoritarian underpinnings at the beginning 1970s, and pursued ambitious economic strategies.¹ In the following, after giving a brief overview of the two countries, I will proceed with a short description of the development of the two political regimes for the period between 1970 and 1998.

The Philippines

With a population of 65 million the *Philippines* stands out as the only predominantly Catholic country in Southeast Asia. Its long experience, first of Spanish colonialism (1565-1898) and then of US colonialism (1898-1946), interrupted by Japanese occupation, left an imprint on its political culture. The resulting contact with Western culture led to a greater degree of conversion to Western values than in any of the other Southeast Asian countries. The Philippine polity developed into a system greatly influenced by the political, economic and military hegemony of the US. The tight US-Philippine relationship had an almost unquestioned legitimacy among the ruling elites and significantly shaped the Philippine national identity.²

Prior to the declaration of martial law in 1972, the Philippines had experienced continuous democratic rule since 1935. It was the oldest democracy in the region and the official rhetoric portrayed the Philippines as a modern nation-state governed by the rule-of-law. Due to European and American influences all Filipino constitutions since 1898 have included basic

¹ See, for example, Stauffer (1977) for the Philippines and Robison (1993) for Indonesia. Schmitter (1974: 96) defines corporatism as a "system of interest representation in which the constituent units are organised into a limited number of singular, compulsory, noncompetitive hierarchically ordered and functionally differentiated categories recognized or licensed (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and supports."

² Antikainen-Kokko (1996: 133); Constantino (1978); Shalom (1981: 183)

standards of human rights. The constitution of 1935 constituted the basis for a relatively open political system, in which two political parties, the Nationalist Party (Nacionalista Party: NP) and the Liberal Party (LP) alternated in exercising executive power. It was basically modelled along the presidential system of its colonial master, the US, according to the presidency's extraordinary influence. National parliamentary elections were held on a regular basis. The expansion of the educational system under American rule resulted in the emergence of an independent middle class and contributed to one of the highest literacy rates (90 %) in Southeast Asia.³ The Philippines has emerged as a state unity with an almost all-encompassing Christian identity.

The Philippine state has been portrayed as a weak one, which only gained considerable strength under authoritarian rule. Yet, the sources of state weakness seem to be different from the one in the Indonesian case (see below). American colonial rule entailed an elaboration of bureaucratic state structures of national proportions. State bureaucratic structures were superimposed upon an indigenous structure of localised charismatic authority.⁴ Large land-owning families dominated provincial politics in the fashion of powerful political dynasties. The power of these landlords was based on an extensive patronage system, and presented a centrifugal force challenging the authority of the state.⁵ While in Indonesia, the state was weak because of its limited expansion of state administration, in the Philippines, the state's weakness had its source in the domination of land-owning classes, which used the state as an arena for struggle, but were themselves largely autonomous of it. The state expressed "a situation of domination" and reflected the interests of dominant classes, according to Garry Hawes.⁶

This land-owning agrarian elite itself originated from the colonisation of the Philippines. Spanish colonial rule provided for the world market integration of the Philippines primarily as a producer of primary commodities such as sugar and coconuts. After 1834, agricultural production for the world market became a driving force in the development of the Philippines. Spanish rule institutionalised the centralised political and administrative structures under which rapid economic change could take place, ensured the growth of a corresponding class structures, most importantly a class of landowners, and created the legal codes to protect them. After 1898, US colonial rule rationalised this development and deepened the integration of the Philippines into the capitalist world economy via the United States on the basis of

³ See, for example, Wurfel (1965: 679), Sidel (1995: 140-142).

⁴ Sidel (1995: 152)

⁵ Clark and Chan (1995: 138); Hawes (1987: 125) Wurfel (1965: 692); Hutchison (1993)

⁶ Hawes (1987: 131)

colonial specialisation in producing primary products. The key became sugar which was given a special and subsidised quota in the American market thereby guaranteeing a continuation of the Philippine political economy with its heavy reliance on the sugar plantation land-owning class.⁷ The diversification of the Philippine economy after World war II, especially during the period of import-substitution industrialisation in the 1950s, resulted in the creation of a socially identifiable bourgeoisie which expanded in manufacturing production for the local market. Between a third and a half of manufacturing entrepreneurs came from backgrounds in the established landed oligarchy. This meant that there was no clear social or cultural break between this class and that of the landlords.⁸

Despite social change associated with industrialisation, the Philippines continued to be governed by narrow class interests in the post-colonial era. Democracy failed to institutionalise the fundamental divisions in society in the arena of political contest as parties formed around personalities rather than sectional or ideological differences. The alternation of power of the two political parties, Nacionalista Party and Liberal Party, during the period of parliamentary democracy, was less an expression of a functioning political party system and high political mobilisation, than of the patronage policies of local politicians. Elections became the vehicle for the transfer of political power between members of the dominant economic class and were frequently distorted by massive vote buying. Yet, this form of state and class power did not go unchallenged, for in the immediate postwar period (1949-51), it became threatened by the peasant-based Hukbalahap rebellion in Central Luzon, the Philippine's main island, which was only quashed by US counter-insurgency support.

The drive to use the state to promote industrialisation led to the erection of a complex set of tax incentives laws and foreign exchange controls through legislative enactments and administrative fiats that successfully carried the Philippines through the import-substitution phase on the one hand, but created partial cleavages over the maintenance of import protections on the other. Import protections benefited manufacturers but damaged that section of the landed oligarchy, notably the powerful sugar bloc, involved in the production of export crop. The ensuing intra-class conflict led to a decline in elite cohesion, and was deepened by an upsurge of popular political participation and nationalism and an extended economic crisis in the early 1960s. By 1964, massive student demonstrations were being held before the American embassy protesting against American imperialism in the Philippines.

⁷ Stauffer (1985: 244)

⁸ Pinches (1996:108)

Attempts by Marcos, elected president since 1965, to solidify his rule and to lead the nation toward a more open economy, in which foreign investment would play a larger role, failed. They were stymied by a combination of factors, including an entrenched group of import-substitution manufacturers, the growing nationalist reaction to foreign domination of the Philippine economy, and the continued power of rural elites who were reluctant to allow any further centralisation of power. The nationalist movement gained in strength and drew support from segments of the bourgeoisie, who aspired toward a more influential role relative to foreign corporations, an increasingly radicalised student movement, existing worker and peasant unions and parts of the intelligentsia. The breakdown of elite cohesion, the economic decline of the late 1960s, and the growing sense of nationalism in large segments of the population led to a paralysis of the old state machine and many began to question the legitimacy of the political system and the continued rule of an elite then led by President Ferdinand Marcos.⁹

In 1972, Marcos proclaimed martial law, after repeated efforts to change the constitution and to expand his constitutional mandate as president had failed. A clandestine subversion, conducted by the Communist Party of the Philippines (CPP), which had been founded in 1968, a Muslim dominated secessionist rebellion in the Southern Philippines, and the rising number of student and labour protests in the early 1970s, served as justification for the declaration of martial law.

Marcos immediately announced an ambitious economic and political reform program, the New Society. The New Society, which was frequently referred to as “revolution from the centre”, foresaw an agrarian reform, a reform of the bureaucracy and an economic reform program geared toward attracting foreign investment. They were implemented, between 1973 and 1978, by strengthening the state and centralising political authority, financed via debt-driven growth. The organisation of legitimate and independent political interest formation outside the state-sanctioned and controlled groups was progressively constrained – to state corporatism. Marcos’ ideological vision of a New Society stressed a belief in hierarchy, discipline, and state cooperative dominance of sectoral life as proper characteristics of the polity. Accordingly, national well-being had to be sought in an organic harmony of interests that replaced class and interest conflicts of typical parliamentary regimes.

Congress and the traditional parties had been banned at the outset of martial law and were only allowed to resurface in 1978 for elections to the interim national assembly. The regime stimulated the rise of the government-supported mobilisation party, the New Society

⁹ Hutchcroft (1991: 418)

Movement (Kilusan Bagong Lipunan: KBL) in 1978. Direct control down to the lowest local government level was secured via the establishment of a "proto-legislative structure", so-called "Barangay Assemblies". By holding national plebiscites on important questions like the continuation of martial law rule (1973) and the suspension of elections the assembly system provided the popular support necessary for quasi-constitutional rule.¹⁰ The widely factionalised labour movement (except for the Federation of Free Workers) became unified in December 1975 under the Trade Union Congress of the Philippines. Youth organisations were founded in order to socialise the youth into behavioural patterns supportive of the regime.¹¹

During the Marcos regime, the military (Armed Forces of the Philippines: AFP) slowly gained increasing influence in the political arena. It became Marcos' principle ally in the authoritarian coalition. Until the declaration of martial law, the Philippine military had been a professional army and had no history of intervention in civilian rule. Under Marcos, its size increased substantially. In 1967, the AFP had 45,000 members. By 1972, its size had increased to 58,000 members and reached 250,000 members in the 1980s, including the police and so-called Civilian Homes Defence Forces (CHDF). Defence expenditure rose significantly by 279 % and represented the highest increase among members of the Association of Southeast Asian Nations (ASEAN). The fight against a communist rebellion and the establishment of an authoritarian state apparatus accelerated the militarisation of wide segments of Philippine society.¹² By 1989, the number of military personnel had decreased again to 147,000, including the police (Philippine Constabulary). Paramilitary units amounted to 45,000 members.¹³

After initial successes, the Philippine economy experienced a sharp downturn. Most importantly due to the oil crises of 1979, and the fall in sugar prices on the world market, the Philippines' main export product, the Philippine economy contracted continuously in the 1980s. The economic crisis was further exacerbated by the "crony capitalism" of the Marcos regime. By the mid-1980s, Marcos and his cronies had virtually exploited the Philippine economy and accumulated substantial wealth, by appropriating state monopolies over the most important export products, sugar and coconuts.¹⁴ In 1983, the Philippines had to ask for a moratorium on debt service, as its total external debt amounted to 30.5% of its GNP. Almost 50% of the Philippine population fell below the poverty line.

¹⁰ For an evaluation of the barangay assemblies see Rüländ (1986).

¹¹ Stauffer (1977: 398f.)

¹² Heinz and Knappe (1991: 220); Rüländ (1998: 130)

¹³ Asia Yearbook 1989: 206

¹⁴ Hawes (1987)

Political opposition increased remarkably after the assassination of the leading opposition politician, Benigno Aquino in 1983. The assassination had given rise to a social movement demanding greater respect for human rights and democracy. Despite repeated calls on Marcos on behalf of the US government, during the course of 1985, to step down, he virtually clung to power. In late 1985, he announced a snap election to be conducted in February 1986. Benigno Aquino's widow, who had been the opposition's presidential candidate, seemed to gain the majority of the votes, yet, through massive election fraud Marcos emerged as the winner of the elections. Aquino called for a civil disobedience campaign. On February 24, 1986, a splinter movement of the AFP, the Reform the Armed Forces Movement (RAM) in 1985, staged a coup against Marcos. When the Catholic Bishop of the Philippines, Cardinal Sin, called on the Filipino population to support the rebels, people power was born, a largely peaceful demonstration demanding the resignation of Marcos. Due to the intervention of the Reagan Administration, Marcos refrained from crushing the military coup and people power and finally resigned.

Corazon Aquino was immediately sworn in as new President of the Philippines and saw as her primary task the re-establishment of democratic procedures. Despite quick successes, her coalition government of extreme Left and extreme Right wing forces soon broke up. Within a year, the first coup, launched by military rebels in August 1987, shook the Philippine public. Between 1987 and 1989, military rebels pursued altogether six coup attempts aiming to dethrone Aquino or gain substantial gains from her. Under military pressure, Aquino was forced to dismiss cabinet members considered belonging to the political Left, and to politically support the military's anti-subversion campaign against the NPA after 1987.

Recent evaluations of the Philippine transition show a marked confidence in the stability of democratic rule. Michael Thompson, for example, recently stated that the Philippines was "off the endangered list" in terms of democratic consolidation.¹⁵

Indonesia

Indonesia is the largest Muslim country in the world. Over 80 percent out of 200 million people in Indonesia nominally belong to Islam. Indonesian nationalists declared their country's independence in 1945, which was followed by a bloody independence war against the Dutch (1945-49). In contrast to the Philippine constitutions, the current Constitution of 1945 only entails a very limited amount of human rights guarantees.¹⁶ While in Indonesia class cleavages are not as prevalent as in the Philippines, religious and ethnic cleavages are

¹⁵ Thompson (1996). For similar evaluations, see Thompson (1997), Putzel (1999) and Hewison (1999).

the main source of political polarisation. In Indonesia 88 percent of the population officially adhere to Islam. However, many practice a syncretism of different Islamic and pre-Islamic elements. Indonesia is a secular state, as prescribed by the state ideology Pancasila. Although the proclamation of independence in 1945 was preceded by a controversy over the state foundation – secular or Islamic – the national leaders Sukarno and Mohammed Hatta nevertheless eventually agreed on secularism as the guiding principle of the Indonesian state. Since its independence from Dutch colonial rule in 1945, the Indonesian state has steadily increased its autonomy from societal forces. In the early days of Indonesia's independence, the state was very weak and society-based forces were largely independent of it. When the Republic of Indonesia was proclaimed on August 17, 1945, it could at first hardly be categorised as a state, or even a nation. Dutch colonial administration had never created the encompassing state structures, which Spanish and US rule had erected in the Philippines. The new government of the republic took over the existing bureaucratic structures left behind by the Dutch and Japanese, appointing its own people to key administrative posts. At first, the government's effective capacity to exercise the normal attributes of statehood was very limited. Hence, the strength of the government and the state apparatus depended largely on the degree of active cooperation it could muster from the numerous political and social organisations springing up all over the country. These organisations largely reflected ethnic-religious cleavages and hardly cooperated with each other.¹⁷

The period of parliamentary democracy (1950-57) was generally characterised by the weakness of both state and society, which amplified economic problems. Cabinets based on fragile coalitions collapsed in quick succession. The weakness of the parties was reinforced by the fissiparous tendencies of political parties and rampant ethnocentrism in the society itself. The civilian bureaucracy was virtually paralysed by widespread corruption and divisive factions. This process reached a dangerous level in the mid-1950s with hyperinflation. On a societal level, the 1950s saw an intensifying conflict between Islamic political parties and secular ones, most importantly the nationalist party. The Islamic group under the leadership of the Masyumi party gradually emerged as a significant force in the national political discourse and also gained in electoral strength. For example, in regional elections held in a number of parts in Java and in Yogyakarta in 1951, the Masyumi had gained absolute majorities of the

¹⁶ See Lubis (1993) and Thoolen (1987) for an extensive treatment.

¹⁷ King (1982)

vote or at least many more votes than any other contender.¹⁸ Yet, the consensus on the secular state remained firm. Mohammed Natsir, the chairman of Masyumi, even argued that Pancasila had not excluded religion from statehood because it incorporated the Belief in One God principle. The major challenges to the Indonesian nation state did not emanate from the potentially conflicting views on the appropriate Indonesian polity, but from the weakness of the state as such.

The territorial unity of Indonesia remained endangered by several regional rebellions and insurgencies. The most notable became the rebellions in West Java, led by the Islamic Darul Islam movement, and the secessionist movement in Aceh. The rebellions assumed historical significance, because they instilled among the Indonesian army a sentiment against fundamentalist Islam. They did not, however, threaten the consensus among the Indonesian political elite on the secular basis of the Indonesian State. This consensus only began to wane with the envisioning of general elections in the 1950s. Elections for the parliament and the national assembly had been impossible due to Indonesia's revolutionary situation between 1945 and 1949. After that, elections had been continually delayed apparently because of the fear among the state and party elite, that they would lead to a victory of Islamic parties and endanger the secular basis of the state.¹⁹ In 1953, President Sukarno in a public speech reminded his listeners of the necessity to maintain Indonesia as a national unitary state. "The state we want," he argued, "is a national state consisting of all Indonesia. If we establish a state based on Islam, many areas whose population is not Islamic, such as the Moluccas, Bali, Flores, Timor, the Kai Islands, and Sulawesi, will secede. And West Irian, which has not yet become part of the territory of Indonesia, will not want to be part of the Republic."²⁰

Against the backdrop of separatist movements and a perceived threat from fundamentalist Islamic forces, President Sukarno dissolved the Constituent Assembly on July 5, 1959. He secured the support of the army, and issued a decree proclaiming the return to the 1945 Constitution, which gave him extraordinary presidential powers. Sukarno accused the Masyumi leadership of having incited a secessionist rebellion and imprisoned its leadership, most importantly Mohammad Natsir. The actions marked the transition to "Guided Democracy", including limits on civil and political rights under a coalition government between nationalist parties, the army and the Indonesian Communist Party.²¹ Sukarno

¹⁸ According to Feith (1962: 274-275) nationalist parties consciously designed strategies to withhold elections. In 1952, a party member stated that his party's strategy was "to work for the postponement of elections until the position of the supporters of Pancasila was stronger".

¹⁹ Effendy (1994: 112f.); Feith (1962: 274-275)

²⁰ Speech at Amuntai, Kalimantan, January 27, 1953, Antara, January 29, 1953, as quoted in Feith (1962: 281).

²¹ For extensive treatment on the decline of democracy in Indonesia in the 1950s, see Feith (1962) and Effendy

introduced "Guided Democracy": He dissolved the parliament and re-implemented the 1945 Constitution which granted him extraordinary presidential powers. The Masyumi party, then the only Islamic party, was dissolved in August 1960 on the order of Sukarno. Muslim activists were excluded from political participation in the Old Order of Sukarno, and ever faced political repression.

Sukarno ruled under a coalition government involving the Communist Party of Indonesia (Partai Komunis Indonesia: PKI), the military and nationalist parties. The ruling coalition was intended to unify the three largest socio-political forces in Indonesia, namely nationalism (*nasionalisme*), religion (*agama*) and communism (*komunisme*), and was consequently referred to as *nasakom*. A coup attempt in September 1965, allegedly carried out by the Indonesian Communist Party (Partai Komunis Indonesia: PKI) ended this coalition government. The coup was politically manoeuvred by the army to gain power and supported by Islamic organisations who had been politically marginalised under Sukarno and hoped to increase their political participation in a new government.²² The joint action against the political Left in Indonesia resulted in the near extinction of radical Left organisations in Indonesia after 1965.

In 1967, General Suharto officially became president and instituted the "New Order". While the first years of New Order government were characterised by democratic freedoms, in the early 1970s the political system was slowly reorganised and became more and more authoritarian. Executive power increased, and gave rise to a strong bureaucracy and the establishment of corporatist state structures which enabled tight control of participatory organisations such as political parties, labour unions and the media. The military emerged as the backbone of the New Order and slowly increased its political influence.²³

Beginning in the early 1970s, President Suharto and his economic advisors began implementing a depoliticisation and centralisation strategy in order to ensure the smooth execution of their economic reform program. In 1973, Suharto unified the political parties and thus "simplified" the political party system. As a result, Christian and nationalist parties merged into a single party, the Indonesian Democratic Party (PDI), while Muslim parties were united into a single United Development Party (PPP). The political regime developed a concept of loyal party opposition along with the establishment of Golkar as a political pro-government party in 1971.²⁴

(1994).

²² Samson (1968); Boland (1971)

²³ Mackie (1999)

²⁴ Golkar had been founded in 1964 by then president Sukarno as amalgamation of numerous occupational

The state philosophy Pancasila became the summation of Indonesian official nationalism, and has been a focus of national political discourse for both official and non-governmental actors. It embodies five principles, the belief in one God, humanity, unity, democracy through deliberation and consensus, and social justice. The principles emphasise the rights of the collective and unity and consensus, through the image of the "nation as a family".²⁵ While the five principles of Pancasila are general in their policy content, the New Order government has interpreted these principles in a way legitimising "authoritarianism as a mechanism".²⁶ From 1985 onwards, political parties, and all social organisations, were obliged to adopt Pancasila as their sole ideological basis, which was understood to be a deliberate action to weaken the role of political Islam.²⁷ Together with Pancasila came the idea of an organic, integralist state. The state was supposed to transcend particular vested interests, but seemed to be primarily oriented toward fending off demands of Islamic political forces who challenged the secular foundations of the state as well as separatist movements, which contested national unity. Pancasila served as a major source of legitimation for Sukarno and later Suharto.

Military influence increased in the political realm, too, but the actual number of military personnel declined during the Suharto regime. Under Sukarno, the total strength of the armed forces (excluding police) was 400,000. In 1978, the military still had 270,000 members, and nearly 10% of these men were engaged in civil and administrative duties.²⁸ By 1989, the armed forces totalled 284,000.²⁹ The military's claim to a political and military role (dual function or "dwifungsi") translated into an organisational structure which matched the bureaucratic structure down to the village level and increased the military's surveillance over society.³⁰ It was this far-fetched organisational structure which greatly contributed to the view of Indonesia as a staunchly military regime, despite the fact that its army was comparatively small if related to the size of the population. The military assumed an outstanding political role, legalised in 1982, with distinct advantages. During the Suharto regime, it was strongly represented in the political cabinets of the regime. Until the late 1980s, an informal rule prescribed that the vice-president had to be a member of the military. The military as an

groups, among them the functional group of state employees (KORPRI) representing the state bureaucracy. Under President Suharto, Golkar subsequently became a means for the Indonesian Armed Forces (ABRI) and Suharto to establish a civilian basis.

²⁵ Chua Beng Huat (1993: 155); Pabottingi (1995: 247), Ramage (1995)

²⁶ Robison (1993)

²⁷ See Morfitt (1986) and more comprehensively Ramage (1995) for studies on the Indonesian political discourse in relation to Pancasila.

²⁸ Jenkins (1978c)

²⁹ Far Eastern Economic Review (1989: 134)

³⁰ Tanter (1990b); Rüländ (1998: 123)

institution was granted a comfortable share (75 out of 500) of seats in the Consultative Assembly (MPR), the Indonesian parliament. Many of the provincial governors were members of military services.³¹

Until the mid-1990s, these two parties were the only officially acknowledged opposition parties in addition to the ruling Golkar party. Although they were allowed to operate throughout the "New Order" of President Suharto, they were not permitted to open local branches which effectively limited their access to the local population (floating mass concept). Election campaigning was restricted to a couple of weeks preceding the actual election. Elections, which were held on a regular basis, were consistently won by the state party Golkar. The fact that Golkar usually won large majorities and that elections did not constitute an arena for opposition, according to Richard Robison, made it possible to hold elections in the first place.³² As in the case of the Philippines, the Indonesian government dissolved organisations of civil society and reorganised them in state-acknowledged groups. In 1973 the All-Indonesia Workers Federation (Federasi Buruh Seluruh Indonesia: FBSI) was established as the sole organisation for worker representation, and was followed by an even more centralised All-Indonesia Workers Union (Serikat Pekerja Seluruh Indonesia: SPSI) in the mid-80s. The professional interest representation of lawyers, teachers, business, the mass media, and industry were integrated into the functional group system.³³ After extensive student protests in the 1970s, the government proclaimed a campus normalisation program in 1978, which outlawed political activities at Indonesian universities.

The economic development of Indonesia was greatly facilitated by the Indonesian oil boom in the mid-1970s. By the mid-1980s, oil and oil-related products had become Indonesia's main export product. Yet, when prices for petroleum plummeted in the mid-1980s, Indonesia's Suharto government quickly adjusted to the looming economic crisis and undertook a drastic change of economic policy.³⁴ With external financial assistance by the Western donor community, it liberalised the economy and the capital markets from 1985 onwards. Japan and the US became Indonesia's most important donors.³⁵

Since the late 1980s, the Indonesian political system has seen a gradual liberalisation. Public protests became more frequent and demands for democratisation emerged. In late 1988, the first signs of a split among the ruling coalition became public, when President Suharto

³¹ Rüländ (1998: 124)

³² Robison (1993: 44)

³³ Hadiz (1994: 192); Reeve (1990)

³⁴ Liddle (1991); Booth (1992); Higgot and Robison (1985); MacIntyre and Jayasuriya (1992); Fujiyama (1996)

³⁵ Bresnan (1993); Robison (1986b)

selected a vice president who did not have the army's stamp of approval. In 1990, President Suharto officially announced a political liberalisation called "*keterbukaan*" (opening) and allowed public debate about his political succession. Since then, an emerging opposition has consequently aired its demands for democratic change. The Suharto regime reacted with a policy of carrots and sticks to these growing demands. It allowed limited public debate and reacted harshly if the criticism became too pronounced. Most political observers were convinced that Suharto was pursuing political liberalisation in order to see potential political contenders emerging more clearly so that he could eventually outmanoeuvre or co-opt them.³⁶ Yet, the transition to democratic rule became irreversible, and the regime collapsed in May 1998.

After this brief overview of political developments in Indonesia and the Philippines since the 1970s, the next chapter will describe the development of the human rights situation under authoritarian rule and during the transition to democracy in the Philippines and Indonesia.

³⁶ Vatikiotis (1994); Bertrand (1995); Suryadinata (1997)

CHAPTER 3

The development of human rights practices in Indonesia and the Philippines: 1975-1998

In this study, I argue that transnational networks promoting human rights norms in the Philippines and Indonesia have achieved substantial changes in human rights practices. This chapter will evaluate the dependent variable, human rights practices, in order to substantiate the claim that significant changes have occurred. Before I proceed with a description of the development of the human rights situation in Indonesia and the Philippines, a few comments on measurement problems are in order.

As Russel Lawrence Barsh has noted, there is today no single social accounting scheme that is adequate for the measurement of human rights. In the following, I will operationalise changes in human rights practices (what is usually referred to as state repression) by several indicators. First, I will measure the extent of protection of personal integrity rights by referring to the reported number of human rights violations according to arbitrary arrests/detentions without trial, disappearances, torture and extrajudicial killings per year.¹ These indicators were chosen because they represent a set of human rights which are universally acknowledged. Moreover, the four indicators can be measured, as they have been evaluated since the 1970s by major human rights organisations.

Second, I will evaluate to what extent human rights norms have acquired prescriptive status for the state by measuring the following indicators: (1) ratification of key human rights treaties, especially the International Covenant on Civil and Political Rights, including the First Optional Protocol, and the Convention on Torture and other Forms of Inhuman and Degrading Treatment, (2) implementation of international human rights norms in the domestic law, (3) the independence of the judiciary, (4) and the establishment of individual complaint procedures. Prescriptive status of a norm means that actors regularly refer to human rights

¹ Barsh (1993: 121); Zehout (1997). Barsh also provides an excellent discussion about methodological problems, which occur in evaluating human rights performance.

norms in order to justify their behaviour in the area of human rights.² These indicators will be measured for the entire period under investigation here, i.e. from 1970 to 1998.

Measuring state repression, or, what is attempted here, the development of the human rights situation over a period of more than 20 years, is subject to a number of measurement errors. Using the "reported number of human rights violations" as an index raises the thorny question of data reliability. As I do not observe human rights violations directly, but evaluate them according to reports of human rights organisations, I have no control over the first hand measurement process. The evaluation of human rights conditions was done by local or international human rights organisations whose methods may vary from country to country and over time.

Additionally, reporting on human rights abuses in a particular country is not separable from the political context in which these abuses occur. Counting reported violations depends on the reliability and equivalence of the secondary sources in each country, such as newspapers, government documents and reports of non-governmental organisations. The crux is, however, that "[t]ruly repressive regimes are likely to suppress such information."³ For example, it is much easier for human rights organisations to report abuses in a democratic system than in an authoritarian one, in which the activities of human rights organisations are subject to state repression. It is rather obvious that on the quantitative level human rights abuses might increase once an authoritarian regime loosens its grip on civil society organisations and reporting on abuses becomes easier. Although the reported number of human rights abuses is likely to increase, this does not necessarily imply that the authoritarian rulers have also become more repressive.

By the same token, the lack of reports on abuses is not necessarily an indicator that a particular political regime does not commit human rights violations. Rather, it might as well be that human rights organisations simply have no access to geographical locations where abuses are committed.⁴ In sum, the question arises whether reported human rights violations are a valid indicator for state repression in the spirit that it measures what it is supposed to measure (state repression), and whether it is a reliable one, measuring the real number of human rights violations. The approach adopted by this study tries to be sensitive to these problems, but cannot offer a satisfactory solution.

Yet, I shall give a few examples which might be able to ameliorate the given measurement problems. First, if one looks at the statistics of human rights organisations, especially of local

² Müller (1993: 45)

³ Barsh (1993: 100)

organisations such as the Task Force Detainees of the Philippines, specific developments of the indicators support the assumption that these statistics are sensitive to changes in human rights practices and hence valid. For example, as Figure 3-1 on the reported number of human rights abuses in the Philippines indicates, there is a divergent development in the number of reported cases of disappearances and extrajudicial killings ("salvagings") between 1984 and 1985. While the reported number of extrajudicial killings increases over those two years, the number of disappearances drops in the same period. If these numbers simply reflected an overall increase (or decrease) in state repression, one would expect a parallel trend in both indicators. This is not the case.

A second case is the development of the indicators after the change of power in 1986. If regime type (authoritarian/democratic) directly affected the number of reported cases, one would expect an immediate decrease in human rights violations after regime change. Yet, the Philippine statistics exhibit a decline followed by a sharp upsurge in the number of human rights violations after 1986. In sum, there is some reason to believe that the reported number of human rights violations constitutes a valid and reliable measure of the human rights situation.

Overview

In both countries, the human rights situation worsened considerably with the establishment of authoritarian regimes. Both regimes faced Communist movements in the 1960s and 1970s and various secessionist movements and tried to crush these movements by military might. The Philippine state had to cope with an armed Communist movement from 1968 onwards, but the movement's activities significantly increased only after the proclamation of martial law, leading to the a widespread saying that the dictatorship was the biggest recruiter of the rebels.⁵ Additionally, it faced a secessionist movement in the Muslim dominated South of the Philippines, Mindanao. The Indonesian state had virtually eliminated a Communist movement in the mid-1970s. But it faced secessionist movements in Irian Jaya, which was only integrated into Indonesia in 1950, in Aceh and East Timor. East Timor had been invaded and integrated into Indonesia in 1975/76.

The human rights situation in the *Philippines* deteriorated considerably after the proclamation of martial law in September 1972. Marcos systematically strengthened the power of internal security units, which consequently became notorious for severe human rights abuses.⁶ On a

⁴ Goldstein (1986)

⁵ Wurfel (1988); Abinales (1988)

⁶ International Commission of Jurists (1977)

quantitative level, the months following the proclamation exhibit the greatest number of human rights violations, most importantly related to arbitrary arrests and detentions without trial. According to the reports of human rights monitors, human rights violations became a deliberate government policy in the 1970s and were mainly associated with the fight against a Communist inspired rebellion (the National Peoples Army: NPA), and a secessionist movement in the Muslim dominated Southern Philippines, in Mindanao (Moro National Liberation Front: MNLF).⁷ The Armed Forces of the Philippines, which had assumed police functions under authoritarian rule were commonly regarded as the main perpetrator of human rights violations.

In January 1981, Marcos lifted martial law. Implementation of basic human rights guarantees was obstructed, however, by three important qualifications. First, the call upon the Armed Forces of the Philippines to prevent or suppress lawless violence, insurrection, rebellion and subversion continued in force. Second, the privilege of writ of habeas corpus remained suspended in the two autonomous regions of Mindanao, as well as with respect to persons detained for the crimes of insurrection, or rebellion, subversion, or conspiracy or proposal to commit such crimes. These qualifications made the lifting of martial law essentially a "paper" lifting. Human rights violations increased considerably after 1981. The government not only dispensed with minimum standards of judicial process, but also seemed to shift the tactics of human rights abuses: Human rights reports noted a decrease in detentions without trial or arbitrary arrests, yet, a decisive increase in the number of extralegal executions, known in the Philippines as "salvaging."⁸

After the change of power from Marcos to Aquino in 1986, human rights violations immediately decreased. Yet, reports about abuses continued to be recorded, especially from rural areas. These abuses were again associated with the military operations against the NPA. After the breakdown of peace negotiations between the government and the NPA in 1987, the human rights situation worsened considerably, although the Aquino government continued a policy of institutionalisation of human rights norms into legal and state structures. Human rights monitors noted a proliferation of paramilitary units and accused them of severe abuses. Human rights defenders, members of labour unions and church workers became main targets of such abuses. Since 1988, human rights violations have slowly decreased, however. Singular abuses continue to be committed, but these are no longer regarded as systematic government policy.

⁷ International Commission of Jurists (1977); Amnesty International (1976)

⁸ Amnesty International (1982)

In *Indonesia*, the declaration of martial law by President Sukarno in 1957, and the subsequent limitations on freedom of speech, press, and the organisation of assembly after 1959, also increased violations concerning personal integrity rights of individuals considered belonging to the political opposition. In the 1960s, Muslim activists and members of Islamic parties became major victims of human rights violations, most importantly arbitrary arrests and detentions. A coup attempt, allegedly initiated by the Communist Party of Indonesia (PKI)⁹ provided a pretext for the military to assume power in 1965. In the aftermath of the coup, the military, but also Islamic religious organisations persecuted alleged members of the PKI, nearly extinguishing the PKI as political organisation and killing tens of thousands of alleged party members. As a result of this campaign against the PKI, Indonesia became known as one of the worst human rights violators in the late 1960s and early 1970s.

Although human rights violations never reached these proportions again, human rights violations continued and assumed a systematic character. Abuses were most frequently reported in connection with the fight against secessionist movements, especially in Aceh (Northern Sumatra) and Irian Jaya and the territory of East Timor. However, the government also persecuted political opposition it considered "fundamental Muslim", and used human rights violations on a large scale as an instrument to deal with petty criminals. Due to the lack of access by human rights monitors to East Timor between 1975 and 1988, and Aceh between 1989 and 1991, reports have usually been very tentative and mainly quantitative, but did not document individual cases.

Human rights monitors regularly reported abuses concerning persons considered as belonging to the political opposition in Indonesia. In the 1970s, the Suharto government was alleged to detain without trial, torture or even kill students who demonstrated against the Suharto regime. In the late 1970s and early 1980s, Muslim activists became a primary target of human rights abuse.¹⁰ From the late 1980s onwards, documentation of human rights abuses began to switch to abuses which had been almost taken-for-granted until then, especially the forced evacuation from land and accompanying practices such as arbitrary detentions, extrajudicial killings during student and peasant demonstrations, and the violent suppression of dissent. The human rights situation hardly changed during the 1980s, but reporting of abuses increased especially for the territory of East Timor.¹¹ From the beginning of the 1990s until mid-1995, reports about specific abuses decreased slightly, reflecting the government's efforts

⁹ Partai Komunis Indonesia: PKI

¹⁰ Amnesty International (1986); Tapol (1987)

¹¹ In particular, the Catholic Church in East Timor activated its channels to international organisations and channelled information on human rights abuses to the outside world.

to improve its human rights record. There was a backwards trend following the violent take-over of the office of an opposition party in July 1996, resulting in more abuses by security services between 1996 and 1998. Gross and systematic human rights violations continued after the change of power from Suharto to Habibie, and the human rights situation worsened temporarily, especially in East Timor, Aceh, the Moluccas and Irian Jaya. Yet, human rights monitors note a decisive overall improvement in abuses since President Abdurahman Wahid assumed power in October 1999.

Violations of personal integrity rights

Arbitrary detentions and detentions without trial

In the Philippines under Marcos as well as in Indonesia arbitrary, detentions and/or detentions without trial were a widespread practice. Although in both countries there were and are detailed prescriptions describing the formal procedures, these procedures lacked enforcement and did not apply if persons were prosecuted under Anti-Subversion Laws. In Indonesia as well as in the Philippines most of the arbitrary detentions occurred in connection with the fight against insurrection and rebellion. However, the picture has slowly changed in the Philippines since 1988. The number of people detained arbitrarily has decreased continuously and remains at a relative low level. In Indonesia, the US Department of State report for 1999 in general noted a marked improvement in human rights practices, but still observed arbitrary detentions and detentions without trial.

In the *Philippines*, most of the arbitrary detentions or detentions without trial followed the declaration of martial law in 1972. Throughout the Marcos' rule, human rights organisations reported arrests and detentions in which international law and nationally prescribed procedures had been systematically violated.¹² Amnesty International called arbitrary arrests one of the most prevalent human rights violations in the Philippines under Marcos.¹³ Between 1983 and 1986, detainees remained imprisoned despite judicial orders to release them. These detentions were legalised through Presidential Commitment Orders (PCOs) and, after 1983, through so-called Preventive Detention Actions (PDAs).

After the assumption of power by Aquino, human rights organisations reported only a few political arrests, and stated, that most of the persons arrested were released within a few days. Those detained longer were charged with criminal offences before civilian courts.¹⁴ This trend

¹² International Commission of Jurists (1977: 32); Amnesty International (1982: 4)

¹³ Amnesty International (1988b: 7)

¹⁴ Amnesty International (1988b: 11)

reversed, however, in 1987, and political detentions or arrests without warrant, in which the relevant laws had not been followed or had been circumvented, regularly occurred. The detainees were arrested without warrant for a couple of days and interrogated, the relevant laws had not been followed or circumvented.¹⁵ Since 1988, the reported cases have continually decreased to a low level. Despite clear improvements in the practice, problems remain: Because of inefficient investigation procedures, administrative detention is pursued and remains a threat to individual liberty. Moreover, reports about arrest and detention procedures claim that political offences have been criminalized, thus leaving unacknowledged the political motives of the offenders.¹⁶

In *Indonesia* under Suharto, detentions without trial were a widespread practice and safeguards against arbitrary arrests and detention were routinely violated.¹⁷ Human rights monitors claimed that two state security organisations had primary responsibility for arbitrary detentions. The Command for the Restoration of Security and Order (KOPKAMPTIB) and, after its dissolution, the Agency for Coordination of Assistance for the Consolidation of National Security (Bakorstanas) both operated outside the legal code and had wide discretion to detain and interrogate persons who were perceived to be threats to national security.

The number of arbitrarily arrested persons, or persons who were detained for years without trial, was especially high in the 1970s. In the 1970s, the Indonesian government openly acknowledged the existence of political prisoners who had been detained for ten years and more without evidence justifying their detention.¹⁸ After the release of these prisoners in 1979, the practice continued, although a new Criminal Procedures Code was enacted in 1981, which spelled out detailed procedures for arrest and detention. Yet, human rights monitors noted that the code lacked adequate enforcement mechanisms and that authorities routinely violated it. The code also specified a kind of habeas corpus hearings (pre-trial hearings) and persons could sue the state for compensation if wrongfully detained. However, human rights organisations reported that it was virtually impossible for detainees to invoke this procedure, or to receive compensation after being released without charge.¹⁹

Arbitrary arrests and detention without trials were especially reported from areas where active guerrilla movements exist, such as Aceh, Irian Jaya and East Timor.²⁰ While documentation

¹⁵ US Department of State (1986: 797); US Department of State (1987: 787); US Department of State (1988: 905); US Department of State (1992: 967)

¹⁶ Sadiwa: 293); Philrights (1995: 7)

¹⁷ US Department of State (1997: Sec. 1d); US Department of State (2000a: Sec. 1d).

¹⁸ Amnesty International (1977a)

¹⁹ t'Hart (1987)

²⁰ Amnesty International (1990: 200); Amnesty International (1993b: 231, 233)

of these abuses was severely limited while Aceh and East Timor were closed to outside observers, there was sufficient evidence that arbitrary arrests and detention without trial were employed systematically.²¹ East Timor was a closed "province" until 1989 and human rights organisations were prevented from visiting the territory. Aceh was a so-called area of military operations between 1989 and 1991 and apart from the International Committee of the Red Cross, no independent human rights monitors had access to the area.

Arbitrary detentions have been persistently reported in connection with political demonstrations all over Indonesia. Between 1992 and 1995, human rights organisations noted a decrease in the number of persons prosecuted under the Anti-Subversion Law of 1963, which carries the maximum penalty of death. However, they also remarked that the government had simply resorted to other means, namely to accuse suspects of sowing hatred against the president.²² The government entirely refrained from applying this law from early 1992 to 1996.²³ In April 1999 the Parliament repealed the 1963 Anti-Subversion Law, which had given the Attorney General the authority to hold a suspect for successive 1-year periods without limit. Latest human rights reports note a marked decrease in arbitrary detentions or detentions without trial since the assumption of office of Abdurrahman Wahid in 1999.²⁴

Disappearances

Since the 1970s, in both, the Philippines and Indonesia, there have been continuing reports of disappearances, which became to be known as salvagings in the Philippines. There has been a clear improvement in the case of the Philippines, with the number dropping considerably after 1986, and continually declining after 1988. In Indonesia, disappearances were widespread under the Suharto government, and have continued until today. However, human rights monitors note a marked decline in disappearances, together with the general improvement in human rights practices in Indonesia.

In the *Philippines*, human rights monitors continually documented cases of disappearances between 1972 and 1998 and accorded responsibility to governmental security services, especially the AFP. In many cases, the military reportedly misrepresented these killings as an unavoidable result of an exchange of gunfire with the suspects. Victims were first and foremost individuals who were suspected of being members of or sympathisers with the Communist NPA. Especially between 1982 and 1985 the number of "disappeared" persons

²¹ Amnesty International (1985)

²² Yayasan Lembaga Bantuan Hukum di Indonesia (1995)

²³ US Department of State (1997)

²⁴ US Department of State (2000a)

grew drastically, obviously reflecting a change in strategy of the authoritarian regime. According to international human rights organisations, the Philippine government used disappearances deliberately to eliminate evidence for other human rights violations, such as detentions without trial and torture.²⁵ After the change of power from Marcos to Aquino, the number of reported cases dropped temporarily. However, after 1987, the number of abuses increased again, and human rights organisations accorded armed vigilante groups major responsibility in these abuses, which affected members of labour unions, church workers and human rights activists. Since 1988, the reported cases have slowly decreased. The Philippine human rights organisation, Task Force Detainees, reported 2 victims of disappearances from mid-1998 through June 1999.²⁶

Cases of disappearances were reported from *Indonesia* during the whole period of 1970 to 1999. The government hardly imposed any sanctions on the practice, and this impunity greatly contributed to its continuance until the 1990s. In the 1970s, thousands of suspected Communists disappeared after the attempted coup against President Sukarno in 1965. The Suharto government has never accounted for them. Apart from persons suspected of supporting or belonging to one of the three independence movements operating in Aceh, Irian Jaya, or East Timor, politically active Muslims became a main target of governmental prosecution in the 1980s and disappearances were reported, too.²⁷ The practice received great international attention after the Dili massacre in East Timor in 1991. International and domestic human rights monitors, alleged that more than 270 East Timorese had disappeared after the massacre.

According to the latest US Department of State country report on Indonesia, there were no significant efforts by the government to account for the missing and dead persons from the 1991 military shooting of civilians in Dili. The report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, published in 1995, particularly complained that there had been no independent investigation of the killings at the Santa Cruz cemetery and that the measures taken by the government to account for the disappeared had been worse than inadequate.²⁸ Many of these disappeared had been witnesses of the shooting, and their disappearance was understood to be a deliberate move to extinguish possible evidence.

Several Indonesian students disappeared in May 1998. Nine of them re-surfaced alive a couple of days later and reported that they had been taken into custody and tortured, before

²⁵ Amnesty International (1982: 4); Amnesty International (1988a: 7)

²⁶ US Department of State (2000a)

²⁷ Amnesty International (1986)

²⁸ United Nations Economic and Social Council and Commission on Human Rights (1995)

they were freed again. There were many reports of disappearances in East Timor prior to the consultation vote, when kidnappings of pro-independence activists were common, as well as from Aceh and Irian Jaya. In all cases the military was accorded primary responsibility for these actions.

Torture

For the Philippines under Marcos as well as for Indonesia under Suharto, human rights organisations noted that cases of torture were so widespread that they amounted to standard procedures, especially in areas with an active insurgency.²⁹ Neither in the Philippines under Marcos, nor in Indonesia under Suharto were perpetrators consequently prosecuted by the judiciary. Government statements at times denounced the practice, however. Human rights organisations regularly claimed that inaction and permissiveness of government officials in sanctioning torture contributed to its continued use. While cases of torture declined in the Philippines after 1988, there does not seem to have been an improvement in Indonesia, where – according to the US Department of State and other international human rights organisations – torture is still applied.

The *Philippines* came on the agenda of international human rights organisations due to its systematic practice of torture in the 1970s and 1980s. Torture included beatings, degrading treatment, electrical shocks, sexual abuse, and other practices which were euphemistically called “man-handling” in the Philippines. Security services usually tortured suspects immediately after their detention in so called safehouses, i.e. illegal detention centres in which victims were detained for several days and even months. Torture was systematically used during phases of “tactical interrogation,” in order to acquire information about the activities of “subversive movements.” The main targets were persons considered to be members of the NPA or MNLF, but also members of ethnic minorities.³⁰

Immediately after the change of power from Marcos to Aquino, the number of torture incidences decreased significantly in the Philippines. In parallel to the other indicators, human rights violations involving torture re-emerged in 1987.³¹ Since 1988/89, however, torture cases have slowly but continually decreased. The main perpetrator has been the Philippine police. For 1999, human rights monitors reported three cases of torture, but noted that members of security forces and the police continued to use the practice.³²

²⁹ US Department of State (1983: 869); Human Rights Watch Asia (1993)

³⁰ Amnesty International (1984: 198)

³¹ US Department of State (1992: 640)

³² US Department of State (2000b: Sec. 1c)

In *Indonesia*, human rights monitors have regularly documented cases of torture since the 1970s. Although the practice was certainly most prevalent between 1965 and 1967, when suspected members of the PKI were persecuted, torture was regularly applied afterwards, too. Similar to the Philippines, torture was used as a routine part of any interrogation, although the Criminal Procedure Code (KUHAP) of 1981 provides that information may not be obtained by the use of force.

According to the Anti-Subversion Law, the Attorney General or a subordinate is responsible for the pre-trial hearings or interrogation. In practice, however, detentions and initial investigations were handled by local branches of the military command for the restoration of security and order (Kopkamtib). In most cases, torture has occurred immediately after the detention if suspects were under the responsibility of Kopkamtib. In 1984, Amnesty International received a copy of a manual delivered to military units stationed in East Timor. This manual allowed the application of torture and threats to life in order to increase the suspect's willingness to "cooperate."³³

In 1993, a report by the Lawyers Committee for Human Rights concluded that "[t]orture pervades the criminal justice system of Indonesia. Persons being detained in the custody of the police or military are commonly subjected to beatings with fists, metal cables, rattan canes, bottles and iron bars; repeated kicking in the face and chest; electric shock; and burning with cigarettes. Police officers have raped and sexually molested female detainees. Psychological torture is common, and includes threats against a detainee's family, sleep deprivation and mock executions."³⁴ It concluded that extinguishing the practice was not only a matter of legal reform, but implied overcoming the limitations of the political regime.³⁵ The report provoked a public condemnation of the practice of torture by the Indonesian government. Yet, a general atmosphere of impunity prevailed, and the US Department of State concluded that though some members of the military services have been prosecuted for abuses, "such action is an exception to the rule of general impunity."³⁶ Recent reports of human rights monitors noted that security forces continued to employ torture and other forms of mistreatment, and that police often resorted to physical abuse, even in minor incidents.³⁷

³³ Amnesty International (1984: 305)

³⁴ Lawyers Committee for Human Rights (1993: 10); US Department of State (1997: Sec. 1d)

³⁵ Lawyers Committee for Human Rights (1993: 1)

³⁶ US Department of State (1994: Sec. 1c)

³⁷ US Department of State (2000a: Sec. 1c)

Extrajudicial killings

In both countries, extrajudicial killings were a widespread practice under authoritarian rule, but occurred after the transition to democracy. But while the reported cases in the Philippines have dropped continuously since 1988, in Indonesia, improvements have occurred only recently. In both countries, security forces resorted to extrajudicial killings to cope with political opposition. Moreover, in Indonesia extrajudicial killings became an instrument to diminish crime rates in urban areas.

As noted above, the number of extrajudicial killings under the Marcos government increased drastically during his last five years of rule.³⁸ Between 1975 and 1980, however, human rights monitors already noted a continuing increase in the numbers of extrajudicial killings. Cases documented as extrajudicial killings involve, for example, peasants who were shot by the Philippine Constabulary because they had participated in a demonstration. The Philippine military and government usually justified extrajudicial killings by arguing that the victims had been killed during encounters between subversive movements and the military, or had tried to escape imprisonment. Yet, an Amnesty International report stated in 1982: “[I]n a high proportion of cases killings occurred after interrogation and torture or after the victim had been taken to a place of detention, indicating that death occurred after the victim had been taken into some form of custody. The mission found no evidence in any of the cases investigated that the victims were killed on encounters with military or police personnel as the authorities have sometimes alleged.”³⁹

While the reported number of extrajudicial killings dropped with the inauguration of Aquino in 1986, Amnesty International reported an increase in the course of 1986, due to the resumption of fighting between the NPA and government troops. It included killings of non-combatants. However, compared to the Marcos regime, the number remained relatively low, with 85 reported cases between 1988 and 1991. Amnesty International saw a pattern of government, military and police responsibility for the political killings.⁴⁰

In Indonesia, extrajudicial killings became notorious during the 1980s, when the government waged a campaign against criminal suspects between 1983 and 1986. In his autobiography, President Suharto stated how he had officially sanctioned the killing of up to 5000 people because they had allegedly committed minor criminal offences?? (Petrus campaign).⁴¹ The campaign was eventually taken up again in the 1990s (operation “clean-up”), resulting in at

³⁸ Amnesty International (1988b: 7)

³⁹ Amnesty International (1982: 19)

⁴⁰ Amnesty International (1992: 25f.)

least 150 killings in West Java in 1994. In another major incident, Muslim activists disappeared in 1984 when security forces shot into a crowd of Muslim demonstrators at a harbour area in Jakarta. The so-called Tanjung Priok incidence was then reported only by few human rights organisations. The upsurge of independence movements in East Timor and, especially, Aceh additionally resulted in thousands people being killed extrajudicially, from 1989 to 1998. Reports of human rights organisations univocally claimed that over 2000 people were killed during military operations in Aceh between 1989 and 1992.⁴² The US Department of State country report on Indonesia gave the number of 1021 Acehnese, who were killed during military operations in three districts between 1989 and 1998. In 1991, the disappearance of over 270 individuals who had witnessed the Dili massacre received international attention. The government did not respond sufficiently to requests by international organisations to track down the persons missing.⁴³

Soon after the announcement of a referendum in East Timor in January 1999, extrajudicial killings increased remarkably in the territory. While human rights organisations and public press reporting initially blamed independent East Timorese militia forces for these abuses, evidence soon indicated that the militias had been set up and provided with weapons by the Indonesian military. According to human rights NGOs, the typical pattern in such incidents was for militias, which were obviously armed by the security forces, to provoke conflict to which regular military forces then responded.⁴⁴ The number of abuses rose in the Indonesian province of Aceh, too, after political activity increased at the end of 1999. The Acehnese have been encouraged to struggle for the independence of the territory after the East Timorese referendum was completed in August 1999. In 1999 alone, human rights organisations reported more than 150 people killed by the military during demonstrations and clashes between independence activists and the military.

⁴¹ Amnesty International (1990: 201); Bourchier (1992)

⁴² Amnesty International (1991: 191f.); US Department of State (1999: Sec. 1a); Amnesty International (1993c)

⁴³ US Department of State (1997: Sec. 1b); Amnesty International (1993a); Goderbauer (1993: 153)

⁴⁴ US Department of State (2000a: Sec. 1a)

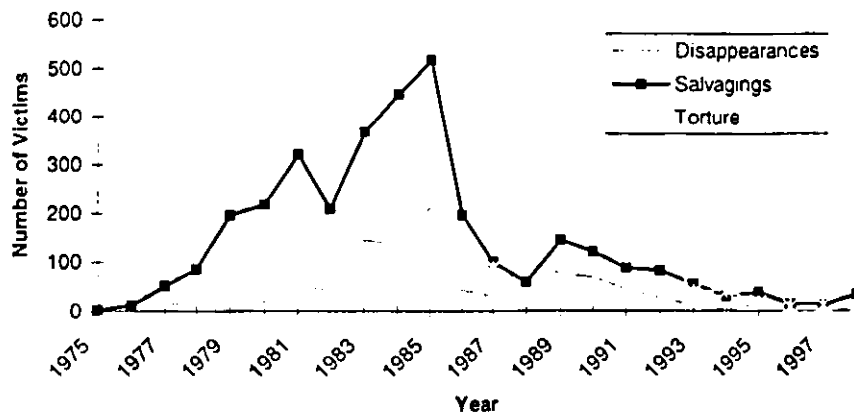


Figure 3-1: Number of reported human rights violations: Philippines⁴⁵

Prescriptive Status: Varying Commitment to human rights

The development of the respective human rights situations correlates in both countries with the prescriptive status of the norm. "Prescriptive status" means that actors regularly refer to the respective norm to comment on their own behaviour and that of others, and is further measured by the existence of the following mechanisms: (1) ratification of key human rights treaties, especially the International Covenant on Civil and Political Rights, including the First Optional Protocol, and the Convention on Torture and other Forms of Inhuman and Degrading Treatment, (2) implementation of international human rights norms in the domestic law, (3) the independence of the judiciary, (4) and the establishment of individual complaint procedures.

Ratification of key human rights treaties

With regard to the ratification of international human rights instruments, the Philippines performs much better than Indonesia. However, in both cases the ratification of conventions only happened as a result of regime change.

Until the ouster of Marcos in 1986, the Philippines had not ratified one of the international human rights treaties under consideration here. When the International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN General Assembly, the Philippines was

⁴⁵ Task Force Detainees of the Philippines, 1975-1998 Statistics

among the first countries to sign it. But it was never ratified under the Marcos government. This picture has changed with the Aquino government. It ratified the ICCPR on October 23, 1986. The First Optional Protocol was signed on August 6, 1987 and entered into force on November 22, 1989. As of January 1, 1989 the Philippines had ratified 43 international human rights instruments.⁴⁶

Indonesia signed the International Convention against Torture and Other Inhuman or Degrading Treatment in 1985 but the Suharto government never ratified it. In July 1998, the Indonesian Parliament ratified the Anti-Torture Convention. That same month, the Habibie government announced a National Action Plan on Human Rights, envisaging the signing and ratification of international human rights instruments within five years.⁴⁷

Human rights norms in domestic law

While Marcos in the Philippines tried to conceal his authoritarianism in extensive legislation, in Indonesia legal experts noted that laws pertaining to the protection of human rights were either underdeveloped or extremely vague. In the Philippines, legal consistency has considerably improved since 1986, although the continued existence of repressive laws of the Marcos era caused concern and were regarded as impediments to the full implementation of human rights. In Indonesia, there have been important transformations of the judicial process including the repeal of repressive laws since the resignation of President Suharto in May 1998, indicating the government's willingness to conform to international standards.

In the Philippines under Marcos the constitution of 1973 contained in a Bill of Rights almost all human rights. However, emergency laws and Marcos' notorious Presidential Decrees virtually invalidated the Bill of Rights. Because of the large number of decrees issued by Marcos, and the partial classification of important pieces of legislation as "not for general circulation" government officials claimed to be unaware of them.⁴⁸ Various executive orders legitimated detentions. Arrest, Search and Seizure Orders (ASSOs, until 1981), Presidential Commitment Orders (PCOs, from 1981 onwards), and Preventive Detention Actions (PDAs, from 1983 onwards) allowed detentions without the possibility of bail. PDAs legalised detentions without arrest orders and without the possibility of bail until Marcos himself ordered the release of the persons detained. The dispelling of minimum standards of judicial

⁴⁶ United Nations Human Rights Committee (1995b)

⁴⁷ Government of Indonesia (1998). For a critical review of the action plan, see Heinz (1998: 670f.).

⁴⁸ International Commission of Jurists (1977)

process after 1982 consequently resulted in a sharp deterioration of human rights conditions, as arrest orders did not have to be signed by civil courts.⁴⁹

The former arbitrary legal situation changed drastically with the Aquino Administration. The new Philippine Constitution of 1987 contains in a Bill of Rights all relevant international human rights guarantees. In comparison to the preceding constitutions of 1935 and 1973 which already embodied fundamental rights, these rights have been enlarged or expanded. According to art. 2 of the constitution, the provisions of the ICCPR can be invoked before and directly enforced by Philippine courts, other tribunals or administrative authorities. Under art. 7 of the constitution the only right that can be derogated temporarily (up to 60 days) under a state of emergency is the privilege of the writ of habeas corpus.

Transition to a human rights protecting state did not proceed without difficulties and was dependent on the political situation in the Philippines, especially the perceived threat emanating from guerrilla activities. By mid-1987, mounting insurgent activity increased military pressure to strengthen existing laws on arrest, detention and prosecution of suspected insurgents. Thus, Presidential Decree No. 1850, providing for exclusive court-martial jurisdiction over crimes and offences committed by members of the Armed Forces or the Integrated National Police of the Philippines, remained valid. The period required to bring arrested persons to court was doubled in July 1987. The element of foreign power or support was removed from the charge of subversion, making it not much different from rebellion but eliminating legal safeguards that were to be followed under the subversion charge.⁵⁰ Against the backdrop of a continuing rebellion in the countryside and increased government efforts to fight it, these laws were perceived as particularly harmful to the protection of human rights. After intense internal debate and international pressure, the controversial PD 1850 was finally repealed in June 1991, and the Anti-Subversion Law was revoked in September 1992.⁵¹

In Indonesia, human rights are only inadequately guaranteed by the constitution. Therefore, the provisions of the criminal procedure code of 1981 and the criminal code are of major importance. They include provisions to prevent torture and mistreatment in detention, to protect the rights of the accused and specific limits for the period of time a criminal suspect may be detained prior to trial, as well as habeas corpus hearings. Some of these provisions are not in line with international human rights norms, the most serious impediment for an implementation of safeguards emanated from the so-called Anti-Subversion Law of 1963, however. The law contained special procedural provisions, which made it possible to

⁴⁹ Espiritu (1986: 38); US Department of State (1983: 861); Amnesty International (1982: 13)

⁵⁰ Sarmiento (1993: 13)

circumvent the normal procedures and eliminate the protection of a suspect or defendant under the criminal procedure code. The most serious exception concerned the authority given to the Prosecutor General, to order detention or to detain a suspect for a period of one year, without any interference from a judge or pre-trial hearing.⁵²

Apart from the failure of specific safeguards to comply with international human rights norms, human rights organisations and the US Department of State have observed serious violations of existing provisions. In summary they complain that legal requirements were often not followed, and that the legal system was "frequently manipulated for political ends."⁵³ The US State Department continuously concluded that e.g. in cases of torture "legal protections are both inadequate and widely ignored."⁵⁴ Yet, timid improvements became visible in the early 1990s. Between 1992 and 1996, the Indonesian government abstained from applying the Anti-Subversion Law,⁵⁵ but reapplied it after riots in Jakarta in July 1996 and accused several of the regime's critics of subversion. Based on recommendations of the National Commission on Human Rights, the government started reviewing several laws, which contravened international human rights norms. This process yielded tangible results only after regime change, however. The Indonesian parliament revoked the Anti-Subversion Law in 1999, and lifted important laws on press censorship which were perceived to harm reporting on human rights abuses.

Judicial independence

Neither the Philippines, nor Indonesia had an independent judiciary under authoritarian regimes. In the Philippines, the judiciary's independence was restored after 1986, leading to a heightened respect for the rule of law.⁵⁶ In Indonesia, the judiciary has demonstrated more independence since the early 1990s, and has made steps toward a formal acknowledgement of human rights on a state level.

Under Martial Law, the Philippine Supreme Court's independence was severely curtailed.⁵⁷ One day after declaration of martial law, Marcos issued a Letter of Instruction requiring all lower court judges, except the Chief Justice and the Associate Justices of the Supreme Court to submit their resignations within a month. He reorganised the judiciary leading to a

⁵¹ Lawyers Committee for Human Rights (1990: 142); Lawyers Committee for Human Rights (1991: 128f.)

⁵² t'Hart (1987: 199)

⁵³ Lawyers Committee for Human Rights (1993: 19); Human Rights Watch/Asia (1994: 140)

⁵⁴ US Department of State (1991: Sec. 1c, 1d); US Department of State (1997: Sec. 1c)

⁵⁵ US Department of State (1996)

⁵⁶ Tate (1994)

⁵⁷ Claude (1978: 104)

centralisation and "streamlining" of the judicial administration. An extensive domain of judicial jurisdiction over civilians was transferred to Military Tribunals in 1972, and remained under them until the end of the Marcos regime. Intervention of the Armed Forces in civilian matters soon undermined the role of the civilian judicial process.⁵⁸ The independence of the judiciary was restored under the Aquino Administration, leading to an increased adherence to the rule of law. From the early 1990s onwards, the Supreme Court exhibited a decidedly independent role in its rulings against the government.⁵⁹

In Indonesia under authoritarian rule, the manipulation of legal requirements was exacerbated by a restricted independence of the judiciary and the systematic executive intervention since the early 1970s. Judges were considered civil servants and have been categorised explicitly as officials of the executive since March 1986.⁶⁰ The government resorted to transfers of judges to remote and underdeveloped provinces, if they did not decide important cases in the government's favour, and judges have been harassed by the military.⁶¹ Corruption was and remains widespread and posed a significant impediment to the judiciary's credibility.⁶² In the mid-1990s significant changes in attitudes of the judiciary became notable. In 1991, the government introduced a system of administrative courts, which allow people to hold government officials accountable for decisions and to claim damage. In 1995, a judge of an administrative court, in a historical ruling, found that Suharto's Information Minister had acted beyond his powers when he banned a popular weekly magazine in 1994. The decision was widely seen as a watershed in Indonesian law.⁶³ The reform process in the judiciary speeded up after the change of power. Most importantly, the Indonesian government separated the executive and judicial branch by formally placing the judiciary under the authority of the Ministry of Justice in August 1999.

Individual complaint procedures

In the Philippines under authoritarian rule, there did not exist an individual complaint procedure.⁶⁴ In Indonesia, the Suharto government set up a National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia: Komnas-HAM) in 1993. After regime change, the Philippine government established several individual complaint procedures between 1986

⁵⁸ Dolgopol (1983); International Commission of Jurists (1977: 58)

⁵⁹ Tate (1994: 192); Sarmiento (1991)

⁶⁰ Thoolen (1987: 61); Lawyers Committee for Human Rights (1993: 69)

⁶¹ Lawyers Committee for Human Rights (1993: 70)

⁶² US Department of State (1997: Sec. 1e); Bourchier (1999)

⁶³ For a more extensive treatment, see Bourchier (1999: 239-240)

⁶⁴ Cull and Allen (1987)

and 1988,⁶⁵ of which the Constitutional Commission on Human Rights has become the State body handling individual complaints on human rights violations. It consists of five commissioners with a legal and administrative staff numbering around 600 persons nationwide.

The first complaint procedure dealing with human rights abuses in the Philippines was the Presidential Committee on Human Rights (PCHR), which was established in March 1986. The Committee was headed by noted human rights lawyer José W. Diokno, and functioned as an advisory and consultative body mandated to investigate complaints of human rights violations committed under the Marcos Regime and under the Aquino government. The Committee ceased to exist on 5 May 1987 to give way to the Constitutional Commission on Human Rights. The powers of the Philippine CHR are laid down in Section 18, Article XIII of the 1987 Constitution. A second Presidential Committee was established in 1988 (Executive Order 101, 16 December 1988) as an interagency committee involving also human rights NGOs.

Initial steps to establish a national complaint procedure in Indonesia occurred in 1993, when President Suharto established a National Human Rights Commission. The Commission does not have prosecuting powers, however. The Indonesian Komnas-HAM comprises 25 commissioners with a staff limited to only a dozen persons. It had no definable powers other than public pressure, and could only recommend specific issues to "state institutions." Yet, the commission developed a positive track record.⁶⁶ After the change of power from Suharto to Habibie, and since the assumption of office of Abdurrahman Wahid, more comprehensive changes occurred. In August 1999, the judiciary was formally separated from the executive branch. The Wahid government appointed Darusman Marzuki, a former member of the National Human Rights Commission, as Attorney General and, for the first time, a State Minister for Human Rights. The Indonesian government established a national human rights court in November 1999.⁶⁷

Moreover, the prosecution of military abuses in Aceh and East Timor points to a change of understanding with regards to the impunity of human rights violations. Since regime change, several investigation commissions have been established to account for several massacres committed by the military in the past years. Among others, a commission to investigate the massacre of Muslim demonstrators in 1984 (Tanjung Priok incidence) and human rights violations in East Timor has been established. In an unprecedented procedure, in Aceh a joint

⁶⁵ Sarmiento (1994: 25-31)

⁶⁶ Human Rights Watch/Asia (1994: 122-135)

civilian-military court (a five judge panel, three civilian, two from the military police, dubbed the "connectivity court") was pursuing Aceh human rights cases involving military officers. These five incidents involve widespread human rights abuses committed by the Indonesian army (Tentara Nasional Indonesia: TNI, previously ABRI) from 1989-98, when Aceh was designated a "Military Operations Area", but include more recent abuses, too. The first case heard by the court involved the trial of 8 persons for the July massacre by TNI troops of at least 51 civilians in West Aceh; however, no one above the rank of lieutenant colonel was to be tried.

To conclude, according to the selected indicators, the human rights development in the Philippines and Indonesia has improved remarkably in the Philippines, and human rights monitors record marked decreases in the number of human rights violations in Indonesia. In the case of the Philippines, the implementation of international human rights norms in the legal structure, as well as actual adherence to the prescriptions of the norms has significantly improved. In the Indonesian case, important measures which have been undertaken during and after the transition from authoritarian rule point to the prescriptive status of human rights norms, even if these measures have not translated into visible improvements in human rights practices, yet.

Although in both cases regime change seems to have played a significant role, especially in Indonesia, important steps toward official acknowledgement of human rights norms preceded the actual change of regime for several years. The major difference in the developments in the area of human rights seem to relate to differences in timing, but this difference cannot gloss over the fact that even in Indonesia important changes are underway, which would have been unthinkable a decade ago. The next chapter will explore how conventional approaches to human rights change explain these observations.

⁶⁷ US Department of State (2000a)

CHAPTER 4

Conventional explanations for human rights change

The previous chapter described the dependent variable, changes in human rights practices, and argued that there has been a substantial improvement in these practices in the Philippines since 1988, and an improvement in some of the selected indicators of human rights performance in the case of Indonesia. This chapter discusses possible explanations for the observed changes. Explanations can be divided into those which privilege domestic factors and those which grant international factors a primary role. From a domestic level explanation the study of human rights change can hardly be separated from the change from an authoritarian to democratic regime. Because the Philippines and Indonesia were authoritarian regimes and both experienced regime changes, democratisation theories would see changes in human rights practices as a result of regime change. I will look at two approaches within theories of democratisation, modernisation theory as a structural approach to democratisation, and an actor-oriented transition approach. From an international perspective, realist approaches provide a framework for the analysis of domestic political change, too. Some approaches to democratisation implicitly draw on realist hypotheses in order to capture international influences on democratisation. Hence, in discussing realist approaches, I will refer to the respective approaches in democratisation theory in order to make explicit their underlying assumptions.

Does human rights change result out of modernisation?

Starting with Seymour Martin Lipset's study "Political Man" in 1960,¹ there has developed a long research tradition in democratisation theory holding that there exists a causal link between economic development and democracy. The main hypothesis which has guided research since then is that the more well-to-do the people of a country, on average, the more

¹ Lipset (1960)

likely they will favour, achieve, and maintain a democratic system for their country.² If one assumes that the consolidation of democracy also entails a greater respect for human rights, one can readily claim that the forces that lead to democratisation might also lead to positive human rights change. Since the appearance of Lipset's book, literally hundreds of studies have approached the explanation of democracy and democratisation in a broadly similar way. Among the central variables, which were considered, the level of development was regarded as central. The main research strategy has been quantitative analysis and a focus on a correlation between socio-economic development and democratisation.³ The modernisation approach to democratisation has been quite popular in research on Asia, as most of the countries have seen exceptional growth rates of their gross domestic product over the last three decades.

In the following, I will follow Przeworski/Limongi (1997) and stick as closely as possible to one causal relationship, the impact of economic development on human rights change. It is important to note here that in this explanation, international variables do not influence the outcome, human rights change. According to this approach, political liberalisation, including significant human rights guarantees, emanates from processes of socio-economic development and is hence primarily influenced by domestic structural factors. The rationale is that human rights change only occurs as a result of regime change. I will take the development of the average per-capita gross domestic product (per-capita GDP) as an indicator and evaluate whether economic development correlates with regime change and human rights development. This might seem awkward for developmental specialists, given the fact that authoritarian rulers in the 1970s legitimised the centralisation and concentration of power and authority, including the suspension of civil and political rights by arguing that these were necessary measures to accelerate modernisation. Hence, there was an explicit trade-off between economic development and human rights, which a correlation of these two variables might simply neglect.⁴ Although I accept this claim, I will bracket this objection for a moment. Firstly, it does not touch the basic explanatory mechanism assumed by modernisation theory that the diffusion of capital, technology, values and ideas from the industrial West to the Third World will replicate the historical experience of the Western

² Lipset (1960: 31); Diamond (1992: 93)

³ Burkhart and Lewis-Beck (1994), rather than studying whether socio-economic development causes democracy, focused in their quantitative study on the question whether authoritarian or democratic regimes yield greater economic development.

⁴ See, e.g. Huntington (1971); an excellent discussion of the modernisation paradigm with regard to Southeast Asia provide Higgot and Robison (1985). For a recently published comprehensive treatment of the impact of modernisation on processes of democratisation in Asia see Morley (1999).

democracies. Hence, it secondly, does not challenge the adjunct claim that over time modernisation will also lead to changes in human rights practices.

Except for relatively short periods of slack in the 1980s, Indonesia and the Philippines both saw continued improvements in their average per-capita income between 1973 and 1997, that means over a sustained period of more than 20 years (see Figure 4-1).⁵ The respective growth rate is quite similar, although Indonesia started at a lower level than the Philippines. In 1973, the average per-capita GDP of Indonesia was 120 US\$, the one of the Philippines was 250 US\$. In the case of the Philippines, there is a downturn in per-capita GDP for the period 1981-86, and for Indonesia for the period 1982-88. If one compares this data with statistical thresholds providing a kind of orientation for when authoritarian regimes topple, neither the Philippines nor Indonesia were ready to democratise and develop a positive human rights record. Przeworski and Limongi calculated a hypothesised average per-capita income of 4115 US\$ as a statistical threshold where a majority of the authoritarian regimes are likely to become democratic ones.⁶ The respective Philippine and Indonesian per-capita incomes were well below that threshold when regime change occurred. If translated into purchasing power parities for better comparison, both the Philippines' and Indonesia's average GDP still remains far below that threshold even after regime change has occurred (in 1991: Philippines 2440 US\$; Indonesia 2730 US\$).

⁵ Source: World Bank (1986: 22-23; 356-359; 544-547), World Bank (1997)

⁶ Statistical analyses of democratisation, which provide evidence that the transition from an authoritarian to a democratic regime type becomes more likely when authoritarian regimes reach higher levels of development generally observed that the relevant per-capita income at which most transitions occurred was around 6000 US\$. If a dictatorship's per-capita income grows above that level, it tends to become more stable. The statistics predict that dictatorships survive in very poor countries (under 1000 US\$ income), become less stable between 1001 and 4000 US\$ and are likely to topple if the per-capita income reaches a level above 4000 US\$. Przeworski and Limongi (1997: 159f.) estimated the transition probabilities conditional on level as a square, because the patterns did not exhibit a linear development. The data basis were 224 regimes, out of which 101 were democratic and 123 authoritarian.

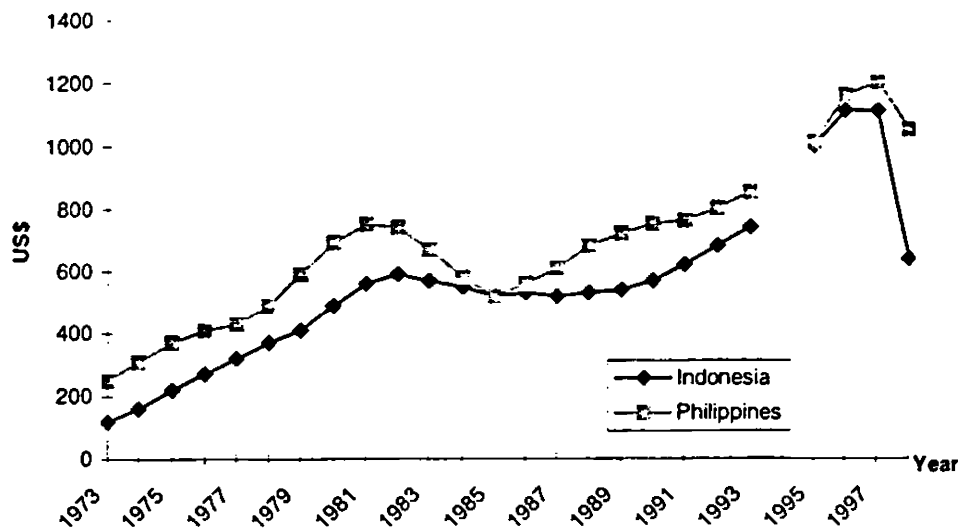


Figure 4-1: Annual average per-capita GDP Indonesia and the Philippines

Moreover, given the pending question whether authoritarian rule promoted economic growth, there is no clear evidence either. The Philippine economy developed under an authoritarian regime between 1973 and 1981, but authoritarian rule did not yield economic development (and human rights improvements) between 1981 and 1986. In 1986, there was a regime change. Development only set in again after 1986, under a democratic regime. Similarly, Indonesia saw economic development and economic decline under authoritarian rule. There was a regime change in 1998, and since then, the economy has slowly improved. That means that neither did a sustained economic crisis inevitably lead to transition and improvements in human rights practices (Indonesia 1983-88), nor did sustained economic growth inevitably lead to a transition (Philippines 1973-82). Similarly, there is no direct correlation between socio-economic development and human rights development. Despite continuing growth in both cases, neither the Philippine nor the Indonesian human rights situation improved between 1973 and 1983 on a sustained basis. The human rights situation took a clear downturn in the 1980s in the Philippines, and improved only after 1988, while it constantly remained at a low level in Indonesia.

The actor-centred variant of modernisation theory confirms suspicions concerning a structural explanation of human rights change. In their search for causal mechanisms rather than correlation, modernisation proponents early suggested that the development of middle classes constituted an important step toward democratisation. Socio-economic modernisation resulted in a gradual differentiation and specialisation of social structures enabling democracy. Given

the continued high growth rates in Asian countries. modernisation theory has been widely used to explain the democratisation or lack thereof of Southeast Asian countries.⁷ Apart from the lack of reliable data especially on the development of the Indonesian middle class,⁸ the most interesting feature of these contributions is that most of them did not accord the Indonesian middle class a role as a primary mover in democratisation in Indonesia until regime change. They thus failed to predict the decline of the Suharto regime until 1998. Similarly, many observers agreed that regime change in the Philippines in 1986 had not brought about revolutionary changes in class relationships. They were therefore inclined to predict a continuation of gross and systematic human rights violations even under democratic rule.⁹

In the case of Indonesia, most observers agreed that a middle class had developed, mainly as a result of the Suharto regime's comprehensive deregulation policies in the second half of the 1980s. To date, Richard Robison probably provides the most systematic account of class politics in Indonesia.¹⁰ In his view, the New Order regime of Suharto had two facets: a mercantilist one, leading the state to intervene to protect national enterprise and national economic agendas, including the development of upstream manufacturing industries such as steel and petrochemicals, through tariffs, monopolies and state-funded industrial projects. The patrimonial/rent-seeking facet made state officials appropriate state resources and authority on behalf of specific political and corporate interests. Under this dirigiste regime the growth of a capitalist class has, according to Robison, proceeded with great rapidity, and has broadly produced three segments of middle classes: Ethnic Chinese, who operate below the major international conglomerates with interests in manufacturing, property, banking, construction, forestry and trade. An indigenous class (so-called *pribumi*), which emerged largely as a result of various state policy offensives to stimulate *pribumi* capital, and finally a *pribumi* capitalist class which was mainly connected to the Suharto regime's bureaucrat families and hence linked to Suharto via clientelistic structures.

Yet, Robison's evaluation was negative when it came to the question whether the Indonesian bourgeoisie had reached a stage where growth and expansion could be more profitably sought

⁷ See, for example, Robinson (1991); Croissant (1998); Tanter and Young (1990); Budiman (1990); Sinaga (1995); Martin Jones (1998); Fierlbeck (1994)

⁸ With few exceptions, the empirical study of middle classes, and their political behaviour remains unsystematic, most importantly due to the lack of statistical data or survey data, and restrictions on research imposed by the Indonesian government under authoritarian rule. Moreover, as the contributions in Tanter and Young (1990) make clear, some area specialists tended to dismiss the notion of class structures altogether, thus inhibiting more systematic insights into class structures.

⁹ Silliman (1991); Hutchison (1993)

¹⁰ Robison (1985); Robison (1990); Robison (1996)

through competition in the market than in the dirigiste State. Neither of the class factions overwhelmingly supported demands for democratisation, for various reasons. The deregulation policies of the Suharto regime in the 1980s had overwhelmingly advantaged the conglomerates and ethnic Chinese, who consequently had no interest in changing the status quo. The *pribumi* classes, even if they were not major beneficiaries of the deregulation policy, did not demand change, either. On the contrary, they asked that the dirigiste regime take greater account of their interests. In sum, there was "little evidence to suggest that either the largest corporate groups or the most politically important elements among the Indonesian bourgeoisie have reached a stage where their continued expansion requires a fundamental change from dirigisme to the triumph of market over state. Even less so is there any evidence that this bourgeoisie is pressing for liberal reform at the political level."¹¹ Moreover, the heterogeneity of the Indonesian population and its distinct horizontal separation along ethnic and religious rather than class lines were seen as major impediment to middle class mobilisation. Martin Jones (1998) argued that given the dominance of Islamic faith among the Indonesian middle class, democratisation was unlikely to come about in Indonesia.

Others doubted that ethnic Chinese, who represent a big proportion of private entrepreneurs, but had been a minority group and victims of persecution in the past, would initiate or actively participate in political struggles. Put differently, the lack of political consciousness conducive to democratisation of the Indonesian middle class has become the major explanation for Indonesia's lack of progress toward democratisation until recently. In a reversal of the proposition that middle class development contributed to state accountability and improvements in human rights practices, Robison even argued that middle classes required at least some degree of legal protection from arbitrary rule. In other words, a minimum of human rights protection had to precede middle class mobilisation. This would ensure the organisation of a framework within which skills, qualifications, credentials and expertise might be expected to prevail over political whim.¹²

As with the Indonesian case, for the Philippines a causal connection between middle class development and human rights improvements must be rejected. There is broad agreement that the Philippine middle class, due to its economic independence, would have been in an ideal position as a harbinger of democratic regime change. The industrialisation policies after World War II had led to the differentiation of landed classes and contributed to the growth of

¹¹ Robison (1993: 55-58)

¹² Robison (1993: 62). In this context, Kastorius Sinaga's excellent study on the representation of the middle class among NGOs in Indonesia does not contradict this hypothesis. Sinaga (1995) basically shows that the professionalism of NGOs profited from middle class development, but does not explain what enabled the growth

a landed middle class, which had expanded its economic base by investing in industrial production, especially in the sugar and coconut sector. This new economic middle class was hence characterised by a distinct economic independence and autonomy from the state. It achieved a far greater size and higher economic status than its counterparts elsewhere in the region.¹³

In particular, the high visibility of the middle class during the people power revolution in the Philippines in February 1986 has frequently been cited to support the claim that the middle class can be considered the main conveyor of democracy and human rights.¹⁴ Yet, the middle class was deeply split from the declaration of martial law until the assassination of opposition leader Benigno Aquino, and began to mobilise against the Marcos government only afterwards. Above all, export-oriented entrepreneurs supported the declaration of martial in 1972, because martial law promised an end to nationalist legislation which had been on the rise in the early 1970s, and an end to the perceived political instability. Rigoberto D. Tiglao even holds that the Philippine upper and middle classes revealed a "near total embrace of the dictatorship," because they viewed it "as the country's path towards a Singapore-style, strong-man-rule industrialisation."¹⁵

While there is agreement that dictatorship strengthened state power and cut back the power of the landed middle class, there is also consensus that the Marcos regime did not really threaten class rule. It continued to protect private property and acted in the general interests of the dominant class through its repression of organised labour. Hence, human rights violations were in the interests of the landed middle class, putting them in no position to struggle for human rights and democracy. Middle class support for change from the authoritarian Marcos to the democratic Aquino regime in the mid-1980s, according to this perspective, was largely prompted by the consequences of crony capitalism and the associated debt crisis, which threatened class interests.¹⁶ Based on this analysis, many observers agreed that the regime change from Marcos to Aquino had not brought a profound change in class rule. People power revolution, leading to the unseating of Marcos, had just restored the elite democratic system of the pre-Marcos era. The human rights violations committed during Corazon Aquino's Administration, in this perspective, appeared as a logical function of the dominance

of these NGOs in the first place. Here, a human rights perspective might add some explanatory weight.

¹³ Hanisch (1989); Hutchison (1993: 199); Mackie and Villegas (1999: 143); Doronila (1986)

¹⁴ Anderson (1988); Timberman (1987); Wurfel (1988)

¹⁵ Tiglao (1988: 29)

¹⁶ Wurfel (1988: 238); Hutchison (1993: 197) Timberman (1991)

of the bourgeois middle class, or an "unfinished revolution."¹⁷ By sticking to this explanatory framework, class analysis has been unable to account for the sustained changes in human rights practices in the Philippines since 1991, and for the slow consolidation of democracy in the Philippines since then.¹⁸

To sum up, in the Philippine and the Indonesian case, economic middle classes did not play a significant role in the demise of authoritarian rule and in the improvement of human rights practices. The available data seems to point to the important function of middle classes in the legitimisation of *any* order, be it authoritarian or democratic.¹⁹ Both cases suggest that middle classes abandoned their support for dictatorships because the regimes threatened their economic benefits. Hence, there is also no evidence that modernisation, via the development of economic middle classes, *caused* regime change and a positive development of human rights practices. Pressure for regime change arose because a relative small and independent economic middle-class perceived economic crises as a threat to its economic existence. The transition literature does account for this fact and argues that authoritarian regimes are by their nature transitional and fall victim to their own rhetoric. If their main source of legitimacy is the promise of economic development, they inevitably lose legitimacy if they can no longer deliver economic development.²⁰ Yet, even this explanation remains incomplete given the fact that Indonesia experienced a severe economic crisis between 1983 and 1988, too, and this crisis did not lead to regime change.

To sum up, while it is undisputed that greater economic welfare contributes to the stability of democracy, the Philippine and Indonesian cases reject the hypothesis that continued economic growth leads to democratisation and to a continual human rights improvement. The Philippine and Indonesian average per-capita income remained well below any statistical thresholds when the transition to a democratic regime occurred, confirming the emerging consensus that the transition to democratic rule can occur at any level of per-capita gross domestic product.²¹ Middle classes mobilised, but were part of a larger social mobilisation against the authoritarian regime. The middle class was not the most important social class, nor did it initiate the transition to democratic rule. Regime change was precipitated by an international and domestic mobilisation against the authoritarian rulers against gross and systematic human

¹⁷ The title of Timberman's (1987) article epitomises this impression most visibly.

¹⁸ For an excellent discussion of the thesis that the Philippine regime change in 1986 had brought no fundamental changes in class dominance see the contribution of Törnquist (1993).

¹⁹ Mackie (1999: 126f.)

²⁰ O'Donnell, Schmitter and Whitehead (1986: 15)

²¹ Przeworski and Limongi (1997); Schmitz (1998)

rights violations. As such, mobilisation was a social event cutting across class lines and reconstituting interests along reformers and status quo oriented people (or hardliners and softliners) rather than encompassing whole classes.

Is human rights change the result of democratic regime change?

Human rights change is hardly analysed in its own right in theories of democratisation. Rather, it is conceptualised as part of the process of liberalisation and democratisation. Accordingly, positive changes in human rights practices seem to be regarded a quasi-automatic outcome of the transition to democratic rule. Hence, the question arises whether the observed changes in Indonesian and Philippine human rights practices can be explained by regime change. This proposition challenges the proposition of this study primarily by questioning two assumptions. First, approaches to democratisation which accord domestic politics a primary role would reject my claim that international human rights norms promoted by transnational networks played a role in initiating the transition process. Second, they would place less emphasis on my claim that pressure for human rights change is part of the explanation for regime change and argue that human rights change only came about as a result of regime change. There are several theories of democratisation, of which I will evaluate here the ones which accord domestic factors a primary role in the transition process, in order to differentiate them more clearly from the argument in this study. Approaches to democratisation have addressed international influences, too, but as these influences overlap with propositions in IR, they will be treated in the section on international influences on human rights change.

In their evaluation of international influences on democratisation, Guillermo O'Donnell and Philippe C. Schmitter argued that "domestic factors play a predominant role in the transition. More precisely, we assert that there is no transition whose beginning is not the consequence – direct or indirect – of important divisions within the authoritarian regime itself."²² The following evaluation of the Philippine and Indonesian case will thus focus on the extent to which important splits in the ruling coalition can be regarded independently from international mobilisation and contribute to a better understanding of human rights change.

In the Indonesian case, there is a broad consensus that splits in the ruling coalition and the struggle over succession initiated broader political changes and eventually contributed to the resignation of Suharto in May 1998 and the formal change of political regime.²³ In this perspective, the competition between the military and President Suharto arose out of the

²² O'Donnell, Schmitter and Whitehead (1986: 19); similar: Whitehead (1986)

declining influence of the military under the New Order. The military constituted the backbone of the New Order, when it assumed power in 1967. In the early 1980s, Suharto was able to concentrate more and more power in his hands and to expand his network of patronage. While personal friends, his family and several tycoons of ethnic Chinese background profited from their close relations to Suharto and the deregulation policies of the 1980s, the military became increasingly insulated both from society, and from the major power centre constituted by the inner circle around Suharto.

The economic liberalisation policy of the Suharto regime in the 1980s, a reaction to the rapid decline in oil prices, further weakened the military's socio-economic base. In the 1970s and early 1980s, the military had been able to use oil revenues as a power base to subsidise its own network of patronage. As Richard Robison has shown, the military had occupied key positions in many of the big oil producing companies.²⁴ The shift in economic production diminished its ability to engage in this kind of patronage system and forced it to resort to political repression as a primary means to achieve political control and preserve the status quo. There developed a distinct split in the ruling coalition over political liberalisation between Suharto and ABRI, which became publicly visible in 1988, when Suharto nominated Golkar chief Sudharmono as vice-president, whose candidacy was rejected by the military. The neglect of ABRI's preferences, in this view, precipitated a power struggle between Suharto and ABRI, which opened up political space for civil society organisations to organise and develop political alternatives to the authoritarian regime.

For example, Max Lane argued that partly in a kind of retaliation for the nomination of Sudharmono in 1988, ABRI tolerated, and even actively supported to a limited extent the student demonstrations in the late 1980s, nor did it intervene in the protests. The students had demonstrated for greater social justice and – in this context – criticised the Suharto family's wealth and nepotism. In allowing the public demonstrations to proceed, ABRI as an institution was seen to enhance its power position in the struggle against Suharto.²⁵ In 1990, Suharto officially announced a political liberalisation and for the first time allowed a public discussion about his succession. Many saw Suharto's decision an ingenious device to see political contenders emerge, in order to co-opt or replace them if they became threatening to his power.²⁶ The ensuing interaction, or games of transition²⁷ between hard and softliners in

²³ Uhlin (1995); Vatikiotis (1994: Chapter 6); Hewison (1999)

²⁴ Robison (1985); Robison (1993: 50f.); see also Tanter (1990a)

²⁵ Lane (1991); Robison (1993: 51); Bertrand (1995)

²⁶ Bertrand (1997); Vatikiotis (1994)

²⁷ Przeworski (1992)

the civilian elite, the military and organisations of civil society consequently led to the disintegration of the regime and its demise. The variation in time between the Indonesian and the Philippine case can be explained if structured contingency (here: political culture) is taken into account, arguing that countries with democratic experiences democratise earlier.²⁸

I have to admit that this account is compelling and one wonders why introduce such a fuzzy concept as norms into the analysis. The major argument is that it reflects on something, which is usually taken for granted in theories of democratisation: That (liberal) democracy is the preferred option and that the ruling elite gets split over it. In other words, the perspective starts from fixed preferences and exogenises their formation. The case of Indonesia during the 1970s highlights the argument: In the 1970s, important splits had developed in the ruling coalition, too. A broad based coalition among Muslim political parties, students, and parts of the military, then criticised the Suharto regime for its trend toward authoritarian rule and leaning toward Western development models.²⁹ The students, but also prominent members of ABRI and the Muslim United Development Party (PPP) demanded and criticised the increasing corruption and lack of accountability of Suharto's ruling inner circle and called for greater democracy. In 1974, public disaffection erupted in the so-called Malari riots during Japanese Prime Minister Takuei Tanaka's visit to Indonesia. The riots, led by students of major universities, shocked the Indonesian policy establishment. Although Suharto was able to contain the conflict temporarily, by retiring the major political contender in ABRI, Lt. General Sumitro, splits in the ruling coalition remained. In 1977-78, in the wake of the parliamentary and presidential election, public protests and large-scale demonstrations resurfaced, and students and party officials openly demanded the resignation of Suharto. The demonstrations gained a magnitude leading observers to predict "the last days of Indonesia's Suharto".³⁰ Yet, history proved to be otherwise. The Suharto regime cracked down on the vocal student opposition and repressed it with harsh measures. This begets the question what actually enabled regime change in the 1990s, but not earlier?

In the case of the Philippines, liberalisation arose in the absence of significant splits in the ruling coalition in 1978. In August 1977, Marcos announced a political normalisation process, including among other measures the freeing of political prisoners and the holding of national elections for the interim national assembly, but did not lift martial law, which still provided his primary source of power. When Marcos started to liberalise, he did not face significant

²⁸ This is the argument Putzel (1997) makes with regard to democratisation in the Philippines, Indonesia and Malaysia.

²⁹ For a detailed account, see Bresnan (1993: Chapter 5).

³⁰ See, Anderson (1978)

pressure from civil society, yet. The political opposition was either imprisoned or exiled, and the strength of the militant Left had been severely diminished due to the military's counter-insurgency campaign in the 1970s. There were splits in the Philippine military; yet, these splits did not play a significant role until after the assassination of Benigno Aquino in 1983. The economy had markedly improved, too. Given the assumption that Marcos had announced martial law in 1972 because it served his power interests, it remains puzzling why Marcos initiated a political liberalisation.

The questions which the transition perspective does not explicitly address is why the ruling coalition gets split over liberalisation and what makes splits in the ruling coalition *important* enough to initiate liberalisation. Put differently, why did splits in the Indonesian ruling coalition lead to liberalisation only in the 1980s and not in the 1970s, when the political situation had allowed liberalisers to ally with a student movement? If fissures in the ruling coalition only became visible in the early 1980s, why did Marcos announce a "political liberalisation" in 1977, in the absence of significant splits and financial pressures? Democratisation theory has taken for granted that the preferences of actors in the ruling coalition become differentiated along supporters of the status quo (hard liners) and supporters of liberalisation (soft liners). But where do these preferences come from? Why is it liberalisation, not some other policy issue which leads to the demise of an authoritarian regime? Why did concerns for human rights gain such an attention in both cases? By focusing on the question of how liberalisation emerges as a viable political alternative to authoritarian rule, I will endogenise precisely *how* liberalisation emerges as a decisive issue. The failed Indonesian transition in the 1970s provides evidence that splits did not lead to a regime change because there was no consensus on human rights norms and hence a constitutive principle of democracy.

As the empirical chapters will demonstrate, demands for democratisation in Indonesia in the 1970s failed precisely because the majority of the Muslim opposition did not agree on secularism as a pre-condition for human rights protection. Parts of the Islamic opposition justified their opposition to authoritarianism by arguing that an Islamic State would protect the Muslim community from arbitrary state action and increase their political participation. Given the Iranian revolution in 1979, other states were highly sensitive toward such demands. The Suharto regime was effectively able to exploit these sentiments and in the domestic debate capitalised on the concern of the secular and Christian part of civil society that their rights might actually be curtailed. Secular oriented groups cooperated with Suharto and the military and enabled the continuation of authoritarian rule. In sum, a lack of consensus on

human rights norms accounts for the ability of the Indonesian government to survive the political challenges and the splits in the ruling coalition.

Based on this evidence, I claim that splits in the ruling coalition become important only as a result of transnational pressures for human rights change which manages to unify the political opposition on a human rights frame. The claim of this study is that democratisation becomes an option if a transnational human rights network mobilises international and domestic actors against the human rights violations of the authoritarian regime and if the political opposition agrees on human rights norms with their two constitutive claims to validity, individualism and secularism.

Does human rights change depend on the commitment of powerful states?

If one transcends the domestic level to account for explanations to human rights changes, one confronts Neorealism and Neoliberalism as important approaches to explain changes in human rights practices. Like its domestic counter-part, modernisation, Neo-realism favours material structures over actors. In Neorealist and Neoliberal analyses, unitary states are the dominant actors in international relations, the international system is an anarchical system and power is distributed in an asymmetrical way among states. States are rational, utility-maximising actors which calculate on the basis of given preferences the costs and benefits of each action. States establish international institutions such as human rights regimes only if these institutions promise gains. From a neorealist perspective human rights change is hard to explain, yet, this perspective has contributed to a hegemonic regime theory, tracing the source of domestic political changes to more powerful states. This proposition draws on the assumption that due to the lack of supranational authority able to enforce compliance upon states, human rights change will only come about as a result of the activities of more powerful states, which sanction instances of gross and systematic human rights violations.³¹

Some approaches exploring the international influences on democratisation implicitly draw on realist concepts, too. The emphasis some authors accord to the political conditioning of development aid reflect the rationale that making the continuation of dictatorship more costly will increase incentives to liberalise. Given that states have an interest in improving the human rights practice of another state, one might expect an improvement in human rights practices 1) if great powers initiate sanctions against human rights violating regimes or attach political conditions to development assistance.³² Given that other states act rationally, this

³¹ See, for example, Krasner (1993); Rittberger (1994: 230) emphasises the convergence of societal interests with great power interests.

³² Diamond (1997); Segal (1991); Pridham (1991a)

pressure becomes the more likely, if 2) the financial vulnerability of the target states is high. The more dependent an authoritarian government is on the financial resources of Western states, the less costly it is for other states to induce sanctions, and the more likely it is that sanctions yield positive results in terms of human rights improvements. Given the concept of normative prescriptions as constraints on actor behaviour, the sustainability of these measures is likely to depend on the sustenance of these transfers to the target state, because sanctions only impose an external constraint on another state's preferences, but do not change the preference as such. Hence, sanctions need to be consistent and sustained in order to be effective. In order to evaluate this proposition, I will establish the extent of external dependency of the Philippines and Indonesia first, and relate it to incidences where material pressure was applied, later. It is important to note that in this perspective, both observations appear easy cases for Neorealist approaches because of the obvious material and cultural hegemony of the West in general and the US in particular as well as the two countries' economic dependency on Western financial support.

As Figure 4-2 shows, both countries' dependency on foreign financial transfers increased almost in parallel over the period 1970-97. Until 1984, the external debt situation of both countries was quite similar. Their total debt service as a percentage of exports of goods and services (TDS/XGS ratio) was well below 20 percent, with Indonesia exhibiting a slightly higher ration between 1977 and 1980. The ratio dramatically increased for both countries in 1984. It increased in the Philippines from 14,7 to 40,2 % in 1988. In the case of Indonesia, the ratio made a similar jump upwards from 14,1 % to 30,7 % in 1988. In both countries, this ratio steadily declined until 1994. While the TDS/XGS ratio for the Philippines has further diminished to 11,4 % in 1998, the one of Indonesia significantly increased in the same period and reached 57,6 % in 1998.

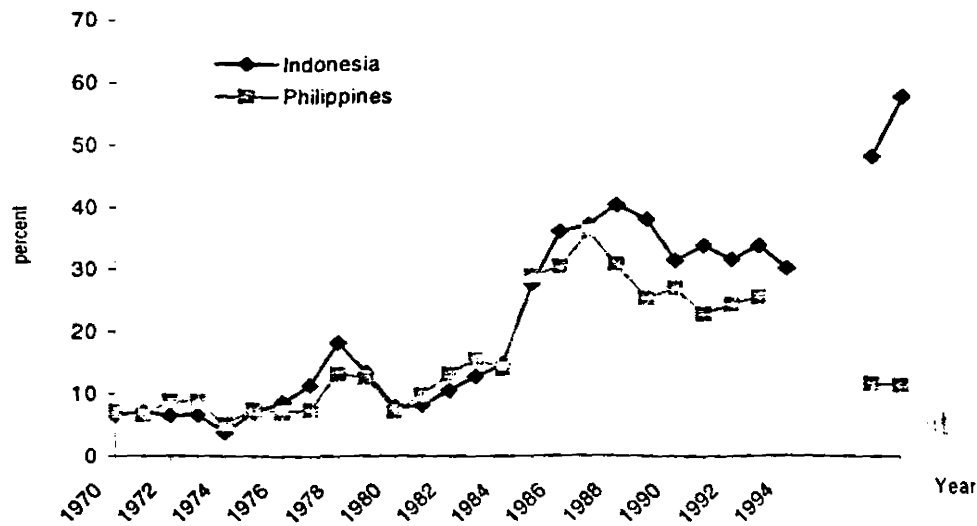


Figure 4-2: Total Debt Service as Percentage of Exports of Goods and Services (TDS/XGS)

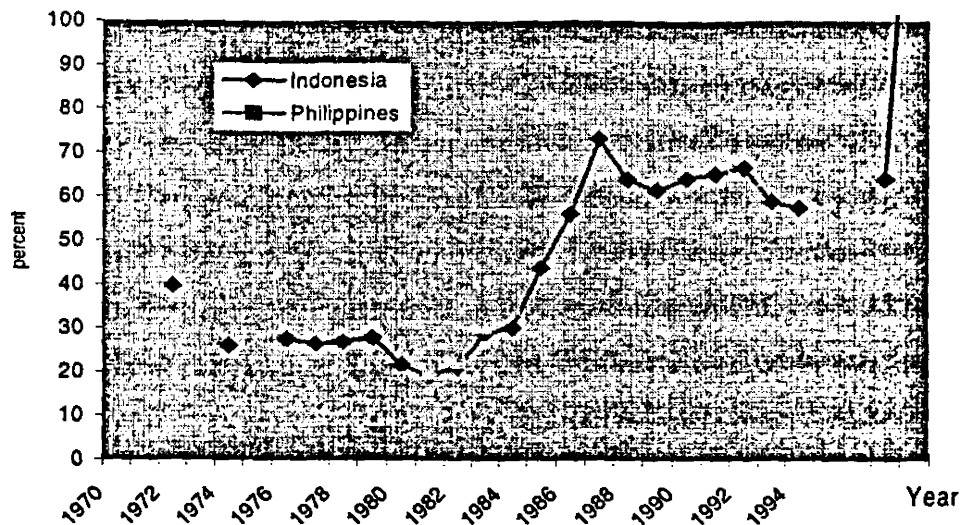


Figure 4-3: Total External Debt as Percentage of Gross National Product (EDT/GNP)³³

The development is even more dramatic for the total external debt to gross national product ratio (EDT/GNP). In this category, Indonesia's dependence on foreign funds was higher than the Philippine one between 1972 and 1984. In 1972, the total debt of Indonesia constituted 39,6 % of its gross domestic product, but declined to 19,2 % in 1981. That of the Philippines increased at the same time from a level of 10,6 % in 1972 to 19,8 in 1981. From 1984 onwards, both countries' debt significantly increased. The total debt of the Philippines

³³ Data 1970-80: World Bank (1977), EDT/GNP ratio based on own calculation; data 1980-84: World Bank (1986); data 1985-87: World Bank (1991); data 1988-96: World Bank (1997: 222-225, 378-381).

increased from 34.7 % to 91.3 % in 1987. Though less dramatic, Indonesia's foreign debt rose, too, from 30.2 % to 73 % in 1987. Both countries were able to reduce this debt burden by 1994. Indonesia's total debt exploded in 1998 to reach 154 % of its GNP, while that of the Philippines remained at a modest level of 46.3%. If the EDT/GNP ratio serves as an indicator for material vulnerability, Indonesia exhibits a greater material vulnerability than the Philippines in the 1970s. Thus, pressure to change human rights practices should yield greater results for Indonesia than for the Philippines. How do these developments in material vulnerability correspond with external financial pressure? When did other states actually apply sanctions to improve the human rights situation or more generally coerce the Philippine and Indonesian government?

In the Indonesian case, one can note marked pressure on the Suharto government in the mid-1970s to release tens of thousands of political prisoners, some of whom had been imprisoned since 1965. The Intergovernmental Group on Indonesia (IGGI), which had been established in 1967 under the leadership of the Dutch government and under whose framework donor countries coordinated their activities, then threatened to link developmental aid to the freeing of these prisoners. As several authors claim, the potential loss of financial benefits and secret negotiations with the US actually contributed to the freeing of the prisoners.³⁴ After the release of the political prisoners, international criticism of Indonesia's human rights practice became muted. The US Administration under Jimmy Carter expressed its satisfaction with the releases and did not publicly criticise the Suharto regime for its crackdown on the domestic student opposition in 1978. The prisoner releases did not result in a continued improvement in human rights practices. On the contrary, the Indonesian government increased its repression after 1978 by announcing, for example, a "campus normalisation" program, which effectively prohibited any political activities at Indonesian universities. It increased the repression of Muslim political activists, too, and was effectively able to resist demands for more comprehensive political changes.

If one looks at the 1980s, one would expect the Indonesian government to be under increasing pressure to improve its human rights practices. However, the Indonesian government was largely exempted from public and diplomatic pressure by other states. This surprises because Indonesia was highly dependent on foreign aid due to the rapid decrease in oil prices in the early 1980s. In order to finance the costly restructuring of its economy it turned to Western donor countries. Despite the leverage that these countries had in the 1980s, demands to change Indonesia's policy increased only slowly after 1989, when its vulnerability was

³⁴ Fealy (1995); Kivimäki (1994)

actually declining again. Moreover, these demands were mainly restricted to moral appeals such as the issuing of resolutions demanding improvements in human rights rather than material incentives and threats. It was not until the so-called Dili Massacre in East Timor in 1991, that donor countries linked the disbursement of development aid to human rights.

The European Community, individual donor countries such as the US and Japan, as well as the World Bank threatened to discontinue their aid disbursements if the Indonesian government did not establish an investigation commission. These threats were actually effective in the sense that the Indonesian government established such a commission. As a result, the donor community revoked any restrictions on development aid. Moreover, due to the economic interests of donor countries in Indonesia, the government was effectively able to exploit competing donor interests in order to secure continued aid flows and used the severing of diplomatic ties and the disclaimer of Dutch development aid as a means to protest against the conditionality of development aid and the Dutch "meddling into Indonesia's domestic affairs."³⁵ The Indonesian government launched a diplomatic offensive and was able to secure an additional grant by the Japanese government amounting to 91.4 million US\$, which far surpassed the Netherlands' share of development aid.³⁶ It was only after 1994 that donor countries assumed a more consistent attitude and their actions seemed to converge on a collective understanding.

In the case of the Philippines, the US as most important donor, as well as Japan, did not apply financial pressure to change human rights practices during Marcos' authoritarian rule. The Carter Administration and the Reagan Administration continually judged developments in the Philippines from the standpoint of their impact on strategic-military interests and did not make military aid conditional on improvements in human rights practices. Similarly, Japan, as part of its own power politics in Southeast Asia, supported the Marcos regime until its very last days and never made the disbursement of official development assistance contingent on human rights performance. Japan's official development assistance, amounting to US\$ 240 million in 1985, was primarily allocated and utilised to promote Japanese business interests. Any independent direction of Japan's ODA policy was effectively secondary to the objectives and interests that the United States had in the Philippines.³⁷

In the case of the US, the military-strategic interest of the US in the Philippines provides the clue to why the US Administrations did not consistently apply financial pressure. Pressure for

³⁵ Kingston (1993); Schulte-Nordholt (1995). The Japanese government's approach to Official Development Assistance for human rights violating Asian governments is described in more detail by Takahashi (1993).

³⁶ (Schulte-Nordholt 1995: 153); Baehr, Selbervik and Tostensen (1995: 80)

³⁷ Takahashi (1993: 68)

human rights reforms in the Philippines was actually contingent on international military-strategic developments, especially with regards to the Soviet Union. Until the 1990s, the Philippines hosted eight military installations in the Philippines, out of which two, Clark Air Field and Subic Naval Station, were the largest US military facilities outside US territory. Subic Naval Station was the most important naval port in the Pacific and the Pentagon and the US Department of Defense considered them of utmost importance for the operation of the Seventh Fleet. Although it was never clear whether the naval stations also served as deposits for nuclear weapons, the installations supported the nuclear position of the US in the Pacific.³⁸

While the strategic military interests of the US do not necessarily preclude an active pursuit of human rights concerns, in practice, this was the case. US administrations defined their interest in the Philippines as "political stability" and hence did not criticise the Marcos regime's human rights practices to an extent that would have destabilised the authoritarian regime.

The Carter Administration denounced the Marcos government's human rights practice, but did not make the disbursement of foreign aid, military assistance or other security related funds conditional on improvements in human rights practices. The Carter Administration abstained from voting on credits to the Philippines in multilateral donor agencies, such as the Asian Development Bank, but US abstention did not lead to the cancellation of any credit.³⁹

Credible threats to discontinue development aid were regularly ridiculed by contradicting statements of the different departments responsible for US policy in the Philippines. A Senate Bill, introduced in 1976, suggesting a reduction in military assistance to the Philippines because of the Marcos regime's human rights practices was rejected. Thus, it appears that the Marcos government started with a series of tactical concessions after 1977 despite the lack of financial pressure rather than because of it.

With the ascension of the Reagan Administration in the early 1980s, Marcos received reliable support out of Washington. Despite a growing awareness that the Marcos government engaged in systematic human rights violations, and despite a rapid increase in the Philippines' dependency on external financial help, military aid continually increased and was not used as a lever to pressurise the Marcos government to improve its human rights practices. The Military Base Agreement (MBA), which was negotiated in 1983, foresaw a doubling in the US security assistance to the Philippines from 450 US\$ million to 900 US\$ Million for the period 1985 to 1989. It was not until the assassination of opposition leader Benigno Aquino in August 1983, that the Reagan Administration started to reconsider its interest and began

³⁸ Medianski (1987: 310).

³⁹ Stohl et al. (1989: 200)

supporting human rights and democratisation issues in the Philippines. The US Congress reduced military aid, yet only symbolically, to transform it into economic aid.⁴⁰ Even then, it was the concern for the military bases, which prompted the US to revoke its public support for the Philippine dictator. Stronger support for democratisation emanated from the rapidly increasing strength of the Communist underground movement in the Philippines, the New Peoples Army (NPA). In 1983, US intelligence agencies warned that rising opposition against Marcos benefited the NPA and predicted a victory of the NPA within the next years. US policy began to change only when it became clear that Marcos could not guarantee access to the bases in the long term.

In sum, despite the economic dependence of the Philippines on US capital, most observers agree that the strategic interests of the Carter and Reagan Administrations increased US dependence on the military bases in the Philippines, and thus limited its ability to distance itself politically from Marcos.⁴¹ In particular, the Reagan Administration regarded criticism of the Philippine human rights practice as potentially harmful to its security interest and its positional power interest toward the Soviet Union. Hence, US foreign policy toward the Philippines fits neatly into the Neorealist paradigm, but it does not explain what needs to be explained, the emergence of a human rights discourse and the eventual improvement in human rights practices in the Philippines.

To conclude, a material structural perspective alone does not explain the developments in the area of human rights in Indonesia and the Philippines. Financial pressure was important to secure distinct changes in behaviour of the two leaderships, such as freeing political prisoners, but pressure did not contribute to continued improvements. For the Philippines, Diane Orentlicher argued that "Filipinos' impression of Carter was based less on concrete measures taken by his administration than on the fact that it had elevated human rights to an unprecedented level of rhetorical importance in international discourse."⁴² If one assumes, as regime theorists in the human rights area do,⁴³ that Western liberal states have an interest in the human rights situation of other countries, states did not seem to act rationally or according to utility maximisation: They applied significant pressure when the target states were less dependent on aid, but did not sanction abuses when material vulnerability was comparatively high. Moreover, if one compares the material dependency of the Philippines and Indonesia in

⁴⁰ U.S. Congress and Senate (1985: 42)

⁴¹ Hawes (1986); Kessler (1986)

⁴² Orentlicher (1991: 59)

⁴³ Donnelly (1986) was the first author to apply regime theory to the area of human rights. He stipulated that a "moral interdependence" among liberal states was responsible for the creation and the subsequent institutionalisation of an international human rights regime.

the 1970s, and takes into consideration that donors conditioned development aid to Indonesia, it remains a puzzle why the Philippines entered into a transition but not Indonesia. Finally, other states did not denounce human rights violations in a consistent manner, thus diminishing the effectiveness of their interventions. The available evidence points to the assumption that state governments had to be mobilised to sanction human rights violations, which shifts attention to potential mobilisers, and hence transnational networks.

I am not arguing that pressure from great powers is unimportant to explain how states acknowledge human rights norms leading them to change their human rights practice. Although norms derive their strength from the extent to which other actors share them, an important component of their capacity to influence the behaviour of an actor stems from the punishment an actor faces if it violates the norm. Norms must be partly sustained by approval and disapproval.⁴⁴ Given this assumption, the difficulty regime theorists face in explaining human rights change is less related to the "enforcement" of norms versus the voluntary acknowledgement of norms. Norm violation needs to be "punished" to ensure the continued relevance of the norm, and great powers can assume a primary role in it because they possess the material capabilities to do so. Yet, other states are highly dependent on reliable information, and some liberal states only act if domestic publics increase the costs for pursuing a "business as usual" policy. Finally, *continued* improvements in human rights practices require more than sanctions, especially the insight in the legitimacy of these external interventions. The 30 year long sanction regime against Cuba has not toppled Fidel Castro, and unilateral sanctions against Iraq have done little to destabilise the political regime of Saddam Hussein. On the contrary, given the perceived lack of legitimacy of these sanctions, Castro as well as Hussein were able to rally their domestic constituencies around a nationalist agenda. It is precisely the mixture of pressure politics and persuasion which transnational networks seek to apply in order to change the human rights practices of authoritarian states. The next chapter will develop a theoretical framework for human rights change in Indonesia and the Philippines, integrating the issues which have been raised above in a more systematic way.

⁴⁴ Elster (1989: 99)

CHAPTER 5

International norms and transnational human rights networks in theoretical perspective

In the previous chapter, I developed alternative explanations for human rights change and argued that they either fail to explain the Philippine and Indonesian observations or miss important features, leading to incorrect predictions. In this chapter, I will argue that an explanation for sustained changes in human rights practices in Indonesia and the Philippines needs to integrate international norms into the analysis and the activities of norm promoters, which I will refer to as transnational human rights networks. Domestic imperatives, economic development, or processes of coercion might be important to a change of human rights practices, too, but they are not the sole or even the primary factors conditioning processes of human rights change. Human rights change was an essentially political process drawing intensively on the moral power of international norms. While regime change preceded substantial improvements in human rights practices, regime change was itself *shaped* by transnational discourses about systematic human rights violations of the regime and is therefore influenced by international norms. The process through which international norms translated into domestic politics is best explained by a phase model, which acknowledges the various effects of normative prescriptions on behaviour, and describes how national actors take advantage of these norms: the spiral model of human rights change.¹

Yet, the variation in time between the Indonesian and Philippine case requires us to focus more comprehensively on the need for a consensus over the validity of human rights norms, which comes about as a result of public processes of argumentation and persuasion. Processes of public argumentation on the validity of human rights norms influence the timing of human rights change. Sustained human rights change depends on the ability of transnational human rights networks to mobilise a consensus on the repressive character of the political regime,

¹ Risse, Ropp and Sikkink (1999)

and on the individual and secular validity claim of human rights norms. Transnational human rights networks have to argue their case in front of a transnational audience and have to persuade a transnational public that the target state commits gross and systematic human rights violations. They have to propose convincing measures to deal with these human rights violations, which must ultimately lead to the rule of law. Where they fail to persuade audiences, such as the domestic opposition in the target country, mobilisation fails, too, and prolongs the time human rights change takes. As such, processes of argumentation add explanatory force to the spiral model.

Before I introduce the spiral model, it is pertinent to make explicit the theoretical assumptions which inform the model. The model is basically an attempt to provide a bridge between two competing paradigms in international relations, which claim to explain the efficacy of international norms, rules and law more generally, sociological institutionalism and rationalist institutionalism. While sociological institutionalism provides an explanation of why states follow specific rules, rationalist institutionalism is mainly concerned with explaining why states do not comply with international prescriptions. With these two competing paradigms come different theories of action, or perspectives on why actors follow norms or disregard them, the logic of consequentiality (rationalist institutionalism) and the one of appropriateness (sociological institutionalism). The spiral model includes a third interaction mode, argumentative interaction or a "logic of argumentative rationality".² According to the spiral model, the need for an exchange of arguments among social actors arises because actors need to develop collective understandings enabling collective action. I will argue that there is also a logical necessity for processes of argumentation in the international realm.

A problem-driven approach to sustained changes in human rights practices needs to introduce a logic of argumentative rationality in order to provide a bridge between rationalist frameworks, which take as given that actors accept norms out of utility-maximisation, and a sociological framework, which takes as given that actors consider human rights legitimate. The logic of argumentation problematises each of these assumptions, which helps to explain processes of human rights change. Moreover, a logic of argumentative rationality helps to illuminate the exceptional power of transnational networks in relation to their much more powerful competitors, state governments.

² Risse (2000)

The power of international norms: enforcement vs. legitimacy

A study about the efficacy of international norms immediately faces one central objection: Can international norms be considered a part of international law, and hence to a certain degree binding, or is their independent influence on behaviour insignificant? Realist approaches and Neoliberal approaches in IR would dispute the claim that international human rights norms are law on the ground that international law departs significantly from legal orders in the domestic realm. For realists, the acknowledgement of norms as international law essentially boils down to the question of law enforcement. In the realist view, the international system is an anarchical order. Anarchy is to be understood as the absence of a centralised authority with an exclusive monopoly of force, such as the state in the domestic realm. The existence of a centralised authority marks the *differentia specifica* delineating sharply the international and the national level, international anarchy and domestic political order. The relevant actors in an international system are states as unitary, rational actors, which weigh each action according to its costs and benefits and reveal a high degree of autonomy vis-à-vis other actors and normative rules. Because international law is a horizontal legal system, realists seem to have good reasons to dismiss the independent influence of international law. The international legal system lacks a supreme authority, the centralisation of the use of force, and a differentiation of the three basic functions of law making, law determination, and law enforcement typically entrusted to central organisations. If judged against these criteria of domestic law, international law cannot be considered law.

While these assumptions sharply diminish expectations as to the efficacy of international rules and norms, they do not make them completely redundant, however. In a decentralised international system self-help constitutes a viable alternative to the lack of centralised authority. Yet, especially in the human rights area, this principle offers no enforcement mechanism, as the human rights violations in a state rarely affect other states.³ Moreover, law can be administered by powerful states.⁴ Enforcement of rules and norms becomes more likely the more these norms correspond with the interests of powerful actors. In such a conception, it seems that only weak states can be forced to comply, while strong and powerful

³ In the language of regime theorists in IR, human rights violations in one state do not constitute a problematical situation of interdependence in the interaction among states, and hence to not generate the need for coordination and cooperation. Donnelly (1986), in his classical application of regime analysis to the human rights area argued that there exists a moral interdependence among states inducing other states to act. In a "republican liberal" perspective, Moravcsik (2000: 220) has recently argued that the establishment of human rights regimes constitutes a kind of reinsurance for governments, a "tactic used by governments to 'lock in' and consolidate democratic institutions" in order to enhance their credibility and stability vis-à-vis non-democratic political threats.

⁴ Kelsen (1960: 18); Malanczuk (1997: 3-5)

states are enforcers, but are exempted from pressures to comply themselves.⁵ This would, of course, contradict the basic concept of the rule itself, which specifies do's and don'ts irrespective of the power position (i.e. "equality before the law") and depends on a consistent, rather than arbitrary application. Given these profound problems, the realist's conclusion is simple: Without a central authority securing the compliance of *every* state with legally binding prescriptions, international law cannot be implemented. Accordingly, international law is only a moral or ethical system, but not a legal system.⁶ Friedrich Kratochwil sharply summarised the underlying assumptions as follows: 1) International law is not law in a real sense; 2) even if international law is law, legal norms are not effective; 3) even if legal norms exist, they only mirror the interests of the most powerful actors in the international system, but have no independent influence.⁷

This understanding contrasts with perspectives in legal studies, international society approaches in International Relations (IR), and more recently world polity and social constructivist perspectives in IR.⁸ These approaches emphasise that the view that law depends on enforcement misses other important mechanisms through which law exerts influence on state actors. With regard to the lack of a centralised authority, these perspectives argue that horizontal systems of law operate in a different manner from centralised ones and are based on principles of reciprocity and consensus rather than on command, obedience and enforcement. Although there is no international government, there is rule-governed social order.⁹ The *definition* of law cannot solely be made dependent on the question of enforcement, and the question of law *implementation* must not be reduced to one of enforcement. The efficacy of law is not necessarily linked to coercion and sanctions, but entails an unspecific social power, which induces states to obey rules and constitutes a "generative power" of social structure.¹⁰

According to this approach, law derives its strength by functioning as an identity and community building device. Actors comply with rules and norms because they feel bound by a legal order, which they perceive to be legitimate in its material and procedural aspects,

⁵ Research on the efficacy of sanctions is bound to such a concept. See, Elliott (1998); Simon (1997) and Pape (1998).

⁶ Krasner (1993)

⁷ Kratochwil (1984: 343-344), see also Schaber (1996), for a detailed discussion.

⁸ For an international society perspective see Bull (1995), for a sociological institutionalist perspective see Boli (1987).

⁹ Donnelly (1993: 29)

¹⁰ Höffe (1981: 168); Schmalz-Bruns (1995); Finnemore (1996a: 5f.)

rather than from fear of sanctions.¹¹ Because law contains a rule dimension it develops a normative force and itself provides an impetus for compliance. What is decisive is the material rationality of law, the fact that actors believe in its moral rightness, which provides the basis of any system of law and ensures compliance. The more legitimate international norms, the greater the compliance pulls.¹² In this perspective, the distinction between international and domestic order is less dramatic, as neither in a domestic political order, nor in an international one, are all rules and norms being enforced all the time.¹³ The question of law implementation is crucially important for the efficacy of a legal system, but not for a definition of rules or law itself. This perspective on international norms differentiates between the acknowledgement of normative structures and actual behaviour.

To be sure, both theoretical perspectives capture observable behaviour of state actors in the international realm. While realists find ample evidence in state action which clearly violates international norms, for example the continuing practice of human rights violations, legal experts and sociological institutionalists point to the fact that state behaviour exhibits much more compliance than realists would predict. They even often follow norms, which are against the perceived self-interest of sovereign states. Moreover, patterned activities of states and shifts in state activity in accordance with changes in international norms provide evidence that states are influenced by international expectations about proper behaviour. These changes cannot be solely regarded as the results of individual domestic developments. For example, there is a remarkable pattern among state constitutions regarding their formal acknowledgement of human rights norms in constitutions.¹⁴ Finally, states often feel bound to justify violations of international norms even if they have not subscribed to the relevant international treaties.¹⁵

Rather than making a decision on either theoretical position, I will resort to a different strategy, which is due to the specific research question I am interested in: Why and how do states which previously exhibited gross and systematic human rights violations change their behaviour in accordance with the prescriptions of international norms? This problem-driven reformulation of the two positions proceeds from the assumption that an institutionalised international human rights regime makes prescriptions for state behaviour, but admits that not

¹¹ Schaber (1996: 86-88); Kriele (1990: 34-37)

¹² Franck (1988); Dunne and Wheeler (1997)

¹³ D'Amato (1987)

¹⁴ Boli (1987)

¹⁵ Franck (1988: 707)

all states adhere to them. While some states might change their human rights practice due to external constraints, *sustained* changes in human rights practices depend on the acceptance of these norms as legitimate by the respective state.¹⁶ In theoretical terms, therefore, the study explores how the "compliance gap" can be narrowed and through which mechanisms it takes place. Rationalist institutionalism and sociological institutionalism provide quite different answers to the question of how norms exert influence on behaviour. In order to develop a concept of arguing and be as precise as possible about its effects on behaviour, the next section will describe how norms shape behaviour.

Norms and three logics of action

I do not argue that human rights violating governments start taking human rights measures because government officials wake up one day and realise that human rights are good. Nor do I claim that government officials, security personnel, or members of the military all take pleasure in torturing people or see human rights violations as an end in themselves. In most cases, state governments commit human rights violations because they perceive them to be a suitable means to achieve given ends.¹⁷ In their perspective, they are fighting a separatist movement or Islamists, which they perceive to be a threat to national unity and integrity. The concern of this study is how these rationalisations for human rights violations change, enabling a sustained improvement in human rights practices, and rationalist and sociological institutionalism provide different answers to this question.

For rational choice approaches, the question of compliance with norms, as well as the one of closing or narrowing the compliance gap, is basically a question of an actor's cost benefit calculations. Based on methodological individualism, actors are viewed as egoistic, utility-maximising individuals who select from among available alternatives the option that best serves their self-interest. They follow a "logic of consequentiality." The assumptions about the choice situation can be summarised as follows:

"Rational choice theory appeals to three distinct elements in the choice situation. The first element is the feasible set, i.e., the set of all courses of action which (are rationally believed to) satisfy various logical, physical, and economic constraints. The second is (a set of rational beliefs about) the causal structure of the situation, which determines what course of action will lead to what outcomes. The third is a subjective ranking of the feasible alternatives, usually derived from a ranking of the outcomes to which they (are

¹⁶ The mixture itself is of interest here because it indicates that a positivist enactment of international norms does not guarantee their social validity *over time*. The long-term implementation of a norm might as well depend on whether reasons could be mobilised which justify the continued relevance of these norms. Cf. Habermas (1996: 72)

¹⁷ For this argument, see Poe, Tate and Camp Keith (1997).

expected to) lead. To act rationally, then, simply means to choose the highest-ranked element in the feasible set."¹⁸

This definition is a thick version of rational choice, as it examines the beliefs and the desires that form the reasons for an action.¹⁹ According to this logic, human rights norms are integrated as given norms. Norms provide external constraints on an actor's range of all possible courses of action, they regulate behaviour, and offer a sort of "decision rules" that restrict or promote actor preferences. In the literature on international regimes, states acknowledge the normative prescriptions of regimes as long as they convey benefits, which are higher than the costs of an action in the absence of these norms. They are likely to disobey norms if non-compliance promises benefits. In order to avoid non-compliance on an international level, committing human rights violations must be made more costly. Reliable threats of sanctions or incentives for compliance are possible means.

In the area of human rights, state governments would refrain from committing human rights violations because they fear punishment by other states or because they are concerned about international criticism. An example would be the Kenyan government's decision to legalise opposition parties in 1991, which came just one week after donor countries had suspended development aid to Kenya.²⁰ In these cases, governments abstain from committing certain types of human rights violations in the face of sanctions or other punishment, but are unlikely to stick to them in the absence of pressures.

It is important to note here that rational choice models – unlike realism and neoliberalism in IR and some approaches in the democratisation literature – do not think of costs and benefits only in financial or material terms. A state might as well abide by international norms because it is concerned about its international image. Philippine security services spared Catholic Bishop Ed de la Torre from torture, because his imprisonment had become an international issue and he reported his experience in a BBC documentary, but continued torturing other opposition figures. The point is that preferences as such remain stable and the respective government is likely to return to human rights violations if the external constraint no longer applies. This perspective is quite compatible with both the rational and egoist components of rational choice, and does not present a serious challenge to rational models of interaction.

¹⁸ Elster (1986: 4)

¹⁹ The thin version of rational choice leaves these reasons unexplored and avoids psychological and mental thought, as long as it can be shown that behaviour and mental events correspond with each other or are consistent. For an excellent overview of the incorporation of norms and ideas into rational choice models see Yee (1997).

²⁰ Schmitz (1999: 60)

Sociological institutionalism provides a different answer to the question of adherence to norms. It proceeds from the assumption that actors follow a logic of appropriateness. Actors are not conceived of as autonomous individuals, but as embedded in a society toward which their action is oriented. This society provides a kind of higher, moral authority to which actors owe allegiance. Actors are more likely to act according to rules and practices that are socially constructed, publicly known, anticipated, and mainly accepted, than pursuing their narrowly defined self-interests. Structure is not perceived as a constraint, but as an enabling device, making possible courses of actions and social interaction.²¹ The particular motivation for compliance with these rules might partly still be related to cost-benefits concerns: Actors might calculate that they would be punished if they broke a rule. Two features restrict such concerns, however: First, the respective norm is so much taken-for-granted that actors do not even discuss costs and benefits,²² and second, sticking to the expectations of a respective rule and norm is considered a duty in society.

With regard to the compliance gap, sociological institutionalism provides a more differentiated picture than rational choice institutionalism. The gap between normative prescriptions and behaviour can have three sources: 1) The actor does not consider the norm legitimate and, therefore, the norm does not exert a compliance pull. 2) The norm is considered legitimate, but the actor follows a different one, which it regards as more appropriate for the situation at hand. 3) The norm has only a symbolic meaning and is largely decoupled from actual behaviour. International norms and rules generate "isomorphism," a pattern of state institutions, among states, but these institutions are decoupled from actual behaviour. In all three cases, the reasons and justifications for why the actor does not act in accordance with (human rights) norms can be reliable guides for an explanation of the compliance gap.²³ Hence, sociological institutionalism distinguishes here between discourses and actual behaviour, and discourses can reveal the extent to which human rights norms are

²¹ It would be inaccurate, however, to see a neat divide between proponents of these two logics: Proponents of a logic of appropriateness have not denied that actors act in accordance with their interests or act irrationally. Instead, they have made the central argument that rational choice theory does not offer a theory about preference formation. Because it locates preference formation outside the choice situation, it reveals a great permissiveness toward the normative content of these preferences. For this argument see Schmalz-Bruns (1995: 350). Based on the assumption, that cultural approaches provide a theory of preference formation, several authors have suggested a division of labour between social constructivist and rational approaches. See Checkel (1998); DiMaggio and Powell (1991); Zürn (1992).

²² Some relate this taken-for-grantedness to a cognitive explanation: Actors have internalised specific rules and cannot even think of alternatives. Costs and benefits are themselves cognitive. See Thelen and Steinmo (1992); DiMaggio and Powell (1991: 9, 11).

²³ See, for example, Chayes and Chayes (1995) and Kratochwil and Ruggie (1986: 766-768).

considered legitimate.²⁴

In trying to explain *changes* in behaviour or, as in my case, sustained human rights change, either logic faces difficulties. Rational choice models provide a very general perspective on the motivations of actors who follow norms. However, they do not analyse the properties of norms. Norms are “given” and defined as an already “agreed-upon set of values that restrict preferences.” Because rational choice locates the origin of constraint inside of an actor (as a kind of value), this perspective actually presupposes what this study seeks to explore. How actors come to view human rights norms as “given”, how they come to “value” them, integrate them into their utility functions and stick to them even if they cannot expect the transfer of material benefits which might have induced the change in the first place. An analysis of the autonomous effects of norms that does not resort to interest-based or sanction-based explanations needs to analyse, rather than assume as “given”, this process.²⁵

The logic of appropriateness faces similar difficulties. Human rights violating states cannot be regarded as following human rights norms as standards of appropriate behaviour. Sociological institutionalism thus needs to establish first, whether human rights violating states do not regard human rights norms as legitimate, or whether they simply follow a different norm, for example the principle of sovereignty. However, sociological institutionalism itself does not suggest a process of how actors come to change their discourse and view human rights norms as standards of behaviour rather than other norms. “Socialisation”, which has recently emerged among social constructivists in IR to explain these shifts imputes an image of ‘socialisees’ as “empty boxes” which hardly matches the empirical reality of dictatorships rejecting any external attempts to change their human rights practice as undue interference in their domestic affairs. This is exactly the image of a conflict-free process unimpeded by an autonomous agency, which critics of sociological institutionalism have castigated.²⁶ These explanatory gaps open the door to processes of argumentation and persuasion. “Persuasion” or processes of “arguing” might solve the dilemmas described above, because it deals with what rational choice models and a logic of appropriateness presuppose: The process through which collective actors accept human rights norms as appropriate standards of behaviour, accept them as “given” restrictions to their available set of preferences or as the appropriate norm.

²⁴ Kratochwil and Ruggie (1986); Wuthnow et al. (1984)

²⁵ This criticism also applies to the image of norms and ideas as focal points, see Yee (1997: 1021, 1027).

²⁶ See, for example, Checkel (1999). Although the concept of “socialisation” is widely used in the IR literature on normative efficacy, it is important to note that sociological institutionalism explicitly rejects the notion of “socialisation”. On this point see DiMaggio and Powell (1991) and Jetschke and Liese (1999) for a comprehensive criticism from a perspective of cultural studies.

Similar to the previous logics, the logic of argumentative rationality proceeds from several assumptions about actors. Actors are neither concerned about what action best serves their interest nor committed to maximise or to satisfy their own given interests and preferences (consequentialist thinking). Nor do they restrict themselves to questions of individual purpose and moral (appropriate thinking). At the heart of argumentation stands the question: "What ought I do" or "To what course of action do we want to commit ourselves?" In this mode of interaction, action is oriented toward reaching a mutual understanding about the proper course of action and/or the validity of a norm through reaching an "uncoerced consensus" in a public discourse. In ideal terms, in order to warrant that this consensus does not come about through other means than the force of the better argument, the discursive setting should meet specific pre-conditions of communication. Discourses need to be inclusive, that means anybody with the capacity to speak is entitled to participate in it. There is a principal equality among the free participants in the discourse. Moreover, the assertions speakers make are true, i.e. they conform with perceived facts in the world, the speakers mean what they say (truthfulness and authenticity) and they believe in the norms which they advance to justify their behaviour (moral rightness of the norms).²⁷ This means that actors consciously risk a change of preferences during the interaction if they cannot mobilise good reasons justifying these preferences.

The "logic of argumentative rationality" assumes that social structure entails contradictory, competitive rules and norms, and that these competing norms might lead to contradictory prescriptions for action. In the human rights area, actors can argue about the appropriateness of human rights violating measures to reach predefined preferences, but the argument can also be about the nature of the authoritarian system, which produces gross and systematic human rights violations. In the latter case, arguing is closely linked to legitimacy: Legitimacy concerns the problem of "explaining or justifying the social order in such a way as to make institutional arrangements subjectively possible"²⁸ Thus, processes of argumentation are not devoid of "power". In the sense that power is mediated through structures in which action must be justified and legitimated, public justifications oriented to shared norms and goals can

²⁷ These are the conditions of the ideal speech situation Habermas (1990a); Risse (2000: 9); Prittwitz (1996: 134f.).

²⁸ Scott (1991); Finnemore and Sikkink (1998: 914); Finnemore and Sikkink (1998: 900) refer to "persuasion" instead of argumentation. There is a notable difference between the two: While persuasion might lead me to do something I previously did not consider, it does not mean that I am necessarily convinced that it was a right action. It does not imply that I really believe in what I have been told to do. To be *convinced* entails such a normative commitment. If I am convinced of something, and act accordingly, I am fully responsible for the consequences of my action. In contrast, if I have been persuaded and my action has bad consequences, I can use the fact that I have been persuaded and advance it as an excuse. "Somebody has persuaded me to do it, but I

produce behaviour different from behaviour absent such demands.²⁹

Arguing not only provides a bridging principle between the other two logics. Some proponents of arguing claim that compared to strategic choice or voting it is the better decision-making process.³⁰ Decisions are likely to be implemented more effectively, if they rely on a reasoned consensus, and they are likely to ensure the unity of the actors even in situations where there might be individual gains by defecting from cooperation.³¹

Despite a considerable consensus about the definition of "arguing", different conceptions of arguing and its function in preference change and formation prevail, which need to be clarified in order to support claims about how arguments might enter struggles to change the human rights practice of a target state. It is thus pertinent to provide a non-exhaustive overview of different conceptions of arguing and suggest tools with which to analyse argumentation processes empirically.

Arguing concepts

The concept of "arguing" or "deliberation" has become a focus of attention in varying sub-disciplines of political science. In the following, I will distinguish three different arguing concepts and introduce the approach which will guide the analysis of argumentation processes in this study.

Arguing and the construction of reality: At a most basic level, the one of language and communication, arguing is seen as an attempt to construct intersubjective common knowledge, or reality. It is impossible to characterise an action or event in a language of pure observation. No description is "innocent", but entails a political project. What is a human rights violation for Amnesty International is a question of survival for Government A. It follows that characterisations of actions have to be viewed not so much as descriptions but *appraisals*. If an event acquires the status of an "objective" fact it is because reasonable persons could agree on a specific account, or the *intersubjective validity* of that characterisation.³² Actors have come to a consensus on the definition of the situation. Proponents of argumentation emphasise that rational choice and theories of bargaining ultimately rely on assumptions about common knowledge among actors, which must have

actually didn't want to do it." For a distinction between persuasion and conviction see Raatzsch (1999).

²⁹ Lynch (1999: 40)

³⁰ Dryzek (1990)

³¹ Tuomela (1998); Johnson (1998)

³² Kratochwil (1989: 218-227); see also Keck and Sikkink (1998: 27); Adler (1997)

been established prior to their interaction, but is exogenised by rational choice. Precisely *how* actors come to a shared pool of assumptions or beliefs about cause and effects and views about the world – in short, reality – and how this perception in turn influences their actions is the focus of these studies.

Arguing and collective action: This concept of arguing is closely related to the first one and emphasises the role of mobilising good reasons in generating and sustaining collective action. In this perspective, shared normative (some say cultural) understandings provide the basis for enabling collective action and the struggle toward a collective goal.³³ Rather than focusing on individual changes in preferences, this approach focuses on how disparate actors with diverging interests develop a common frame enabling them to collectively bring about *social change*. This perspective has gained considerable attention in social movement organisation (SMO) theory, where it has entered discourse mainly under the heading of “framing”, and is not explicitly discussed as “arguing.” *Framing* denotes the process of creating the ideational elements of persuasive communication essential for both the mobilisation of *consensus* prior to collective action and the cognitive process necessary for orienting and sustaining collective action.³⁴

In this approach, arguing is conceptualised as exchanging normative reasons for action, finding a joint normative basis for action and generating a collective will among the movement activists. It conceives of arguing as the creation of a pool of shared understandings and guiding principles, which guarantees the unity of a movement during times of political struggle. The notion of “principled actors” or “norm entrepreneurs”³⁵ draws on this concept. The human rights movement’s collective action frame is constituted by beliefs about the proper relationship between a state and its citizens, regarding the repressive state as primary perpetrator of human rights violations. Argumentation creates commitment among movement actors and ensures their ability to act as a collective. It accounts for the power of the movement as each member is convinced that he is doing the right thing / persuaded to do the right thing and knows that other members believe the same.³⁶ Once this basis is established, strategic framing of (movement) issues sets in, which seeks ways to persuade *other* actors of the movement’s cause. Arguments do play a role in the promotion of normative frames, too, but arguing with the opponent will certainly not change the principled actor’s rational for

³³ Gamson (1988)

³⁴ Benford (1997: 410); Steinberg (1999: 737)

³⁵ See Sikkink (1991), Sabatier (1987), and Sikkink (1993).

³⁶ Willetts (1982a)

action. Arguing is directed toward gaining the consensus of others.

This concept is not concerned with developing an alternative logic of action to strategic choice, but more in linking mobilisation to persuasive frames. "Framing", is often explicitly conceived of as strategic action.³⁷ SMO theory from the outset has been puzzled by how seemingly powerless actors mobilise particular audiences, craft political slogans and campaigns, influence public opinion and thus shape particular decisions. The analysis of "frames", their structure and comparative persuasiveness has been the main focus of research. SMO theory claimed that in order to be persuasive, a normative frame had to provide a plausible account of the problem at hand, identify a perpetrator and suggest alternative solutions for the problem.³⁸ Frame analysis soon developed the hypothesis that normative frames are the more persuasive the more they resonate with pre-existing cultural understandings.³⁹

Given the focus of frame analysis on language and persuasion, indicators for success were, on the one hand, tangible results such as the correspondence between movement proposals and the decisions, which were ultimately taken. On the other hand, some studies focused on the *shifts* in public discourses in order to find out to what degree social movements have been able to influence the public discourse and hence the cultural environment in which actors are embedded. Thomas R. Rochon claims, for example, that through the link between culture and public discourse, changes in culture leave a readily observable imprint in the form of new ideas that are widely discussed. These imprints can be observed in mass media, in political speeches, judicial decisions and other publicly available sources by undertaking content analyses of newspapers, magazines and other public media.⁴⁰

Arguing and preference change: Individual studies in IR, as well as some conceptions on deliberation in democracies,⁴¹ emphasise the role of arguing in changing preferences. These perspectives introduce arguing as a distinct mechanism to account for an individual preference change during interaction. They see "arguing" as a direct challenge to theories based on rational choice in which preferences remain fix during the interaction (see above). Accordingly, argumentative persuasion denotes a change of attitudes about cause and effect in

³⁷ McAdam, McCarthy and Zald (1996b: 6). This facet of framing is also emphasised by the transnational movement literature, see, for example, Keck and Sikkink (1998: 19).

³⁸ Keck and Sikkink (1998); Gamson (1995)

³⁹ Gamson (1988: 227). More recently, normative resonance has become a main hypothesis in explaining the efficacy of norms in constructivist research in IR, see: Ulbert (1997); Cortell and Davis (1996); Sikkink (1991).

⁴⁰ Rochon (1998: 17), see also the study of Marc Lynch (1999), who has analysed the role of public discourses in changing Jordanians' identity.

the *absence of overt coercion*, and more precisely an activity or process in which a communicator attempts to induce a change of the belief, attitude or behaviour of another person through the transmission of a message in a context in which the persuadee has some degree of free choice.

This conception remains wedded to methodological individualism. It seems to acknowledge the role of arguments primarily if it can be proven that it was the persuasiveness of an argument, not some form of pressure, which convinced me of something, and if it can be credibly demonstrated that the persuader, too, was open to be persuaded. To put it differently, both speakers must have acted in a communicative mode, rather than in a strategic one, and at the end of the argumentation it must be shown that I really believe in the norms of which I have been persuaded. In this concept, the focus seems to be on an individual change of preference or underlying beliefs, and arguing is likely to account for this preference change if the preference change has not come about by the use of force or other pressure.

In conceptual terms, this approach has generated a fruitful debate on the distinction between strategic and communicative action, a distinction, which is rather blurred in the SMO literature.⁴² In particular, the rational choice-dominated North American debate on arguing explicitly discusses how a deliberative setting changes not so much an actor's preferences, but rather their public articulation.⁴³ This debate has consequently focused on the varying mechanisms and strategies which rational, utility-maximising actors have at their disposal to argue their case.⁴⁴ For example, an actor cannot say, "We should do X because that is what I want" if he justifies his preference. A persuasive justification needs to be packaged or framed in universal terms: "We should do X because it diminishes income disparities." On the other hand, if actors use arguments because they are the best means to realise pre-established preferences, it is advisable that the argument must not correspond too neatly with the speaker's preference, otherwise the disguise may be too transparent to work.⁴⁵ As these examples demonstrate, proponents of this arguing concept are concerned with finding reliable indicators to identify when and under what conditions actors abandon utility-maximising and switch to "arguing."⁴⁶

⁴¹ For the former see Checkel (2000b: 2) and Risse (2000), and for the latter most saliently Elster (1998b).

⁴² See Benford (1997); Bohman (1996: 208)

⁴³ See, especially, the contributions of Elster (1998c), Fearon (1998) and Johnson (1998).

⁴⁴ Schimmelfennig (1998) calls this rhetorical action.

⁴⁵ Elster (1998a: 102)

⁴⁶ Müller (1995); Risse-Kappen (1995)

In order to account for the fact that actors accept specific constraints on the articulation of their preferences, proponents think of an "audience" embedded in an institutional environment to which arguments are directed. Speakers, be it social movement activists or governments, generate "audience costs", they compete for the public reactions of audiences, which themselves become public goods, and the probability of these reactions make it more costly for each other to back down from publicly articulated political positions.⁴⁷ Compatible with rationalist institutionalism, such an image conceptualises public deliberation in instrumental terms, as an external *constraint* upon behaviour. Transnational human rights organisations or target governments act, "generating" audience costs, but the "audience" itself remains entirely passive, despite its implied sanctioning force. Leaders pursue predefined preferences, which are not affected by their performance before the audience.⁴⁸

However, with their clear focus on individual actor motivation and strategies of individual persuasion, proponents of this conception not only set the stakes high for "arguing," they risk losing the dynamic of normative or moral pressure which SMO theories have routinely emphasised. This arguing concept basically limits processes of persuasion to a two-person game in the absence of moral pressures. Especially if argumentation comes along with so-called moral or normative pressure by audiences, however, proponents of this concept are unlikely to accept the preference change as having come about through "arguing." The decision does not reflect genuine conviction but "social currency," and can as such hardly be considered a voluntary and autonomous actor decision.

While the claim has some validity, such an image renders the arguing concept of rational choice approaches potentially inconsistent. "Audiences" are on the one hand, necessary to account for the fact that rational actors enter a communicative mode and justify their actions. On the other hand, proponents refuse to acknowledge the normative pressure arising from persuaded audiences, which might ultimately be responsible for changing the behaviour. Maybe the best way to describe the dilemma is that this arguing concept does not distinguish between communicative *action*, in which actors accept the conditions of the ideal speech situation and act accordingly, and a logic of communicative *rationality*. The latter implies that actors might act in a self-interested manner, but are judged according to the counterfactual ideal of a discursive design resembling the "ideal speech" situation.⁴⁹ I will return to this

⁴⁷ Gehring (1995: 203); Chayes and Chayes (1995); Finnemore (1996a: 23). A similar approach has been suggested by students of culture. Cf. Wuthnow et al. (1984)

⁴⁸ For this argument see also Marc Lynch (1999).

⁴⁹ Bohman (1996: 208); Dryzek (1990: 36)

below.

Frame analysis has largely focused on the social movement side and has not considered framing as a dialogical activity. Although frames can also be thought of as clusters of arguments, frames revealed a somewhat static imagery, which fit or were "aligned" to fit existing discourses.⁵⁰ Moreover, failed campaigns were not systematically explored.⁵¹ Similarly, the notion of framing as persuasive activity sits uneasily with assumptions that framing is strategic action. In the IR literature on norms, this problem has become a topic in the study of advocacy networks, too.⁵² The interesting point of convergence between both perspectives is, thus, that they have kept the targets of social movements, audiences and opponents and their strategies in dealing with the challengers' claims largely out of the picture.

Arguing to establish the validity of a norm: In this concept, argumentation is not necessarily related to preferences, but establishes the validity of a norm. While in the previous two notions, validity claims and preferences were largely congruent and argumentation was conceptualised as a process aiming to change either the preferences of the opponent, or the cultural context, in this image, the effects of arguing are much broader, though less tangible. Established validity claims appear as sustained shifts in discourse, which transform the action repertoire of actors and provide limits on what can be publicly articulated and ultimately done without facing opposition. If a human rights violating government has signed and ratified international human rights conventions, it can still commit human rights violations. However, it comes under pressure to justify these violations and cannot simply invoke the non-interference principle in order to reject criticism. Stanley Cohen, for example, has observed that liberal states which commit human rights violations rarely invoke this principle to deal with criticism of their human rights practice.⁵³

This does not mean, however, that arguing and preferences are not linked. Still, the efficacy of arguing is not exclusively *indicated* by a change of preferences. Argumentation only changes preferences and identities, if these are not legitimised by the norms, which have become consensual. This conception acknowledges that norms do not *determine* action but legitimise a certain range of appropriate actions and preferences. This might be the strongest claim in pursuit of argumentation. Processes of argumentation establish the *validity* of a norm; norms

⁵⁰ See also Laffey and Weldes (1997).

⁵¹ Benford (1997: 411f.) provides a systematic insider's critique of the framing perspective within SMO theory.

⁵² Checkel (2000a)

⁵³ Cohen (1996: 521, 527), see also Jetschke and Liese (1999: 296).

gain *independent* explanatory force, because they are detached from the motives of particular actors. Once actors have established the validity of a norm in discourse, they can be held accountable to it, and the norm exerts similar influence on the behaviour of all actors concerned, irrespective of their personal conviction, whether they have previously shared the norm or not.

Many studies acknowledge this influence of norms when they speak of the fact that normative structures "develop a life of their own."⁵⁴ Similarly, Marc W. Steinberg has argued that "framing is strategic, but in the focus on calculation and persuasion, frame analysts have neglected the constraints and limits that discourse itself imposes on such agency."⁵⁵ This conception requires that the process of argumentation itself remains free of material and moral pressures, but once the norm's validity is established, a norm exerts moral power on those who have subscribed to it. This concept might provide a bridge between the previous two, as it does not make any *a priori* claims about the motivation of actors. Actors might consistently conceal their real motivation during the argumentation process, but if they happen to agree on human rights as part of a conscious strategy, and if their agreement has not come about by pressure, they are fully responsible for their consent and can be later held accountable.

An example from the debate on the East Timor question can illustrate the point: In early debates on East Timor, organisations in the East Timor network revealed a preference for self-determination. Initially, this preference was justified by arguing that the East Timorese people were a people in their own right, with their own religion (Catholic) and territory. The Indonesian military's invasion of East Timor had constituted a flagrant violation of the right to self-determination. Hence, the underlying norm was self-determination on the one hand, and nation-state norms on the other. During the course of international debate, these organisations did not change their preference, self-determination, but the underlying norm changed. They did not justify their preference by arguing in nationalist terms, but by claiming that the Indonesian State committed gross and systematic human rights violations against the East Timorese people. They thereby acknowledged the claim to international jurisdiction of the Indonesian State. Had Indonesian security services stopped committing these violations, the preference for self-determination would no longer have been regarded as justified. Consequently, a particular course of action would no longer have been *legitimised*. I am not saying that the East Timor network would have been *unable* to pursue a separation course for East Timor. Yet, they could not have realised their preference without losing popular support

⁵⁴ Finnemore (1996a)

⁵⁵ Steinberg (1999: 742)

and therefore at costs to their international image and probably power.

Arguing in the public sphere

A viable way to ameliorate the above-mentioned problems of the arguing/framing concepts of rational institutionalism and SMO theory is to disconnect the conditions under which arguing is likely to emerge from the actors who advance arguments. In other words, it is necessary to disentangle the claims about the motivations of actors who argue and engage in communicative action from the ones necessary to make deliberation possible (communicative rationality or logic of argumentative rationality). In the literature on arguing in political theory, introducing the concept of the public sphere generally does this. The public sphere is

“brought into the existence whenever two or more individuals (...) assemble to interrogate both their own interactions and the wider relations of social and political power within which they are always and already embedded. Through this autonomous association, members of public spheres consider what they are doing, settle how they will live together, and determine (...) how they might collectively act.”⁵⁶

The idea of the public sphere can thus be seen as a political translation of Habermas' ideal speech situation. It might not exist in reality, but functions as an ideal to which appeal is made. The criteria of the ideal speech situation guide the deliberation process in the sense that they serve as evaluative criteria against which the behaviour of speakers is judged. “Public critics”, via the public sphere, can challenge the interpretative assumptions and understandings, or the different logics of appropriateness, which underlie social practice. In the human rights area, for example, human rights organisations create a public sphere by publishing reports on the human rights situation in a country. Via these reports, they not only list the names and fate of victims of human rights violations, but almost always identify and problematise the features and cultural understandings which contribute to human rights violations, such as impunity or racism. Proponents of deliberation, such as James Bohman (1996) argue that in democratic settings, public critics have means at their disposal to induce communication in the public sphere. By challenging the motivations of actors, or imposing audience costs, speakers engage in a kind of communication about communication, which aims to establish the very conditions of the public sphere – or what is often referred to as metacommunication.⁵⁷ Once they have created a public sphere, it becomes possible to argue about the validity of a contested norm.

This does not mean that speakers do not lie in public, do not try to deceive their opponents by

⁵⁶ Kean (1984: 2-3), as quoted in Dryzek (1990: 37).

⁵⁷ Bohman (1996: 204-5)

giving false information, or do not try to conceal their true motivation if they argue.⁵⁸ The difference is that there are possibilities to hold actors accountable to the conditions of arguing. In a deliberative setting, speakers will be judged by the counterfactual ideal of a deliberative setting and if they can be convicted of having violated either rule of arguing, they will pay a price in terms of credibility and probably power. Critical actors or social movements thus have specific means to break a setting, which restricts public deliberation.

As the cases I am dealing with have been authoritarian states, the valid objection to this concept is that it is simply not applicable to dictatorships. In these states, parliamentary and judicial institutions, as well as free associations, which usually guarantee deliberative settings, are usually defunct. Independent public media are either closed, censored or government-owned and can hardly be considered as distributing impartial information. In many cases, human rights and democracy activists, as much as the political opposition in general, is being harassed and subject to persecution. Deliberation is what authoritarian states have to fear and therefore try to prevent. As Adam Przeworski has observed: "What is threatening to authoritarian regimes is not the breakdown of legitimacy, but the organisation of counter-hegemony: collective projects for an alternative future."⁵⁹ According to Przeworski, the state corporatist character of authoritarian regimes contributes significantly to the stability of authoritarian rule, as opposition groups have no organisational basis to develop alternative ideas about the polity. In the following, I will argue that the establishment of a transnational human rights network is a necessary condition to account for the creation of a transnational public sphere making the deliberation on these collective projects for an alternative future possible. Moreover, I argue that human rights norms themselves provide such an alternative.

Transnational advocacy networks in international relations

By introducing processes of argumentation, it is possible to adequately appreciate the role of agency in the process through which international norms translate into domestic practices. I will focus on the activities of non-governmental organisations (NGOs), especially transnational human rights organisations, because they must be considered the most prominent promoters of human rights norms. In recent years, the activities of transnational societal actors promoting social change have generated a growing body of research,⁶⁰ and

⁵⁸ This has been called rhetorical action, because actors want to persuade others, but are themselves not prepared to be persuaded. See Schimmelfennig (1998).

⁵⁹ Przeworski (1992: 107)

⁶⁰ For different perspectives on transnational NGO activities, see e.g., Finger (1994), Meyer et. al. (1997); Smith, Chatfield and Pagnucco (1997). Boli and Thomas (1997: 172) recently stated that "[b]y studying the promotion

there is a growing understanding that these actors have become quite significant ones. Until recently, the increasing importance of non-state actors in general has been primarily justified by their growing visibility in international affairs. Scholars *had* to acknowledge that transnational actors were influential in formulating new international commitments and policies, be it in the area of human rights, economics, or security.

I will define transnational advocacy networks as networks including those relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services.⁶¹ The central backbone of transnational human rights networks are human rights organisations in the target states which link up with international human rights organisations such as Amnesty International, the International Commission of Jurists, and Human Rights Watch. In many cases, these networks include international human rights organisations, such as the United Nations treaty-based bodies,⁶² the UN Commission on Human Rights, solidarity groups, national and international religious organisations, political and developmental foundations, or labour organisations. In particular, religious organisations and political foundations often provide crucial financial support for local human rights organisations. They provide a link between the local and the global, the international system allows transnational NGOs to draw their legitimation from citizens who no longer refer to national boundaries.⁶³

As Margret Keck and Kathryn Sikkink observed, transnational advocacy networks emerge where civil society organisations are denied access to the decision-making process, or in which mechanisms of domestic interest formation are blocked. Domestic NGOs bypass their state, establish contacts with organisations outside the state which share their concerns, and create networks to search out international allies directly, to try to bring pressure on their states from outside. They induce activities that lead to pressures on their government from the international arena, thus strengthening the demands of these organisations in the internal debate.⁶⁴ Keck and Sikkink called this the "boomerang pattern" because national governments

of world-cultural principles that INGOs are centrally involved in developing, we can see how INGOs shape the frames that orient actors, including states."

⁶¹ Keck and Sikkink (1998: 2)

⁶² In the framework of this study, these are the United Nations Human Rights Committee, which is responsible for the review of compliance of governments with the ICCPR and its Optional Protocol, and the Committee against Torture, which monitors compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁶³ Finger (1994: 58)

⁶⁴ This aspect was emphasised early by Willetts (1982b), later by Finger (1994: 58) and Keck and Sikkink (1998), and has since been empirically substantiated in the human rights area among others by Brysk (1993); Keck and Sikkink (1998: Chapter 3) for Argentina, Chile and Mexico, and Waltz (1991) for Tunisia, Morocco

were confronted with the information domestic NGOs had channelled out of their state to international actors and were compelled to take a position on the issue.⁶⁵ This concept seems to be of particular importance to account for developments in authoritarian states. These are exactly the conditions under which transnational networks are expected to emerge, and in fact, did emerge in many countries such as the Philippines and Indonesia.

It is one issue to argue that domestic human rights organisations search out international allies and establish transnational networks, and another to argue that the activities of these networks as actors contribute to a profound change in the human rights practice of their governments. Rationalist and sociological perspectives on NGOs come to quite different conclusions about their effectiveness. In rationalist accounts, NGOs do not compete with states. They are far too powerless in material terms to present a profound challenge to states or state governments. NGOs and transnational networks complement state activities in those areas where states have little or no competence, or where action would be too costly.⁶⁶ Accordingly, NGO networks fulfil very much the role of policy networks. They help the state to function better by providing information and expertise.⁶⁷ Human rights NGOs provide information on the nature and extent of human rights violations, monitor the compliance of a state with international treaties and provide services, such as legal aid. In sum, they lower the transaction costs of states for an action, enable other states to overcome bounded rationality, become attentive to new challenges and help them to function better, but hardly change preferences as such.⁶⁸

The concept, which will be employed here, stands in the social movement tradition.⁶⁹ It is acknowledged that NGOs do not have material power capabilities comparable to state governments or other actors toward which their campaigns are directed. The extraordinary success of social movements relative to their material capabilities can only be explained by focusing on how NGO networks gather support among civil society, empower weak actors by lending protection, legitimating their claims and opening up political space for their activities – persuasion. Transnational networks transmit knowledge and change policies primarily by inducing cognitive and cultural changes. “[T]hey attempt to influence the conceptual

and Algeria.

⁶⁵ Keck and Sikkink (1998: 12-14)

⁶⁶ This feature is continually emphasised in the literature on NGOs in the Third World. See Eldridge (1989) for Indonesia.

⁶⁷ Rochon (1998); Börzel (1998); Reinicke (1999); Thatcher (1998)

⁶⁸ Finger (1994: 52) and Offe (1985)

⁶⁹ As Clarke (1998: 39) has rightly emphasised, the social movement literature has largely ignored the NGO phenomenon.

framework used to think about a cluster of issues."⁷⁰ Similarly, Margaret Keck and Kathryn Sikkink stress that non-traditional international actors "try not only to influence policy outcomes, but to transform the terms and nature of the debate."⁷¹ The rationale is that these changes in cognition render changes in behaviour likely and might be of more permanent nature than restrictions or incentives for behavioural changes alone. "Meaning is prefatory to action", and this is why actors try to affect interpretations of reality among various audiences.⁷²

While I am not sure that the realist and sociological perspectives are mutually exclusive,⁷³ I believe that the concept of deliberation or argumentation in a public sphere allows me to appreciate adequately the successes of transnational human rights networks in theoretical terms. First, it allows one to theorise the position of transnational networks toward more powerful actors. The logic of argumentation assumes that any actor with the capacity to speak and to act has the right to participate in a discourse. It champions the principal equality among participants in a discourse. Hence, even if transnational advocacy networks are less powerful in financial and organisational terms than the state actors against whom they campaign, these material power asymmetries are not supposed to translate into asymmetries during a process of argumentation. What is supposed to count is the force of the better argument.

This statement even holds true if we acknowledge that authoritarian regimes will do anything to prevent domestic critics from articulating their opposition to the regime. Authoritarian regimes might be able to repress domestic organisations, but they cannot hinder Human Rights Watch or the International Commission of Jurists from publishing a report, they cannot search their offices and confiscate material. This is basically the reason why the transnationalisation of human rights changes the nature of interaction between repressive state governments and civil society. With regard to cultural resonance, the logic of arguing takes as given that the norms which transnational networks champion do *not* resonate with the discourses in the target states. Argumentation is precisely introduced to account for the process through which actors create intersubjective understandings and thus overcome non-resonance. How resonance in the sense of intersubjective understanding is created is the focus

⁷⁰ Rochon (1998: 21); see also Emirbayer and Goodwin (1994)

⁷¹ Keck and Sikkink (1998: 2)

⁷² Benford (1997: 410)

⁷³ For an overview of individual tactics see Keck and Sikkink (1998: 16-24). They break down network activities into several distinct strategies, which integrate the different purposes of networks. They refer to information politics, symbolic politics, leverage politics, and accountability politics. Furtak (1997: 43) differentiates between "inside tactics", oriented toward lobbying individual decision-makers in the state bureaucracy and "outside tactics" oriented toward a general public and the media.

of its inquiry. Moreover, as a study of argumentation systematically describes the arguments of both sides, transnational networks and target states, it is able to point out more precisely what constitutes cultural fits or misfits,⁷⁴ or why human rights norms do not change human rights practices.

The following table presents a synopsis of the different approaches according to their basic assumptions, their view on transnational advocacy networks and their preferred explanation of human rights change.

	Sociological Institutionalism	Public deliberation	Rationalist Institutionalism
	Basic Assumptions		
Ontology	Structuralism	Mutual Constitution	Individualism
Actor Disposition	Norm-governed behaviour, logic of appropriateness	Search for truth, search for the collectively best preference	Egoistic behaviour, instrumental rationality, logic of consequentiality
Environment	Institutional/cultural Intersubjective structures	Competing institutions	Material structures, technical environment
	Norms		
	Enabling structure	Claims to validity	Given constraints on available set of preferences
Causal Status	Primary: constitute identities and interests	Equal: change interests and preferences if arguments persuade	Secondary: Regulate behaviour on the basis of given interests
	Transnational Advocacy Networks		
Purposes	Codify and disseminate community values and norms; provide preferences	Induce justifications by challenging claims to validity; create commitment, mobilise, change preferences	Provide information; monitor compliance, lower transaction costs
	Human Rights Change		
Basic Approach	Socialisation theory, diffusion of cognitive scripts and schemas, moral authority	International judicial tribunal Legitimacy of charges is established	Sanctioning authority; Human rights change depends on enforcement by more powerful actor
Rationale	Duty, identification	Validity, legitimacy	Sanction - reward
Conditions	Community of values and norms among human rights community and non-compliant State	Equality among participants in discourse; common institutional environment	Material vulnerability; power asymmetry

Figure 5-1: Synopsis of Sociological Institutionalism, public deliberation, and rationalist institutionalism

In an excellent criticism of conceptions of norms and ideas in international relations, Laffey and Weldes

The assumptions about international norms, logics of actions, and transnational networks can be traced in the spiral model of human rights change, which was jointly developed by Thomas Risse, Stephen Ropp and Kathryn Sikkink. This model has tried to integrate international norms and transnational networks into an analysis of human rights change. The advantage of this model is that it does not champion rationalist explanations of human rights change over sociological ones, but proceeds from the assumption that each perspective adds a mosaic to human rights change, but maybe at different stages of the model. The following section will describe the spiral model in more detail, as it will serve as a framework for the empirical chapters.

The spiral model of human rights change

In the human rights area, the "spiral model of human rights change"⁷⁵ presents an attempt to conceptualise the impact of international human rights norms and the activities of transnational human rights networks on state behaviour. Building on previous work on norms in international relations, the authors were centrally concerned with two questions: What are the conditions under which international human rights norms are internalised by authoritarian states into domestic practices in the sense of a continual improvement of human rights practices? And what accounts for the variation in the degree to which human rights norms are implemented?

The "spiral model" is a theory of the stages and mechanisms through which international norms can lead to changes in human rights practices. It was initially developed inductively by comparing six countries of three regions (Africa, North Africa, Southeast Asia), and then tested against 5 other cases in Latin America, Eastern Europe and South Africa. It has largely abstracted from country specific domestic structures such as neopatrimonialism, authoritarian bureaucratism and the like. The spiral model rests on several preconditions: First, stable improvements in human rights practices presuppose a transformation of domestic institutions and the establishment of the rule of law. Hence, the internalisation of human rights norms goes hand in hand with domestic structural changes. Second, transnational human rights networks provide primary transmission mechanisms through which international norms are promoted. The spiral model takes Keck/Sikkink's "boomerang pattern" as a basic mechanism and adds dynamic to it by describing the effects iterative "boomerang throws" might yield on

(1997) have already called for a "theorisation" of normative "fit" or "misfit."

⁷⁵ This is only a brief summary of the spiral model of human rights change. For a detailed description see Risse and Sikkink (1999).

state governments on the one hand, and civil society on the other. Finally, the activities of transnational human rights networks are legitimised by international institutions, a global human rights regime.

The spiral model identifies five stages in the process of an internalisation of international norms. The logic of the spiral model suggests that international human rights norms will be the more internalised, the higher a particular country has moved in the hierarchy of stages. Hence, the phase of repression (phase one) denotes a stage where states have not internalised human rights norms, while the phase of rule-consistent behaviour is characterised by the internalisation of norms and implies a compliance pull.

In the first stage of the spiral model ("repression") an authoritarian regime is in power, which pursues human rights violations and represses the domestic opposition. In this stage, the authoritarian regime is unaffected by the prescriptions of international human rights norms and reveals a high level of autonomy from normative structures. The domestic societal opposition is either too weak or too oppressed to present a significant challenge to the government. The situation is likely to change if a transnational human rights network can be established, which manages to make the human rights violations of the target state an issue on the international agenda. Whether such a network forms at all and whether a move to the next stage occurs depends on the level of oppression in the respective state and its capacity to gather information and channel it to organisations outside the state. Kampuchea under the Khmer Rouge presents an example where information gathering was impossible during the height of oppression.

Based on this information, the network can start producing human rights reports, disseminating the available information, and lobbying a community of liberal states, such as international human rights organisations, Western state governments, or individual decision-makers in order to persuade them that action is necessary. If a government's human rights practice becomes the object of international scrutiny, most governments are likely to deny the charges (phase two). "Denial" goes further than just objecting to a particular incident being labelled as a human rights violation. The government denies the international validity of international human rights norms themselves. The government opposes an international jurisdiction by referring to its national sovereignty and calls the criticism an illegitimate intervention in its domestic affairs. In some cases, the target government succeeds in rebutting this international challenge by mobilising nationalist sentiments against the "foreign intervention." However, the denial of the norm almost never takes the form of open rejection

of human rights, but is mostly expressed in terms of reference to an allegedly more valid international norm, in this case national sovereignty.⁷⁶ Because the domestic opposition in the country is still weak and does not constitute a major challenge to the authoritarian regime, the transition to the next phase depends on the strength and mobilisation of the transnational network as well as the vulnerability of the target state to international criticism. Vulnerability can arise due to the dependency of the target state on foreign economic aid, but also in social terms if a nation-state values its membership in an emerging community of liberal states.

If international pressure can be maintained, and demands to improve the human rights practice continue, the target state is likely to respond to these demands by undertaking tactical concessions. They might release political prisoners, for instance. Action has to be seen as solely instrumentally or strategically motivated: The target governments have not changed their preferences, but they want to get rid of external pressures. These minor concessions are nevertheless crucial because they can facilitate social mobilisation in the target country. The increased international attention can create or strengthen local networks of human rights activists whose demands are empowered and legitimated by the transnational/international network. In this sense the transnational network helps to create space for the domestic groups to organise and to amplify their demands in the international arena. As a result, activities are likely to shift to the domestic level now, as domestic opposition groups gain political strength and the government faces pressure from an international and increasingly a domestic level.

The movement toward the next stage can still be interrupted, however. Because the state government is still strong and in control of the military, it can stop the domestic mobilisation by increasing repression. In most cases, the movement will only be delayed, however, as the costs of maintaining a policy of repression rise. Not only is it costly to maintain a repressive state apparatus, the government also pays a high price in terms of its legitimacy. Moreover, increasing repression may validate international criticism that the state is essentially a "dictatorship." In some cases, other governments now join the demands of human rights networks and make foreign aid contingent on improvements in the area of human rights. As a result, the norm-violating government slowly loses its control over political developments: its attempts to broaden its political base in civil society unleash opposition forces, which generate new choices for the political elite. The government is increasingly unable to restrain the activities of the political opposition, might even start to justify its human rights violations and implement some human rights protecting measures in order to appear responsive to the

⁷⁶ Risse and Sikkink (1999: 24)

demands and regain popularity.

On the level of domestic society, processes of argumentation and deliberation become important in the coalition-building processes of the domestic opposition. "Human rights claims are likely to serve as the main principled idea around which an opposition coalition can be formed."⁷⁷ This does not suppose, however, that these coalition-building processes are devoid of power-seeking or instrumental rationality. Some domestic groups might support demands for a greater respect for human rights because they regard human rights norms as an effective tool to delegitimise the government. According to the spiral model, these justifications now open an opportunity for advocacy networks to question the motives of the target government. In this situation both actors, governments and transnational network, are viewed as engaging in rhetorical behaviour in the sense that they are not open to be persuaded through arguments themselves but are trying to persuade particular audiences. Over time, this process might develop into a true dialogue over specific human rights allegations in the target state. The government "entraps" itself, as its behaviour will now be judged according to its words, although words (support for human rights) and deeds (human rights practice) do not match.

Some authoritarian rulers start a process of "controlled liberalisation" and begin implementing human rights norms domestically. This phase corresponds neatly with the "liberalisation" phase in the democratisation literature.⁷⁸ Others try to regain control over the situation and increase repression. Given rising pressures from above and below, the government does not have many choices now. Either it undertakes serious policy reforms or transnational mobilisation takes on a momentum, making a change of power likely. At this stage, Philippine President Marcos was ousted, while the Moroccan King Hassan II began implementing serious policy reforms.⁷⁹ This stage marks the transition to the phase in which human rights norms become consensual in the public discourse and the norm gains prescriptive status. Actors regularly refer to human rights norms to justify their behaviour in the human rights area. The validity claims of the norm are no longer controversial.

In order to measure the prescriptive status of the norm independently of actual behaviour the authors of the spiral model suggest four indicators to operationalise "prescriptive status." State governments sign and ratify the International Covenant on Civil and Political Rights including the First Optional Protocol (individual complaint procedure) (1), they implement

⁷⁷ Risse and Sikkink (1999: 26)

⁷⁸ O'Donnell, Schmitter and Whitehead (1986)

⁷⁹ On the first case see chapter 6 of this study, on the latter see Gränzer (1999) and Waltz (1991).

human rights norms in their domestic legal structure (2), they establish institutionalised mechanisms for citizens to complain about human rights violations (individual complaint procedures) (3), reveal a relatively consistent discourse on human rights irrespective of the audience (4), and match words with deeds (5). As a result, human rights violations are likely to decline.



The transition from the phase of prescriptive status to rule-consistent behaviour (phase 5) can be accompanied by gross human rights violations. National governments might not be in full control of their police and military forces, which commit the human rights violations and legal institutions might not be strong enough to consistently condemn abuses. The impunity of past and continuing human rights violations might pose a serious threat to a continual improvement in the record on human rights violations.⁸⁰ In order to achieve sustainable improvements in human rights conditions, it is essential that human rights organisations are able to maintain the pressure. International support at this stage can further legitimise the demands of reformists and hold in check the political ambitions of status quo-oriented actors. Sustaining international pressure over these years poses a great challenge for human rights networks, as gross human rights violations might actually decrease in the target state and international attention wane. In such a situation, the transnational network will be weakened and human rights reforms are likely to fall prey to power struggles among reformists and status quo-oriented political groups.⁸¹ The state proceeds toward rule-consistent behaviour if human rights violations decrease continually and the government routinely undertakes steps to investigate specific occurrences of human rights violations. The final stage in the socialisation process is reached only if international human rights norms are institutionalised domestically and compliance enforced by the rule of law becomes a habitual practice. Human rights norms are "internalised."

The "spiral model" and the argument of this study

Similar to the spiral model, the approach of this study locates the initial legitimacy challenge outside domestic politics, in the gap between the prescriptions of international norms and the domestic practices of the authoritarian regime. I argue that the criticism transnational human rights networks articulate via the publication of human rights reports constitutes an

⁸⁰ O'Donnell, Schmitter and Whitehead (1986)

⁸¹ This is why Schmitter (1996: 40) considers international influences most important in the consolidation phase of democracy, and suggests conceiving of international impact as parabolic: low during the initial transition, building up to its maximum effect during the consolidation, and, subsequently, declining once national political institutions are functioning normally. The spiral model advocates the importance of international influences on the transition phase, an influence Schmitter (1996: 50, footnote 20) tends to dismiss.

international legitimacy challenge to authoritarian regimes. The international pressure which transnational networks are crucially involved in creating, not only increases the costs for authoritarian rulers of pursuing their repressive practices by focusing attention on abuses. In addition, transnational networks create a transnational public sphere in which state actors have to discursively justify the rationale for human rights violations and ultimately authoritarian rule. The collective action frame transnational networks employ, provides a collective project for the future, a state based on the rule of law, and suggests specific solutions to translate this project into practice, clear limits on the power of the military and governmental accountability. Human rights norms thus legitimate a specific range of practices and actions supporting the activities of human rights organisations and limit the range of preferences of state governments. In sum, I argue that the international human rights regime creates opportunities for human rights activists to open an additional level of interaction in their dealing with their government and to take advantage of international institutions, human rights norms.

In conceptualising the impact of transnational human rights networks, I will take a slightly different perspective on arguing than the spiral model, however. The authors maintain that the interaction between the human rights violating target and transnational networks takes on an arguing mode only in later stages of the model, without further elaborating what causes this switch in interaction mode.⁸² This conceptualisation of arguing in the spiral model implicitly rests on the assumption that processes of argumentation are only possible if the speakers are principally open to persuasion themselves. Neither principled actors nor human rights violating governments are likely to be open to persuasion in the early phases of the model and moral network pressures rather than true persuasive efforts account for many of the developments that the spiral model describes. By employing this narrow definition of arguing Risse, Ropp and Sikkink (1999) not only fail to assign arguments a systematic place in early stages of the spiral model, they also cannot account for the variation in time between the Philippines and Indonesia. In the current conception of interaction modes, it fails to appreciate that authoritarian rulers might have persuasive arguments, too, which effectively diminish the influence of transnational human rights networks and therefore delay the progress of the spiral model.

The spiral model adds an international dimension to the literature on processes of democratisation. I will introduce transnational human rights networks, which make recourse

⁸² Checkel (2000b: 9)

to the power of human rights norms. to explain how domestic organisations in civil society are empowered, gain strength in the political struggle with authoritarian rulers and eventually manage to induce regime change by submitting repressive state governments to international and domestic pressure. The study thus explores the role of human rights norms during the transition to democracy.. This approach focuses attention on two aspects which democratisation theories have tended to neglect. It introduces international factors in order to account for the creation of domestic political space, the strengthening of critical opposition groups within the state, and the mobilisation of civil society organisations at the beginning of the transition phase. It examines the role of human rights concerns in the evolution of splits in the ruling elite decisions to liberalise and the introduction of human rights guarantees and holds that these developments have to be partly seen as a series of "tactical concessions" against the backdrop of an international mobilisation for human rights. Hence, liberalisation does not constitute an entirely autonomous decision by ruling elites, but develops as part of the interaction between transnational human rights networks, other states, target governments, and domestic opposition groups. The spiral model thus brings opposition groups back in and accounts for their empowerment.⁸³ This is why the spiral models places more emphasis on these measures as "tactical concessions".

In focusing on processes of public deliberation in which human rights norms are publicly contested, my purpose is not to test different conceptions of arguing against each other; rather, it is to explore the utility of argumentation in an explanation of human rights change in general and identify the situations and stages where arguing or a logic of argumentative rationality adds explanatory force to the spiral model or accounts for the variation in the two cases. I am not sure that the conceptions can compete, as they are not mutually exclusive. An argument between Amnesty International and an authoritarian government about political prisoners might well start as one in which Amnesty International claims that people have been detained arbitrarily, while the government asserts that it has detained members of a terrorist gang. By establishing common knowledge about the events leading to the detention, both might finally come to a common definition of a situation saying that these are in fact members of a terrorist group but they nevertheless have a right to an arrest warrant and due process. Hence, the validity of human rights norms is established. If Amnesty International convinces other governments and domestic constituencies that the proclaimed "terrorists" are not terrorists at all but dissidents who voice their legitimate criticism, the government might come

⁸³ That these actors are missing in approaches to democratisation has been one point of criticism in the review of Nancy Bermeo (1990), as well as in the empirical studies of Susan Waltz (1991) on North Africa and Catarina Kinnvall (1995) on China.

under pressure to change its practice. Whenever I focus my analysis on processes of argumentation, I try to explore which of these roles arguments played and what they add to an explanation of human rights change. I thus do not champion "arguing" over other modes of interaction but try to explore the relative weight of arguing in comparison with other logics of action.⁸⁴ Given the assumptions about how norms affect behaviour, my hunch is that the lack of consensus on human rights norms accounts for the variation in time between Indonesia and the Philippines.

Finally, while I claim that the process of human rights change in Indonesia and the Philippines cannot be understood without resorting to some sort of arguing, I am not claiming that human rights change was all about persuading Suharto or Marcos that human rights violations were bad. I rather argue that whether or not the authoritarian Marcos and Suharto regimes were regarded committing gross and systematic human rights violations and hence came under transnational pressure depended on an on-going process of community self-interpretation and on evolving international and domestic discourses. Via the process of exchanging arguments, a political dynamic developed which contributed to changing the power relations among actors. I agree that power relations do not always change through arguing, and that it is impossible to hold these other influences constant. Yet, I claim that to the extent that sustained human rights change requires a rational consensus on human rights norms, this consensus can well be traced to the exchange of arguments and justifications.

Data and research strategy

I will restrict analysis of argumentation processes largely to publicly available documents. While this might inhibit far-reaching claims about whether actors believe in the action they take, I presume that shifts in discourse indicate changes in how actors think about certain issues. One does not need to look "into the brains" of decision-makers or transnational activists to find out what they "really" believe. Public discourses present a viable object of analysis for processes of argumentation.⁸⁵

In human rights debates, the first source for processes of argumentations were the reports human rights organisations publish. In most cases, target governments reacted directly to these reports and published counter-reports. An additional source were the regular publications of human rights organisations, especially newsletters. These documents not only

⁸⁴ Müller (1995: 384-385); Risse-Kappen (1995: 181f.).

⁸⁵ This conception is different from the approach Jeffrey Checkel has chosen. He explicitly focuses on learning of individual policy makers and hence tries to find a way into the "brains" of these decision-makers. See,

allowed the discovery of how transnational networks judge particular situations, what kind of meaning they conferred to specific events. Newsletters often contain interviews with opposition figures of the target country in which strategies are discussed, problems identified and activists engage in an ideological critique of the particular authoritarian regime. On the part of target states, official documents constituted primary sources from which argumentation could be reconstructed. Sources such as official development plans and official speeches provide self-descriptions of states. Although they are less related to particular incidences of human rights violations, they always develop collective understandings about what a state government aspires to and what it views as a threat to the national interest. These self-understandings often also provide the validity claims, which rationalise human rights violations. Moreover, as the emphasis was on public discourses, and changes in rules, which are *publicly* known, access to secret decisions and administrative orders were not necessary. In the cases I have chosen, state governments have responded to the allegations human rights organisations made. Hence, it was possible to analyse these documents more thoroughly and reconstruct the arguments. Finally, as the media does not only constitutes a public sphere, but plays an invaluable role in disseminating “frames” and hence collective understandings, newspaper and magazine articles provided useful sources to analyse the *diffusion* specific understandings. Here, I concentrated specifically on the Asian weekly *Far Eastern Economic Review* and the US newspaper *New York Times* as this magazine has been reporting on Southeast Asia for decades and is known for its well-informed news reporting.

These sources were analysed in order to evaluate the frames they used. What are the claims to normative validity these frames express? How do transnational networks justify their allegations against the Philippine and Indonesian government? And how do these governments justify human rights violations? What kind of causality do the frames construct, where do they locate the causes of gross and systematic human rights violations? Given this frame, what are appropriate solutions?

Public press reports, Congressional Hearings in the US on the human rights situation in the respective countries, as well as a vast array of publicly available documents from the different human rights forums of the United Nations provided information on the preferences and motivations of governmental and non-governmental actors. Because actors justified their behaviour in these contexts, it is possible to uncover what motivated a government to take action against a human rights violating state or to remain inactive. A major problem of such

an analysis is the categorisation of the reactions of organisations in the civil society. Due to the very nature of an authoritarian regime, in most cases there are only few public documents from opposition groups available, especially for the phase of repression. If particular organisations do not react to reports of international human rights organisations, is it because they did not know about the activities of human rights organisations? If they do not join a particular discourse, is it because they reject particular statements and claims? In some countries, specific topics are considered so sensitive by the government that it answers attempts to initiate a public debate with draconian measures. It is thus unlikely that these political taboos are publicly discussed. For example, during the 1980s, the East Timor question constituted such a taboo in Indonesia. While regrettable from the perspective of this study, the problems of data collection unintentionally confirmed the proposition of this study, namely that domestic organisations need to channel information out of their country in order to influence their government.

Finally, in order to evaluate whether the reality these frames construct can be considered as having had an impact, I engaged in counterfactual thinking. What would have happened if the actors believed in a different cause-effect-relation? Would they have acted the same way, and would the outcome have been the same? The Indonesian prisoner campaign of the 1970s is a case in point. Although human rights organisations succeeded in getting the Indonesian government to release the prisoners, they did not succeed in convincing domestic opposition groups and other state governments of the necessity to struggle for structural reforms (full implementation of the rule of law) of the Indonesian political system. Although the Islamic opposition struggled for human rights, it did not subscribe to demands for the rule of law but wanted to establish an Islamic state. I will argue that had the opposition fully supported the validity claims of human rights norms, the transnational network would have been able to sustain the international mobilisation and the Suharto regime would have toppled earlier.

Explaining the change of human rights practices in Indonesia and the Philippines

What role do international human rights norms play in an explanation of human rights change in Indonesia and the Philippines? If they played a role, as I argue, through what process can these norms be translated into domestic practices? What role did cost and benefit analyses, feelings for duty or obligation or genuine beliefs in the validity of human rights norms play in these processes? Did state governments obey the prescriptions for conduct in the area of human rights because of sanctions, normative pressure or because proponents had good arguments? In this chapter I will explain the changes in human rights practices in Indonesia and the Philippines by fitting them into the spiral model. In consonance with the spiral model's claims, I argue that changes in human rights practices in these two countries need to take into consideration the independent role of international human rights norms and the activities of transnational human rights networks, which promote these norms. Unable to influence their governments in the domestic decision-making process, domestic human rights organisations considered the establishment of transnational networks a viable strategy to bring pressure from "above" on their government and generate an international challenge to their government in order to facilitate mobilisation from "below." It was the specific interaction between international and domestic political actors described in the spiral model, which induced substantive changes in human rights practices.

Due to the quicker successes of the Philippine network, the Philippines is in a higher stage of the model than Indonesia. According to the selected indicators, network activities have led to a steady decrease in the number of human rights violations, though individual violations still occur (early fifth phase of the model). The Indonesian network's ability to mobilise was severely undermined up to the mid-1980s, and a transnational network was only fully established between 1989-91. As a result, Indonesia is to be located in an earlier stage and – at the time of writing – has reached prescriptive status (phase four). The structure of the

chapter will largely follow the five phases, describe the emergence of transnational advocacy networks and explain how they have triggered changes in human rights policies in the Philippines and Indonesia.

Phase 1: Repression and the creation of a transnational human rights network

In Indonesia, there developed much earlier than the in Philippines a distinct pattern of repressive practices. Although the Suharto regime has become a symbol for repression in Indonesia, political repression actually already started in the 1950s under President Sukarno. Sukarno's declaration of martial law in 1957 led to distinct abuses against Muslim politicians who were perceived to be a threat to the secular basis of the Indonesian state. Indonesia became notorious, however, especially for the purge against members and alleged members of the Communist Party of Indonesia between 1965 and 1967. During those two years, the high degree of repression made a domestic monitoring of human rights practices almost impossible. In the Philippines, gross and systematic human rights violations only started with the declaration of martial law in 1972. Both political regimes legitimated their rule by justifying it in terms of a mandate for revolutionary socio-economic changes.¹ Repressive practices were backed by a host of formal institutions, security intelligence organisations, military interference into civilian matters and national legislation.

In the Philippines and Indonesia, domestic human rights organisations sought to publish information about human rights violations once they were able to operate, even under severe restrictions. As early statements of human rights activists illustrate, reaching out to an international audience became the main object of their concern, and was part of their survival strategy under authoritarian rule. Most domestic human rights NGOs as institutions only survived through funding by Western organisations while their members received some degree of protection against arbitrary state actions.

With regards to the Philippines, a transnational network of human rights organisations, most importantly involving religious organisations, developed after 1974. This network had recourse to a strong overseas basis of Filipino immigrants in the US facilitating transnational mobilisation. Due to the continual flow of information and Ferdinand Marcos' relative sensitivity toward critique of human rights practices, international human rights organisations were able to visit the Philippines. They put the human rights violations in the Philippines on their international human rights agenda in 1975, ending the "phase of repression" in which gross and systematic human rights violations go by unchallenged by observers.

¹ O'Donnell, Schmitter and Whitehead (1986)

In the Indonesian case, efforts to establish a transnational network began in the late 1960s, when the first Indonesian human rights NGOs were founded. The extraordinary feature, however, of the Indonesian case is the emergence of two transnational networks, one for Indonesia and one for East Timor. These two networks initially operated relatively independently of each other. A transnational East Timor network emerged after 1975, which advocated the right to self-determination of the East Timorese People and focused its activities primarily on the United Nations as an international forum. About the same time, a genuine transnational Indonesian network campaigned for the release of Communist political prisoners. The effectiveness of both networks was severely hampered, however. The Indonesian network was successful in campaigning for the release of the prisoners, but failed to gain the support of the Indonesian opposition. As the failure of the Indonesian network in the 1970s contrasts sharply with the successes of the Philippine network, it is worth while paying more attention to this case of failure. Thus, the activities of the Indonesian network will be described in chapter 7.

The East Timor network's activities were severely restrained by its lack of access to the territory. It was unable to sustain its demands for self-determination due to its inability to gather more information on abuses and its failure to persuade audiences, the domestic opposition and other state governments. As a result of the difficulties of the two networks, which operated independently of each other, the Indonesian government returned to a phase of denial, despite an initial mobilisation after 1979. The situation only changed in the mid-1980s. More information on human rights abuses enabled the remobilisation of international actors. These developments ensured the transition to the "denial phase", in which the Indonesian government responded to allegations of human rights violations.

Repression and network development in the Philippines: 1972-1975

In the Philippines, human rights violations dramatically increased after President Ferdinand Marcos imposed martial law on 21 September 1972. Marcos justified this measure on the ground of the existence of a political rebellion and the public order disturbances caused by mass protests and an armed underground movement. As the Constitution had allowed him to declare martial law under these circumstances, he accordingly called his regime "constitutional authoritarianism." Shortly after the announcement of martial law, hundreds of the president's enemies and suspected enemies were arrested, including more than a dozen delegates of the Constitutional Convention, which had been charged with drafting a new Constitution that would have limited presidential powers.

Presidential Letter of Instructions No. 1 ordered that all privately owned newspapers, magazines, radio and television facilities and other media of communication were taken over by the government. Public Information Order No 1 of September 25, 1972 instituted media censorship by requiring all domestic materials for publication and broadcasts and all foreign dispatches and cables to have prior clearance from the Ministry of Public Information. Marcos incapacitated a media landscape, which had had a reputation of being the freest in Southeast Asia. Journalists were arrested, but no formal charges were brought, and detained newsmen were gradually released. The action was justified, as in other cases, by the "communist subversion" of the media and the need to "dismantle the oligarchic structure of ownership."² In the first three months after the proclamation of martial law the government detained over 50,000 individuals, none of whom had the right to *habeas corpus*.³ Marcos abolished the legislative branch of his government, and demanded undated letters of resignation from members of the judiciary.⁴ By means of these open attacks on the pillars of a domestic public sphere, meaningful popular participation in public decision-making became almost impossible.

In 1973, Marcos promulgated a new constitution increasing presidential powers, which contained a list of almost all civil and political rights. However, emergency laws and presidential decrees legitimating arbitrary detentions (among other things) virtually invalidated the Bill of Rights. The main targets of human rights violations became alleged members or sympathisers of the Communist Party of the Philippines, its armed wing the New People's Army (NPA), and members of the Muslim underground organisation, Moro National Liberation Front (MNLF), operating in the Muslim dominated Southern Philippines, Mindanao.⁵

The declaration of martial law itself did not, however, provoke unequivocal cries of consternation,. There was no unconditional condemnation of the declaration either by a majority of the domestic population or by other states. A majority of the Filipino population seemed to endorse the move which promised an end to political violence, increasing criminality, unemployment, corruption and inequality or, at least, they adopted a "wait and see attitude."⁶ Marcos' political program and ultimate justification for authoritarianism was the promise of economic development, a democratic revolution from the centre which would

² Wurfel (1988: 122f.)

³ Espiritu (1986: 71f.); International Commission of Jurists (1977); Wurfel (1988: 122-124)

⁴ Shalom (1981: 170)

⁵ Amnesty International (1976); US Department of State (1977)

⁶ Adkins (1972)

ultimately erase the oligarchic political structure, restore political order, end corruption, and lead to a better distribution of land and income among the Philippine people. It was a revolution from the centre because the "New Society" targeted the Left and the Right as political opponents at the same time. Marcos drew an explicit link between the radical Left, which exploited the popular disaffection resulting from an oligarch-controlled society characterised by inequities and corruption.⁷ A comprehensive land reform became the centrepiece of his political program. In outlining this program, Marcos could rely on the partly explicit, partly diffuse political support among very different sections of the population. Equally, the US Government as the most important Philippine ally with great strategic and economic interests in the Philippines, did not judge the proclamation as an infringement of human rights norms. The initial response of the Ford Administration to the declaration of martial law in the Philippines was a realistic evaluation of the proclamation in view of basic US interests. In 1972, a US Senate Report on the declaration of martial law noted that:

"(...) whatever US interests were – or are – they apparently are not thought to be related to the preservation of the democratic process (...) US officials appear prepared to accept that the strengthening of presidential authority will (...) enable Marcos to introduce needed stability; that these objectives are in our interests; and that military bases and a familiar government in the Philippine are more important than the preservation of democratic institutions which were imperfect at best."⁸

The so-called Mansfield report, prepared by Majority Leader Mike Mansfield for the US Senate articulates best the prevailing atmosphere in 1972. It stated that Marcos had "zeroed in on the areas which have been widely recognized as prime sources of the nation's difficulties – land tenancy, official corruption, tax evasion, and abuse of oligarchic economic power ... There is marked public support for his leadership and tangible alternatives have not been forthcoming."⁹

Yet, the declaration of martial law did not go completely unchallenged. On a domestic level, the earliest and most consistent opposition force to the Marcos regime became the Communist Party of the Philippines (CPP), established in 1968, and its military wing, the New Peoples Army (NPA). Drawing upon its Maoist blueprint, the CPP quickly recognised that the declaration of martial law provided it with a golden opportunity to make common cause with dissident non-communist elements. A directive adopted by the CPP Central Committee in

⁷ Noble (1978: 353); Stauffer (1977)

⁸ US Senate Committee on Foreign Relations (1973), quoted in: Schirmer and Shalom (1987: 168)

⁹ quoted in Tiglao (1988: 34)

October 1972 explicitly recognised the polarisation that was bound to result from Marcos' move and stated that the party should capitalise on this by playing down the class basis of elite politicians of the broad resistance movement directed against the regime. Instead, the document summoned "all those who are interested in achieving national freedom and democracy" to join the CPP in a united front to carry on the struggle. A program for a coalition of anti-Marcos forces among others centred on the re-establishment of "democratic rights" for "anti-fascist forces." The CPP framed its opposition to the Marcos regime in human rights terms because it not only appealed to the liberal opposition in the Philippines, but presented an efficient magnet to attract international support. Internationally, human rights concerns, in this regard, were much easier to convey than demands for land reform. Although there always remained a shadow of doubt about the authenticity of the CPP as human rights promoter, the CPP and its affiliated organisations proved to be one of the most important opposition force to martial rule.¹⁰

A second source of opposition was the domestic network of human rights organisations. Several important human rights groups emerged. In 1974, the Task Force Detainees of the Philippines (TFDP), was founded by the Association of Major Religious Superiors (AMRSP), an umbrella organisation of Catholic churches in the Philippines, and focused on care for political detainees and a systematic but unobtrusive monitoring of human rights violations. In the same year, Jose W. Diokno established the Free Legal Assistance Group (FLAG), a legal aid organisation concentrating on legal aid for the poor. FLAG operated under the aegis of the AMRSP, and remained a small organisation based in Metro Manila. Until 1977, it only had five staff members.¹¹

Two peculiarities facilitated the establishment of a transnational human rights network during this time: First, the Philippine human rights movement had a strong overseas basis. Especially in the United States there was a large Filipino community which organised the US-based opposition against the authoritarian Marcos regime. Organisations such as the Friends of the Filipino People (FFP), established in Philadelphia in 1973, the Anti-Martial Law Coalition, founded in Chicago in 1974, and the Movement for a Free Philippines provided the American public with detailed information on US support for the regime. Due to the nationalist orientation of these organisations, they framed their campaigns in human rights terms, mixed with anti-colonial undertones. They aimed to "[...] find ways of dismantling the superstructure

¹⁰ The paper of Marks (1993: 85f.) presents detailed information on the structure and strategies of the CPP during martial law. The conference proceedings of the Third World Studies Center (1988) equally provides a good discussion of the strategic thinking of the CPP leadership.

¹¹ Free Legal Assistance Group (FLAG) (1994: 9)

of repressive dictatorship and its substructure of US diplomatic, military and economic support.”¹² In May 1973, a Congress Education Project was established, which was coordinated by the FFP and the Anti-Martial Law Coalition, and provided an interface between Philippine human rights activists in the US and US Senators and Congress people. The immediate concern of the US-based Filipino organisations was to cut US military aid to the Philippines.¹³ They lobbied US policy makers and Congressional members in order to persuade the US Administration to apply material pressure on the Marcos regime.

The second peculiarity facilitating the set-up of a transnational network was the fact that the TFDP could rely on a domestic church network as an organisational basis, which covered almost the entire country and thus facilitated the documentation of individual cases related to human rights violations.¹⁴ Although the church as corporate entity did not oppose the Marcos regime from the outset, and adopted a position of “critical collaboration” with state authorities, regional chapters of the National Secretariat for Social Action of the Catholic Bishops Conference of the Philippines became vocal critics.¹⁵ They had been involved in genuine social action programs in the countryside and became victims of military harassment, prompting them to become active in human rights work. Protestant groups under the National Council of Churches of the Philippines and the United Church of Christ also established their human rights desk and the Ecumenical Movement for Justice and Peace to monitor human rights abuses and organise people against such abuses. Much of the groundwork for the solidarity among Christians groups can be attributed to the Christians for National Liberation, founded in 1972.¹⁶ The domestic church network was connected to a great international network of church organisations such as the World Council of Churches, as well as national church organisations in the US and Western Europe.

The Philippine transnational human rights network started gathering and distributing information, which soon influenced the public discourses of other states on the human rights practices of the Marcos Government. The Philippines’ Western legal tradition enabled a legal discourse based on civil and political rights which easily adapted to the rule –of –law rhetoric under Marcos and to salient principles of Amnesty International. Yet, this “cultural conduciveness” or resonance should not be overstated. The manipulation of domestic law by the Marcos regime was as pronounced as in Indonesia. Thus, efforts of domestic legal aid

¹² Rivera and Bello (1977: 5)

¹³ Rivera and Bello (1977: 2)

¹⁴ Nemenzo (1995: 118)

¹⁵ Kunz (1995: 46-57); Youngblood (1977); Tiglao (1988: 60)

¹⁶ Tiglao (1988: 60)

organisations focused on raising the consciousness of their clients as to the limitations of the Philippine legal system and in encouraging clients to organise and act collectively with people in similar situations. Demonstrations, hunger strikes and mass actions were considered suitable means (so-called "metalegal tactics") in order to express grievances.¹⁷ Due to the quick establishment of a transnational network, the transition to the phase of denial occurred quite early after the declaration of martial law, in 1975.

Repression and the emergence of two networks: Indonesia 1965-1986

In Indonesia, human rights violations multiplied after an aborted coup allegedly carried out by the Communist Party in September 1965. The coup removed President Sukarno from power and in 1967, Suharto, at the time commander of the strategic reserve, became President of Indonesia. Between 1965 and 1967, according to conservative estimates at least 250,000 supposed members and sympathisers of the Communist Party were detained, and an equal number of persons were killed in country-wide pogroms.¹⁸

The persecution and killing of thousands of suspected Communists and the liquidation of alleged members of the Communist Party of Indonesia¹⁹ at that time was nearly unprecedented in the Third World. The political significance of the event became visible when the slogans "Jakarta, Jakarta" appeared on walls in Santiago de Chile, which were obviously meant as a warning to members of the Left there. Military regimes in Turkey and Thailand discussed whether the extinguishing of the radical Left comparable to the one in Indonesia would be viable strategies.²⁰ Despite the cruelty of the event, it is important to note here that the New Order regime initially legitimised itself in the eyes of others by distancing itself from the human rights violations under Sukarno. It thereby appealed to the aspirations of many Muslims who had participated in the killings of suspected Communists, and who saw action against the Communists as a revenge for their political exclusion and the human rights violations experienced under Sukarno.²¹

Initially, the newly established Suharto regime had expressed its commitment to human rights and the rule of law and blamed the Sukarno government for gross and systematic human rights violations. There was a relatively open discussion about human rights and demands to reiterate and strengthen human rights guarantees in the 1945 Constitution. A Symposium held

¹⁷ Free Legal Assistance Group (FLAG) (1994: 10)

¹⁸ Fealy (1995: 4f.)

¹⁹ Partai Komunis Indonesia: PKI

²⁰ Amnesty International (1977a)

²¹ Boland (1971)

in 1966 resonated with the public mood when it called for a greater respect of *rechtsstaat* and human rights and demanded the abolition of all legislation which contradicted human rights norms. In December 1970, the Indonesian Parliament enacted a law on judicial power, reaffirming the independence of the judiciary.²²

However, by the late 1960s and early 1970s, the regime had become more authoritarian. The first victims were Muslim activists whose political influence was successively constrained. Suharto and the military actively intervened and manipulated party politics as a means to constrain the public will. The most influential Muslim party of the Sukarno era, Masyumi, was banned under Sukarno in 1960, and its leaders imprisoned on charges of having participated in a regional rebellion in West Java. Despite promises to rehabilitate Masyumi, Suharto did not permit the party to re-emerge. He endorsed attempts by Muslim politicians to establish a new Muslim party if it bore a different name than Masyumi, but refused "clearance" for Mohammed Natsir, one of the most popular Muslim politicians. Natsir was thus effectively prevented from becoming chairman of the newly created Muslim Party (Parmusi),²³ the successor party of the Masyumi party. After the foundation of Parmusi, the Indonesian government and the military manipulated leadership struggles in Parmusi and other parties in order to place party leaders who were supportive of the government in top positions. With regard to Muslim parties, the aim was to catapult accommodationist figures into leadership positions in order to secure support for the government's pragmatic "program-oriented" development policy, free from the religio-political desires and potential ideological demands for an Islamic State.²⁴

The military-backed Suharto regime set up its own political party, the Functional Groups Joint Secretariat (Golkar)²⁵ as a semi-official party representing the New Order. In the following decades, Golkar came to be the military's major political vehicle. In the first elections of 1971, Golkar received an unexpectedly high percentage of the vote (62%), mainly because the military and the local bureaucracy had applied pressure on villagers to vote for the new government party. Muslim parties emerged as the only serious competitor to Golkar.²⁶ In an attempt to further restrict the other parties' political power, Suharto compelled the nine existing parties to regroup, in 1972-73, into two large parties, the PPP (uniting the Muslim parties) and the PDI (uniting the Christian and Nationalist parties). Apart from Golkar, all

²² Lubis (1993: 127-130); Mackie and MacIntyre (1994: 12)

²³ Partai Muslimin: Parmusi

²⁴ Samson (1979); Jackson (1979)

²⁵ Golongan Karya Pusat: Golkar

²⁶ Mackie and MacIntyre (1994)

parties were banned from political activities in rural areas except at election time (the floating mass concept). The ensuing infighting among the different political parties within the PDI and PPP remarkably diminished their popularity.

As early as 1966, the first Indonesian human rights organisation was established. H.C.J. Princen founded the Institute for the Study of Universal Human Rights (LPHAM).²⁷ In 1970, the Lawyers' Association of Indonesia founded the *Lembaga Bantuan Hukum* Indonesia (LBH), the Legal Aid Foundation. It started operating in Jakarta in 1971 and soon began exchanging information with international NGOs such as Amnesty International, the International Commission of Jurists (ICJ), the International Committee of the Red Cross and the British Campaign for the Release of Political Prisoners in Indonesia (Tapol).²⁸

This emerging Indonesian human rights network campaigned for the release of the Communist political prisoners in the 1970s. They managed to alert the international human rights community and pressured Indonesia to release these prisoners. The US entered into secret negotiations with the Indonesian government, which resulted in the release of most of the prisoners between 1975 and 1979.²⁹ Although the political developments which the international human rights campaign provoked, and the reactions of the Indonesian government, point to a dynamic which is described by the spiral model, the outcome was different from the one in the Philippines. While the Marcos regime entered into a phase of tactical concessions in 1978 due to international pressure, the international human rights campaign on Indonesia did not provoke similar concessions on the part of the Indonesian government. Instead, it actually increased its repressive practices. Thus, although the campaign must be regarded as extremely successful because it eventually provoked the release of political prisoners, from a perspective of sustained changes in human rights practices, the campaign failed. It did not manage to change the underlying cultural practices or national logic of appropriateness which informed human rights violations.

There is no need to dwell further on this case here, as it will be treated more thoroughly in chapter seven. For the moment, it is sufficient to assert that the failed campaign constituted a clear backlash against the transnational human rights movement and provided a traumatic experience for the Indonesian student movement, which was harshly repressed. By releasing the political prisoners, the Indonesian government was virtually cleared of charges of committing gross and systematic human rights violations, the Indonesian military and security

²⁷ Lembaga Pembela Hak-Hak Asasi Manusia: LPHAM.

²⁸ For two detailed studies on the establishment and working conditions of LBH under authoritarian rule, see e.g. Lev (1987) and Frings (1991).

²⁹ For more details, see Kivimäki (1994); Fealy (1995); Newsom (1986) and chapter seven of this study.

services were able to consolidate their political power and expand their network of repression.³⁰

Despite this backlash, the main strategy of the Indonesian network in the subsequent years remained based on the need to survive. gather information on victims of human rights violations in order to provide publicity, bring international pressure on the Suharto regime and thus influence governmental policies.³¹ Adnan Buyung Nasution, one of the founders of LBH, explicitly acknowledged the importance of publicity for human rights advocacy when he advised Carmel Budiardjo, the founder of the international human rights organisation Tapol in an interview:

“I would say you should get the names of these people and make them known to the public, internationally. By publicising their names, you are better able to exert pressure on the regime. One thing I have learnt about this regime, and I think this is the character of regimes like this all over the world, is that if nobody pays attention, if nobody cares about what they do, arresting and detaining people, they just go on doing these things.”³²

However, the Indonesian domestic network remained weak. Despite Nasution's belief in the need to document individual cases of human rights abuses, LBH failed to systematically gather information on abuses related to civil and political rights, a failure which is partly due to the dense surveillance on behalf of the military, and partly the result of weaker religious networks. For example, there has been no Muslim network comparable to the church network in the Philippines. Unlike its Philippine counterpart, the Task Force Detainees, and other human rights organisations in Chile and Argentina, LBH did not document the number of violations against personal integrity rights such as torture.³³ It focused primarily on the documentation of violations of land rights, which seemed to entail greater domestic resonance, could more easily be aligned to the dominant development discourse of the Indonesian government, but most importantly was in accordance with the military's prerogatives on what could be publicly articulated.³⁴ Thus, although international organisations continued publishing cases of human rights violations as part of the Indonesian network, the activities of the network in the late 1970s and 1980s were unable to convince international actors of its claims and pry open space for domestic critics. The overall human

³⁰F or a good study on the expansion of Indonesian security services in the 1980s, see Richard Tanter (1990b).

³¹ Lev (1987)

³² Buyung Nasution Interviewed by Tapol. TAPOL Bulletin, 50.

³³ On the Chilean and Argentine cases, see Keck and Sikkink (1998: Chapter 3) and Brysk (1994).

³⁴ See, for example, the yearly reports of LBH, Lev (1987) and Eldridge (1980).

rights situation in Indonesia was subject to slight "seasonal" changes, exhibiting more cases of human rights violations before and during election campaigns, but did not change on a structural level.

East Timor network: Self-determination vs. national unity

There was a second network working on East Timor, which was marred by similar difficulties. Indonesia had invaded East Timor in 1975, and annexed the territory a year later. The United Nations Security Council immediately condemned the annexation and never acknowledged Indonesian jurisdiction over the territory. The invasion laid the basis for another network of human rights organisations consisting of various NGOs lobbying for the right to self-determination. It included NGOs based in Australia, the Portuguese government and parts of the Dutch government, and countries which shared the East Timor network's identity as former Portuguese colonies and newly independent states, most importantly Brazil, Vanuatu, Zimbabwe, Benin and Algeria.³⁵

For the transnational East Timor network, lack of access to the territory of East Timor proved to be a fatal impediment to international and national mobilisation, as it limited access to information. The capacity of the East Timor network to mobilise target audiences was severely hampered by East Timor's isolation from the outside world. It was not until the early 1980s that "credible" information on systematic human rights violations became available because the East Timorese Roman Catholic Church had become part of the network. It assumed a crucial function in the transmission of information from East Timor to the outside world.³⁶ Despite the priority the East Timor question was accorded in United Nations forums,³⁷ there was a clear lack of international resonance of the East Timor question, which must also be seen as a result of norm dynamics. The self-determination norm, around which the East Timor network rallied, did not find much support in an international and domestic arena. Only a few governments were willing to support the demands of Fretilin (the Revolutionary Front for an Independent East Timor) for self-determination, most of them former dependent countries.

³⁵ Ramos-Horta (1987: 139)

³⁶ Archer (1995)

³⁷ The United Nations Security Council had condemned the invasion of the territory in its resolutions 384 of December 22, 1975, and 389 of April 22, 1976, but it did not consider the case a threat to international peace and order, which would have legitimated the use of military force. Thus, the East Timor question became an issue in other bodies of the UN system, such as the General Assembly, the UN Decolonization Committee, the Subcommission on the Prevention and Discrimination of Minorities, as well as the Commission on Human Rights.

The East Timor network presents a particularly interesting object of study, since it was transnational, rallied around an international human rights norm, and the annexation of the territory was in violation of international law. Despite these circumstances, the network, in the period 1977-83 continuously lost support among other state governments for its political demands. The activities of the East Timor network warrant closer analysis, because they help to explain why human rights change took so much longer in the Indonesian than in the Philippine case, and because it was this network which after 1985 initiated an international mobilisation for human rights in East Timor and Indonesia.

In the years immediately following the invasion and annexation of East Timor, the Revolutionary Front for an Independent East Timor (Fretilin)³⁸ constituted the single most important norm entrepreneur for East Timor's self-determination. It framed its struggle primarily in terms of self-determination, which made sense in the 1970s, when the organisation could ride on a wave of independence struggles against colonial domination. It faced staunch opposition from the Indonesian government, which put enormous efforts and resources into trying to rally support among other countries for its annexation of East Timor. In East Timor, the Indonesian military applied a double strategy of seeking to defeat the Fretilin movement in a military operation, while virtually isolating the territory from the outside world. In the period 1975-81 this strategy proved to be extremely successful. All lines of communication between the East Timorese resistance fighters were severed, and communication with the outside world cut off. There had been no contact with the Fretilin mission abroad (represented by José Ramos-Horta and Mari Alkatiri) since 1978, making it impossible to channel information to supporters overseas.³⁹ Finally, the Government tried to develop the territory economically as a strategy to diminish political conflict.

Because Fretilin representatives had embarked on a strategy of persuading other governments of East Timor's right to genuine self-determination, it sought to deny the accomplishments which Indonesia's rule had brought to the territory and to discredit the Indonesian government's activities in the territory wherever possible. This strategy led to a number of smaller public debates, most importantly about the exact number of victims of occupation in East Timor and the success of the Indonesian economic development policy in the territory, as well as the efficacy of the integration efforts the Indonesian government had undertaken. In particular, the death toll was heatedly discussed and served as basis for charges of genocide. Fretilin accorded the Indonesian Government major responsibility for the famine between

³⁸ Frente Revolucionaria Timor Leste Independente

³⁹ Carey (1995: 7)

1978-80, which had cost the lives of thousands of East Timorese, among them many children, and linked these allegations to demands that Indonesia be forced to withdraw from the territory. The Indonesian government challenged these allegations by arguing that the famine was due to the civil war situation rather than a conscious elimination strategy by the Indonesian military. Western governments supported calls for humanitarian relief, but not for self-determination.

The East Timor question 1975-85: Gradual loss of international support

The United Nations (UN) became the most important forum for a debate on the East Timor question. As the minutes of exchanges between the Indonesian government and the different non-state organisations in the different human rights bodies of the United Nations show, transnational actors as well as the Indonesian government publicly justified their positions by reference to an international audience and tried to gather support. These debates show, too, that both parties had adopted a self-determination norm to justify their actions. This question pitted the Fretilin, East Timor support groups and Portugal, as the most important state government, against the Indonesian government and the Associação Popular Democrática Timorense (Apodeti), the pro-integration political party of East Timor.

Between 1976 and 1985, Portugal as well as Indonesia regularly invoked the principle of self-determination to justify their actions. Whenever the Portuguese delegation raised the question of East Timor and demanded the Indonesian military's withdrawal, the Indonesian delegate replied that Indonesia had always respected the right to self-determination of all peoples under colonial and alien domination, including the people of East Timor. Indonesia had not invaded the territory out of power interests and territorial expansion, but because it had been requested by non-Communist political parties in East Timor to aid them in their fight against the Communist Fretilin, which was struggling to establish a Communist state in East Timor. The East Timorese Administration had, in 1976, expressed its desire to integrate East Timor into the Indonesian territory. Based on this account, the Indonesian government held that the people of East Timor had already exercised their right to self-determination and that, as from July 17, 1976, whatever happened in East Timor had become an internal affair of Indonesia.⁴⁰ Supporters of East Timor's cause on the one hand, and the Indonesian government, aided by other governments such as Australia on the other, tried to discredit their opponents by questioning their motivations. Indonesian delegates accused the Portuguese government of

⁴⁰ See, for example, United Nations Commission on Human Rights and Sub-Commission on the Prevention of Discrimination and Protection of Minorities (1983); United Nations Commission on Human Rights and Sub-Commission on the Prevention of Discrimination and Protection of Minorities (1988); United Nations Economic

just being interested in regaining control of the territory, which it had hastily abandoned in 1975 after the fall of the Caetano regime in Portugal. They regularly denounced Portugal as a neo-colonial power and Fretilin as Communist movement which was only interested in coming to power. Conversely, Portugal and Fretilin tried to expose the Indonesian government's justifications as contradictory, and indicating that Indonesia had invaded the territory only for the narrowest of power interests, territorial expansion. That both actors were judged according to the truth of their assertions became evident when the International Red Cross managed to reveal that Fretilin had obviously exaggerated the death toll to discredit the Indonesian government, while it revealed that the Indonesian government itself had produced population figures which lacked any factual basis.⁴¹

On an international level, East Timor remained a low-key phenomenon, although the Indonesian government did its utmost to prevent an official UN resolution condemning its invasion of East Timor. The change in policy by the Portuguese Ramalho Eanes government, in the face of domestic pressure, from neglect to an international support of the East Timor cause during 1981-82, and its active support of the East Timor network at least raised the political costs for Jakarta to defend its position. Eanes appointed a former prime minister, Lurdes Pintassilgo, to work exclusively on the East Timor issue and tried to rally support among European countries and their former colonies. Jakarta was willing and committed to pay these political costs, and it was eventually successful.⁴² The self-determination of East Timor gradually lost support in the UN General Assembly.

and Social Council and Commission on Human Rights (1983); United Nations General Assembly (1982)

⁴¹ Rodger (1981)

⁴² See, for example, Awanohara (1982); Morello (1982a); Morello (1982b).

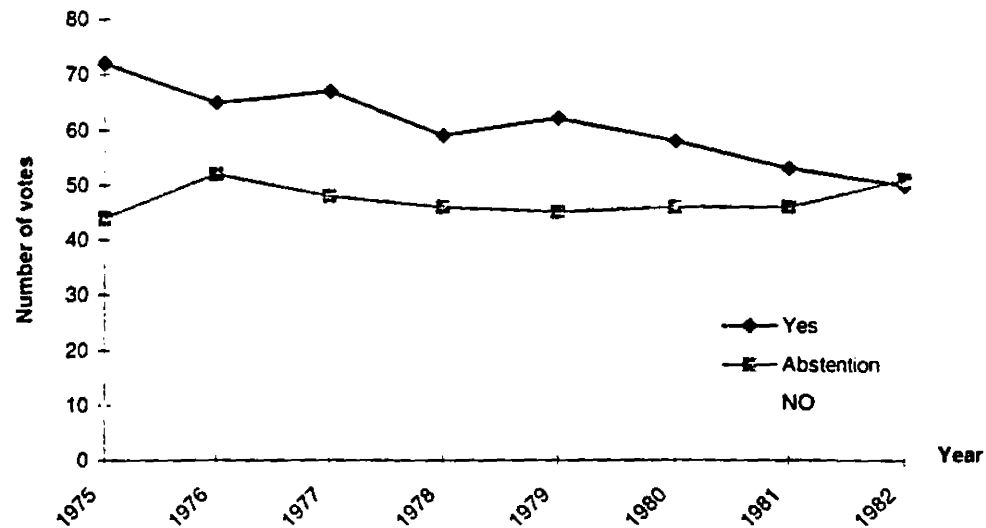


Figure 6-1: UN General Assembly Voting on East Timor Draft Resolution

As figure 6-1 shows, between 1975 and 1982, in General Assembly voting on a resolution on East Timor, the Yes-votes supporting the right to self-determination of the East Timorese continually declined. In 1975, 72 members of the General Assembly had approved the resolution, 44 abstained and only 9 state governments had expressed their opposition to the resolution. Benin, India, Indonesia, Iran, Japan, Malaysia, the Philippines, Saudi Arabia, and Thailand were the only countries voting 'No' on the draft resolution. By 1982, this ratio had changed, with only 50 states voting for the resolution, 51 abstaining and 46 disapproving.⁴³ Members of the European Community (EC) abstained from a vote between 1975 and 1982. Greece, which only became a member of the EC in 1981, nevertheless failed to adopt the lead of its European neighbours during this period of voting. On the other hand, Sweden, which did not join the EU (as it was now called) until 1995, *did* follow the policy of other European countries: in accordance with EC/EU foreign policy, and upon the change of power from a conservative to social democratic government under Olof Palme, Sweden changed its preference from a yes to an abstention. The USA only approved of the resolution in 1975, but switched to a consistent no-vote thereafter.

Due to the loss of support, the topic was officially taken off the agenda and referred to the UN Secretary-General in 1983. He was mandated to initiate negotiations between the administering power, Portugal, and the Indonesian government. Negotiations between

⁴³ URL: <http://gopher/gopher.igc.apc.org:70/00/peace/timor.gopher/un/8>

Indonesia and Portugal over the status of East Timor began in 1983 under the auspices of the UN Secretary-General, but hardly made any progress at all. For international observers, the legality of the action had become, by and large, a historical question, and most states assumed a pragmatic attitude and were willing to accept that East Timor was part of Indonesia, if only because they did not want to sever their economic and security relationship with Jakarta. The Canadian government expressed this attitude explicitly. It regarded the “integration of East Timor, while not entirely consistent with the principle of self-determination, [...] an accomplished and irreversible fact.”⁴⁴

The US Government, which had tolerated if not consented to Indonesia’s invasion of East Timor in 1975, and was one of the most important exporters of military equipment alongside France and Great Britain, equally put considerable resources into persuading other governments to accept the *fait accompli*. In 1976, the US ambassador to the United Nations, Daniel Moynihan, in a cablegram published by the New York Times, applauded the considerable progress made by US strategy at the UN. It had succeeded in a basic foreign policy goal of breaking up the massive blocs of mostly new nations, which for so long had been arrayed against the US in international forums. The cablegram dealt specifically with the General Assembly vote on East Timor.⁴⁵

The lobbying activities of Fretilin at least managed to prevent other states from officially acknowledging Jakarta’s territorial claim to the territory, and the Australian decision of 1978, formally acknowledging East Timor’s integration, remained an isolated one, which was not adopted by any other country. The lack of consensus on the status of East Timor enabled Jakarta to continue its isolation strategy for East Timor, too. It denied international human rights monitors access to the territory and international relief organisations were only allowed to enter in 1980. As with international human rights organisations, the Indonesian government refused to grant an Australian Senate Committee permission to visit East Timor on the basis that Indonesian authorities regarded any inquiry on East Timor as interference in the domestic affairs of Indonesia.⁴⁶

The self-determination frame had consequences for the strategies of the organisations in the East Timor network, too, most importantly Fretilin. As long as the East Timor question was a case of self-determination, organisations had to show that there was internal resistance to

⁴⁴ 1981 Annual Review of the Canadian Department of External Affairs, as quoted in José Ramos-Horta (1987: 143), emphasis in the original.

⁴⁵ Taylor (1991: 170f.)

⁴⁶ Senate Standing Committee on Foreign Affairs and Defence and The Parliament of the Commonwealth of Australia (1983: xiv)

Indonesian efforts at "integration." This made an armed strategy rational and led to a focus on guerrilla tactics. These tactics, in turn, confirmed international understandings of a civil war in East Timor. Moreover, because Indonesia as corporate entity was regarded as the enemy, Fretilin developed no strategies to appeal to an Indonesian domestic audience, whose reactions might have undermined the Indonesian government's position from below.

The politicisation of the East Timor cause, and the clear political polarisation between "good" East Timorese fighting for independence, and "bad pro-integration" East Timorese and Indonesians, led to a predictable "rally around the nationalist flag" effect in Indonesia. The censored press in Indonesia had continually prevented impartial reporting on East Timor and had portrayed the "integration" as an act of mercy. The Indonesian military knew how to exploit the nationalist sentiments among Indonesians in order to rally support behind the invasion. An official taboo around East Timor, reinforced by overt threats not to raise the issue, served to reinforce this policy.

On a domestic East Timorese level, transnationalisation deepened splits among the political opposition rather than serving as a collective action frame. Due to the monopoly Fretilin occupied in articulating the struggle for self-determination in the international arena, other organisations which shared Fretilin's interest in self-determination, but held different political convictions, such as the Timorese Democratic Union,⁴⁷ for example, were reluctant to support Fretilin's demands. Political competitors saw in Fretilin not only a principled independence movement, but first and foremost a political Communist party with stakes in the domestic power struggle. They feared that their international support for self-determination would ultimately strengthen Fretilin in the political struggle in East Timor, too. Hence, the Indonesian government's position remained largely unhampered by pressures from below, and its most important power resource was the weakness of a divided opposition in East Timor, and systematic misinformation in Indonesia.

Even the Indonesian church, which, by its very identity was supposed to support fellow Christians in East Timor, did not support the cause. It had accepted the official policy of Indonesia that East Timor had been "integrated." The Indonesian church regarded the Catholic population of East Timor as an important leverage to increase its position as a minority group in Indonesia. In 1983, the acting Bishop of the East Timorese Church, Martinho da Costa Lopes, an outspoken critic of the Indonesian occupation, was recalled by the Vatican under pressure from Indonesia's Roman Catholic bishops.⁴⁸ In 1984, the youth

⁴⁷ Uniao Democrática Timorense: UDT

⁴⁸ Archer (1995: 127); Taylor (1991)

delegation of the Christian Conference of Asia (CCA) brought up the subject of East Timor in the General Assembly debate. This resulted in the Indonesian delegates leaving the hall in protest and their suspension of membership in the CCA for the next five years. The Indonesian churches only returned to the CCA fellowship at the Manila General Assembly in 1990.⁴⁹

In sum, the self-determination norm, which united transnational network activists, failed to serve as a glue among the East Timorese,⁵⁰ nor did it persuade civil society actors in Indonesia. International campaigning raised the stakes for all actors, not only the Indonesian government, and for many, a direct conflict between the Indonesian military, which defended the unity of Indonesia, was too risky. The East Timor question even split the board of trustees of the Indonesian Legal Aid Institute (LBH). Here, especially Ali Sadikin, who was the governor of Jakarta and a long-time protégé of LBH, as a member of the military seemed to support ABRI's position on East Timor, while others, such as Adnan Buyung Nasution apparently considered the issue too sensitive to be thematised in Indonesia.⁵¹ In this regard, then, the Indonesian Government's success in insulating East Timor and denying access to the territory might be partially explained by the East Timor network's disregard for an Indonesian domestic audience and its failure to construct an adequate campaign, which ultimately worked to the detriment of the East Timor network itself. By 1985, the activists in the East Timor network were frustrated by the lack of support from Western Governments, and received an additional blow when the UN Subcommission on the Prevention and Discrimination of Minorities, in private session, took the East Timor issue off the agenda without disclosing the reasons for this action.⁵²

In sum, strategies of justification, argumentation and deliberation in general were prevalent, but in what ways did they matter? They mattered in the sense that the East Timor network established an alternative frame of reference for interpreting the Indonesian occupation of East Timor. Yet, the self-determination frame convinced no one in the audience who was not convinced before. It was only United Nations procedures which kept the issue alive and provided an annual rallying point for the supporters of the network. One could object to this interpretation of the international debate on East Timor on the ground that Western states' economic and security interests, rather than the absence of persuasive arguments, accounts for

⁴⁹ Clement John (1995: 16); Pattiasina (1995)

⁵⁰ That there might be greater support for genuine human rights issues became obvious in 1981, when members of the East Timorese Administration filed an official complaint in Jakarta, accusing the Indonesian military authorities of severe abuses and human rights violations.

⁵¹ Interview with Indonesian human rights activist (Rambun Tjajo, LBH), Jakarta, 09.08.1996.

⁵² Taylor (1991: 178)

difficulties the East Timor network faced. As Western governments' responses to the lobbying efforts of the network make clear, the economic and security interests of the US and European governments in Southeast Asia played an overwhelming role in their decisions to keep the debate on East Timor low key and to restrain from applying more pressure on Indonesia to end the occupation of East Timor.⁵³ It is an established fact that many Western governments had extensive economic and security links with Indonesia, sold weapons and trained Indonesian soldiers on a large scale. Many authors suspect that the US encouraged the invasion of the territory in 1975 during Foreign Minister Henry Kissinger's visit to Jakarta just one day before the invasion of East Timor by Indonesian troops. The continuing security and economic interests of great powers also contributed, according to this perspective, to the lack of support for the fate of the East Timorese people during the 1980s. Geoffrey C. Gunn claims that the Western media played its own role in erecting a taboo around the East Timor issue. It did not report on atrocities committed by the Indonesian military after 1978, allowing the Reagan, and later, Bush Administrations to "keep the real issues under wraps."⁵⁴

I argued above that precisely how the East Timor network framed the East Timor issue (as a case of self-determination) needs to be understood in order to explain why these governments did not come under more transnational pressure to change their policy of support for Indonesia's policy. My claim is not that these economic and security interests are negligible or irrelevant, but that the international campaign on East Timor never reached a level sufficient to make it necessary for these governments to discursively justify their interests in public. Western media did not report on East Timor, but – as observers have made clear – not much information was available after 1978, either (see above).

To fully account for the failure of the self-determination campaign the following reasons need to be taken into account: First, the "situation on the ground" in East Timor was difficult to ascertain. State governments were confronted with the competing appraisals of groups who all seemed to have an interest in discrediting each other to further their power interests. Second, while there emerged a consensus that the humanitarian situation in East Timor was appalling in the early 1980s, it was difficult to accord Jakarta sole responsibility for it. The image of a civil war roamed through the international discourse on East Timor, in which the civil population was victimised not only by the Indonesian military, but also by the Communist guerrilla organisation Fretilin. In view of these difficulties the proposals of human rights organisations were not persuasive. The East Timor network identified a problem, established

⁵³ For such an interpretation see, e.g. Dunn (1983), Ramos-Horta (1987); and Taylor (1991)

⁵⁴ Gunn (1994: 131)

an alternative interpretive schema and proposed a possible solution. But as the conveyer of the message itself lacked authenticity, the solution (withdrawal of the Indonesian military from East Timor) was widely regarded as self-serving, the interpretative schema appeared distorted or not readily quantifiable and the problem, events surrounding the invasion of East Timor, seemed largely historical. Precisely these three features changed in the course of the first half of the 1980s and slowly prepared the ground for an international breakthrough of the East Timor network and its cause.

Reframing the East Timor question

First, between 1981 and 1986, the Fretilin leadership radically reorganised the structure of the organisation, abandoned its strategy of maintaining permanent bases and created clandestine organisations behind enemy lines and in the so-called strategic villages and population camps under the Indonesian military's control. This essentially meant a departure from reliance on weaponry strength to reliance on the "strength of the people", i.e. persuasive, non-violent activities.⁵⁵ This change of tactics had two important consequences: It enabled a series of cease-fires and negotiations between Xanana Gusmão as leader of the Fretilin and the Indonesian Colonel Purwanto, effectively undermining the impression of a civil war. Second, it changed the politics of repression on the Indonesian military's side. Because Fretilin members had infiltrated the civilian population, but were indistinguishable from civilians, more civilians became victims of human rights abuses in the military's fight against the Fretilin, and now filed complaints with the local church.

Second, in March 1986, Xanana Gusmão declared the formation of a new nationalist organisation, the National Council of Maubere Resistance,⁵⁶ and resigned as President of Fretilin, which enabled him to stand above party politics. This united the different political opposition parties in East Timor, which joined the Council, enabled a common stance toward the atrocities committed by the Indonesian military and contributed to a more impartial standing of Fretilin in international forums. The argument, that Fretilin's struggle for self-determination was self-serving was thus no longer sustainable.⁵⁷

These developments eventually persuaded the local Catholic Church, which joined the network. The Church had received more complaints about human rights abuses and now became active in channelling this information to the outside world. Its involvement proved to be crucially important, because it was undeniably impartial, the only local institution that

⁵⁵ Carey (1995: 7)

⁵⁶ Conselho Nacional da Resistência Maubere: CNRM

⁵⁷ Taylor (1991)

communicated independently with the outside world, maintained institutional connections with an international structure, and could therefore safeguard for itself a certain independence from the Indonesian authorities.⁵⁸ Marthinho da Costa Lopes in several interviews publicly complained about the arbitrary and brutal attitude of the Indonesian military. In an interview with Newsweek and several other international magazines he also openly questioned Jakarta's credibility in its handling of the East Timor issue. If Jakarta was telling the truth it should let in journalists and independent observers and international aid teams who wanted to go there, and let them move about freely and see the situation for themselves.⁵⁹

Information on human rights abuses in East Timor was now increasingly channelled through the Catholic Church to an international church network, including organisations such as Pax Christi and Pax Romana, and to international human rights organisations, enabling them to document in detail violations of individual integrity rights.⁶⁰ Given the involvement of the Catholic Church, the network's legitimacy increased remarkably. The small but continuous flow of information now enabled the transnational network to place Indonesia on an international human rights agenda, provide an emerging transnational public sphere critical of the occupation, and ensure the transition to a phase where Indonesia had to react to the charges of the transnational network (phase of denial).

Arguably, the changes in the framing of the East Timor network were strategically motivated. In particular, Fretilin did not change its strategy because it suddenly became convinced of the superiority of human rights over self-determination. The change seems to have been primarily motivated by the fact that its organisational basis had been destroyed and a majority of its members killed or arrested. The change, thus, was only a continuation of its independence struggle by different means. Yet, it is important to note that this change in strategy or normative framing was also a reaction to the loss of public support. Moreover, in order to appear credible, Fretilin had to adjust its behaviour, too. It needed to credibly convey that it was interested in the human rights situation, not in taking over East Timor and establishing Communist rule. It could even be argued that subsequent events would not have unfolded, had Fretilin not managed to credibly communicate its commitment to human rights, as the self-determination frame would never have persuaded organisations in Indonesia and on an international level.

⁵⁸ As Archer (1995: 126) explains, because East Timor was the subject of an international dispute, the Vatican did not attach the diocese to the Bishop's Conference of Indonesia, but administered it directly from Rome, via the Pro-Nuncio's office in Jakarta.

⁵⁹ The Timorese will fight to the end. Interview with Marthinho da Costa Lopes (1984)

⁶⁰ The first comprehensive report was Amnesty International (1985). Neyer and Protz-Schwarz (1986) edited the first comprehensive German report on the human rights situation, published by Justitia at Pax.

One could also argue that the right to self-determination is an international human rights norm, and claiming that the East Timor campaign failed due to a lack of “good strategic framing” only confirms that international norms are impotent if they are not enforced by greater powers. Some activists have bitterly complained about an alleged international disregard for norms of self-determination and human rights in the case of East Timor. Yet, mentioning self-determination and individual human rights norms in the same breath simply ignores that in international discourse, the East Timor cause has been predominantly framed as a case of self-determination by East Timor support organisations first. Concerns for personal integrity rights only gained dominance in international discourse in the mid-1980s. It was self-determination which was controversial (but not only among Western States), as it clashed with the Indonesian’s preference for territorial integrity, not human rights, as historical evidence reveals.⁶¹

⁶¹ Put differently, because economic and security interests remained a constant feature between 1975 and 1995, they cannot explain the change in public discourse of Western governments after 1985. Even after the end of the Cold War, Indonesia remained an important ally for the US in its strategy to counter Chinese military hegemony in Asia.

Phase 2: Denial or alternative logic of appropriateness?

As we have seen, the initial international mobilisation of an international human rights community with regards to Indonesia and the Philippines started at almost the same time, in the period 1975-77. It occurred at a time during which the international context did not seem to be conducive to a transnational human rights mobilisation. In Southeast Asia, the US had withdrawn its troops from Vietnam and was relying on its Southeast Asian allies since it feared the consequences of a Communist bloc in the area. Despite these countervailing strategic interests, the transnational networks managed to generate an international mobilisation for both countries. This initial success of the transnational networks is partly owed to historical circumstance. In the US, the Vietnam War had generated a large protest movement which was transformed into a variety of organised bodies concerned with different dimensions of the domestic and foreign policies of the US government, among them the human rights movement. In 1976, a Human Rights Task Force had been created in the US, a body that was later incorporated as the "Human Rights Working Group." Key organisations of the Philippine and Indonesian human rights networks were members of this Working Group. For example, the Friends of the Filipino People (FFP) and Tapol, as well as various church groups participated in it.⁶²

As a result of the heightened interest on the part of the US public, the reports of international human rights organisations, such as most importantly Amnesty International, received some attention. Whether and how the "targets", Indonesia and the Philippines, reacted to these reports partly depended on the importance they accorded to international opinion. The Philippines reacted with an official counter-report on the allegations, while in the Indonesian case, public reactions were more dispersed in domestic and international media. Yet, it is highly significant that both countries did not deny the legitimacy of the international jurisdiction in the area of human rights, but justified in a principled manner their human rights practices. Hence, both implicitly acknowledged the existence of international human rights norms.⁶³ This reaction is not compatible with the definition of "denial" in the spiral model, although Risse and Sikink (1999) acknowledge that target states might justify their behaviour by referring to an allegedly more important norm.

Nevertheless, I have coded it as denial, because the Indonesian and Philippine governments' reactions were either able to persuade their audiences of the appropriateness of their actions, or were able to take advantage of the weaknesses of the networks and to reject the allegations.

⁶² Rivera and Bello (1977)

In any event, their actions remained unrestrained by network pressure and they did not feel the need to respond with tactical concessions to the demands of human rights organisations for comprehensive structural reforms in their political systems. As there remains, nevertheless, a tension between this coding and the conceptualisation of denial in the spiral model, I will return to this issue in the conclusion.

In the case of the Philippines, transnational mobilisation increased after two reports of the transnational network in 1975 and 1977 had exposed the Philippine government's justifications for martial law and gross and systematic human rights violations as implausible. Initially, the Philippine government was able to rebuff Amnesty International's claim by providing a principled defence of its policies. It was only in 1977, when the ICJ characterised these excuses as inappropriate given the political situation, that the doors were opened to a major international legitimacy challenge for the Philippine government, to which it promptly responded by announcing first tactical concessions. The shift toward "tactical concessions" was marked by Marcos' announcement of a political liberalisation in 1978.

As mentioned before, in the case of Indonesia, the Indonesian network managed to focus public attention on the political prisoner issue. After releasing the prisoners, the Indonesian government was able to return to the denial phase. It was not until the mid-1980s that the shift in the reference norm from self-determination to personal integrity rights among the East Timor network and the enhanced flow of information out of East Timor enabled the network to put Indonesia on its human rights agenda. Two reports, published in 1985 and 1986, proved to be particularly influential in shaping the transnational public discourse and gathering support. Transnational networks published a series of reports on the human rights situation which established a connection between two official taboos which had hitherto backed the internal logic of repression: East Timor and political Islam. In particular, the report on East Timor provided a serious challenge to the Indonesian government's previous description of events and its justifications for action, since it gained imminent international support. Mainly as a response to international pressure, the Indonesian government decided to open East Timor to outside observers. The decision in fact backfired as the enhanced access to the territory by observers confirmed the allegations which human rights organisations had made for years. The Dili massacre in 1991, paved the way for a decisive shift in the Indonesian government's action repertoire and to a phase of tactical concessions after 1992.

⁶³ Kratochwil and Ruggie (1986)

The Philippines 1975-1978: "Martial law is rule of law"

The transnational network's greatest task was to convince other state governments, domestic constituencies, and the Philippine citizens, of the illegitimacy of the Marcos regime. In its political struggle, it not only faced staunch opposition from the US government, but faced an authoritarian regime which was at the height of its consolidation of power. The transformation of the Philippine state to an authoritarian corporatist state had proceeded smoothly and had effectively institutionalised a repressive logic.⁶⁴ Between 1973 and 1978, the Philippine economy boomed, due to the world commodity boom. Prices for sugar and coconut products, which at that time accounted for nearly 40% of the country's export earnings, took a sharp upturn. In the period 1972-74, the price for copra products increased by more than four times. These economic developments enabled the country to post a balance of payments surplus of US\$ 110 million in 1974, a surplus even the oil crisis could not set off. The oil price increases did not fundamentally harm the Philippine economy, as many Filipinos began working in the Middle East as an unskilled labour force and sent back their earnings. The regime harped on about the semblance of prosperity that existed during this period, claiming it could only prove the appropriateness of "constitutional authoritarianism" in the Third World. Marcos' move against the old oligarchs, such as the Lopez clan in the sugar and coconut industry, drew in the support of parts of the protest movement, which included not only cause-oriented political groups but also the Catholic Church, who had attacked landlordism and the widespread impoverishment and exploitation that the sugar industry had spawned.⁶⁵

It was in this atmosphere that the transnational network placed the human rights violations of the Marcos regime on the international human rights agenda.⁶⁶ Amnesty International had visited the Philippines in 1975, and published its findings in a report in August 1976. Between 1975 and 1977, the International Commission of Jurists (ICJ) conducted three missions in the Philippines, publishing its report in 1977.⁶⁷ Even before the publication of the report, information which had emerged on human rights violations preoccupied the relevant committees in the US. In June 1975, the US House Subcommittee on International

⁶⁴ Stauffer (1977)

⁶⁵ Tiglao (1988)

⁶⁶ International Commission of Jurists (1977); Amnesty International (1976). Originally, Amnesty International had granted the Philippines permission to reply to the report immediately and to have the statement printed in the same publication. However, as the Philippine government was not able to stick to the Amnesty International publication dead line, Amnesty International decided to publish the report without the direct government reply. Amnesty International lived up to this promise and published the government statement in a different publication a year later. See Amnesty International (1977c).

⁶⁷ The two reports are closely related and together with the Philippine Government's counter-report of 1976 constitute an interesting example of public deliberation on human rights practices in the country.

Organizations, headed by Donald Fraser, held special hearings on the human rights situation in the Philippines. In these hearings, the Friends of the Filipino People and the Anti-Martial Law Coalition filed two witnesses of human rights violations and demanded an immediate account of financial assistance.⁶⁸ However, it was not until the publication of the Amnesty International report that the extent of human rights violations became visible to a broader public. Reports from the international human rights organisations did not only disseminate information. They developed a series of arguments, which tried to prove one central claim: “constitutional authoritarianism” was not legitimate. These arguments were part of a conscious strategy on the part of the transnational network. The government was to be confronted with the detrimental effects of its policies on the population and the discrepancies between rhetoric and international standards on the one hand and reality on the other. As a FLAG booklet stipulates: “This part of the strategy is designed to make the regime doubt its own legitimacy and undermine the support, both foreign and domestic, which it may enjoy.”⁶⁹ The report’s allegations will be described in greater detail, as the description makes transparent the evaluative criteria according to which the organisation judged the situation in the Philippines.

Amnesty International made two interrelated arguments: First, that the Marcos Government committed systematic human rights violations. The organisation provided detailed information on Philippine individuals who had been arrested and held for months or years without trial. It provided evidence on the practice of torture, which it called widespread. Its second statement dealt with the state of the rule of law in the country and went even further than stating that the Philippines violated human rights. The Philippine government was said to be authoritarian because there was no rule-of law in the Philippines. “The rule of law under martial law is authoritarian presidential-military rule, unchecked by constitutional guarantee or limitations.”⁷⁰ According to Amnesty International, President Marcos had blurred the separation of powers and created a subservient judiciary, among others, by demanding undated resignation letters from the office-holding justices. This had, according to the organisation, a direct impact on the human rights situation: Virtually no detainees had been charged with an offence and it was impossible for them to appeal for habeas corpus since this right had been suspended as well. Because the judiciary’s independence and responsibility had been curtailed, the courts were unable to exercise their authority to control the actions of the executive. Amnesty International summarised:

⁶⁸ Rivera and Bello (1977: 3)

⁶⁹ Free Legal Assistance Group (FLAG) (1994: 9)

"In reality, at least up to the time of the Amnesty International mission, the only rule of law in The Philippines under martial law has been the unchecked power of the executive branch and the military."⁷¹

With regard to the central legitimisation principle, international human rights norms and the rule of law, Amnesty International presupposed that these norms were shared and thus non-controversial within the Philippine government even if the government violated them. The Philippine government's support for international human rights initiatives, and the Philippine Constitution which includes a Bill of Rights, provided ample support for this proposition. Yet, the organisation pointed directly to the gap between legal human rights guarantees and actual practice in the Philippines. Based on its claim that human rights violations were systematic and had been accompanied by changes in domestic structures, Amnesty International questioned the credibility of the Philippine government's claim that human rights violations were only temporary and due to exceptional circumstances.

The government replied with its own report within months. It entered into a detailed discussion with Amnesty International. The Philippine government affirmed its commitment to human rights and vehemently rejected Amnesty International's positions. It now tried to undermine the credibility of Amnesty International itself. The organisation had, according to the Philippine government, too easily accepted the claims of a limited and above all non-representative number of detainees that they had been tortured or maltreated. This had led to invalid (and unscientific) conclusions about the practice of torture in the Philippines.⁷² Moreover, Amnesty International had been taken in by, or was connected to, communist political groups trying to destabilise the government. In concluding, the government argued that:

"The Amnesty International report is definitely one-sided in the sense that it relies heavily on the allegations of the detainees concerned without presenting the side of government. It appears that Amnesty International was all too willing to accept at face value the claims of the hard core elements of the local communist movement, failing to consider that these elements had every reason to exaggerate any form of maltreatment or to fabricate the same in furtherance of their cause."⁷³

⁷⁰ Amnesty International (1977d: 56)

⁷¹ Amnesty International (1977d: 55)

⁷² Amnesty International (1977d: 73)

⁷³ Amnesty International (1977d: 70)

It presented evidence that the CPP had, as one of its priority programs, utilised detained members in an intensified propaganda campaign, and that there existed a linkage between outside forces and detained members to implement this campaign. In sum, in the government's view, there was a serious shadow of doubt over Amnesty International's positions and it was questionable whether they could be accepted at all.

Surprisingly, despite these accusations, the Philippine government switched to a content-oriented justification strategy indicating that it took Amnesty International's position seriously. It affirmed its commitment to human rights suggesting again that human rights norms were undisputed. The government immediately went onto the offensive and refuted Amnesty International's positions that a) the Philippine government ruled dictatorially and b) that systematic human rights violations had occurred, by challenging the evidence the organisation gave.

"Martial law" is "rule of law"! This is the essence of the whole argument of the government related to the charge that the government was a dictatorial-authoritarian-military complex. Just because there was "martial law," the Philippine government was not authoritarian. The gist of the government's argument was as follows: Martial law was the pre-condition for the rule of law. It had eliminated the threats to national survival. "The Government would not have survived had the proclamation been delayed a few months more."⁷⁴ The government introduced a competing justification principle, "national survival." The declaration of martial law was constitutional, it argued, and drew its legitimacy from the fact of saving the state from an emergency. "Constitutional authoritarianism" was a reform government under martial law. The purpose was not only to re-establish civil order but to demonstrate the utility of a legal mechanism which democracies in developing countries could utilise to bring about urgently needed radical or revolutionary reforms and changes in their societies.⁷⁵

The government also contended that martial law had not led to a decline in the rule of law. The judiciary had not lost its independence. According to the government, the fact that the greatest critics of martial law, such as Jose W. Diokno and Benigno Aquino, had decided to appeal to the Supreme Court, and that their appeal was granted due process, provided undeniable proof that the independence of the judiciary had not diminished. Judges *had* been dismissed, but not in order to create a subservient judiciary, but as part of "[...] the total crusade to remove from government all those unfit by reason of corruption, graft,

⁷⁴ Amnesty International (1977d: 73)

⁷⁵ Marcos (1975: 1-2)

incompetence and greed.”⁷⁶ Finally, the overwhelming majority of the population had approved of the martial law regime in numerous popular referenda.

In relation to Amnesty International’s second argument that the government engaged in systematic human rights violations, the reply was equally frank. The government did not try to dispute the existence of a huge number of detainees imprisoned without charges, nor did it reject allegations of torture. Delays in the prosecution process were, it maintained, due to bureaucratic problems, and torture was by no means a policy of the Philippine government. Torture was explicitly forbidden according to national laws. If detainees had been mistreated, it was in violation of these principles and had been followed by appropriate sanctions.⁷⁷ It was in the context of the Philippine government’s rejection of the allegation that it applied torture or indefinite detentions systematically, that the credibility of Amnesty International gained in importance. The Philippine government attempted to strengthen its claim that incidences of torture were isolated and did not reflect government policy, by challenging the integrity of Amnesty International. By providing evidence of connections between Amnesty International and “Communist subversives” the government could support its argument that the claim of “systematic government policy” was exaggerated and only served the power interests of the enemies of the state.

The general pattern of argumentation is summarised in the government’s conclusion to the report:

“The Philippine Government rejects the Amnesty International mission’s conclusion that torture is widely used and part of a general approach to the treatment of suspects. This is anathema to official policy. The Amnesty International mission’s conclusion are, in the main, based on fabrications, biased and without factual foundations. The report is a disservice to Amnesty International’s reputation for truth and impartiality.

The mission has been used as a propaganda tool by those who would subvert and overthrow by force the government of the Philippines. The Philippines will, of course, continue to condemn torture and punish all public officers and employees who maltreat prisoners.”⁷⁸

This statement provided a principled response to the arguments developed by Amnesty International. It contrasted Amnesty International’s conclusion that the Philippine government ruled dictatorially, with a state’s “normal” and appropriate response to threats to its national

⁷⁶ Amnesty International (1977d: 72)

⁷⁷ Amnesty International (1977d: 71-75f.)

⁷⁸ Amnesty International (1977d: 85)

survival. It pitted a weak, corrupt and indecisive pre-martial law state against efficiency and law-and-order under martial law. Arrests and maybe torture might have occurred, but these were the disliked side effects of a counter-insurgency campaign necessary in order to survive. They were not governmental policy and hence not systematic human rights violations.

It is interesting to note here that the government did not invoke the non-intervention principle to fend off Amnesty International's undue meddling into the domestic affairs of the Philippine government. The government statements implied that Amnesty International had no right to interfere, but not because a norm such as sovereignty exists, but rather because in the government's view the organisation was not trustworthy. Moreover, instead of rejecting the appropriateness of the norms Amnesty International used to justify its claims, the Philippine government situated its own "defence" in the argumentative realm which the organisation had set: standards of appropriate behaviour in the area of human rights and the rule of law. As such, the counter report documents the extent to which the Philippine government subscribed to international norms, even if it deviated from its behavioural prescriptions.

Although the Amnesty International report increased international awareness of human rights violations in the Philippines, it did not change US preferences, which had been one of its major goals. However, it politicised the previously largely unpoliticised debate on military support for the Marcos regime. In February, 1977, an editorial in the *New York Times* articulated the emerging dilemma: It lauded the announcement of the Carter Administration that it would cut foreign aid to nations that violated human rights, but questioned the appropriateness of discontinuing aid to the Philippines, on ground that the country was vital to American security interests. Congressional activities reflected this schism, too: In May 1977, the US Senate Foreign Assistance Subcommittee approved the military aid grants to the Philippines. In July, Senator Inouye of the Senate Appropriations Committee succeeded in eliminating a cut in military aid to Philippines, initiated by Representative Berkeley Bedell (Democrat), from the appropriations bill. Yet, a proposal to remove the ceiling of US\$ 18 million on military aid to Philippines was equally rejected.

The contradictory signals which Marcos received from Washington enabled him to continue his repressive policies. He remained committed to curbing domestic opposition and, for example, warned the Catholic church from becoming too involved in opposition, otherwise he would arrest over 150 church workers. Despite the obvious inability to significantly influence the practical human rights policy of the Marcos regime, the activities of the network were not wholly without effect. They were successful in keeping international attention on Philippine developments, which provided a transnational public sphere in which Marcos remained

accountable to his international critics. Marcos' critics "internationalised" political conflict in order to influence him by obliging him to answer to his external backers.⁷⁹ While one wonders whether justifications made any difference, I would argue that the Marcos regime's actions at least remained subject to a plausibility probe: It gave the transnational network a potential lever to pressure Marcos harder, once the conditions Marcos had specified for the continuation of martial law no longer existed. Moreover, it is likely that if this transnational public space had not existed, human rights violations would have gained a much greater magnitude.

The continued international attention on Philippine human rights practices provided the transnational network with an opportunity to increase its criticism of the Marcos regime's human rights practices. In 1977, the International Commission of Jurists (ICJ) published a report, which obviously confronted the Philippine government's arguments and thus provides evidence for my claim that the Philippine government faced an international challenge to its legitimacy by the transnational human rights network. In contrast to Amnesty International, the ICJ accepted in its report the central justification of the Marcos government, that there had existed a state of rebellion in September 1972. Such a claim had been widely rejected by the previous Amnesty International report. Proceeding from this common definition of the situation, the ICJ advanced several interrelated claims, which basically repeated the claims of Amnesty International, and were based on the same norms: If judged according to human rights norms and standards of the rule of law, the martial law regime was not legitimate. The ICJ was explicit in questioning the motivation of President Marcos: The continuation of martial law only served his power interests, but was not in the interests of the Philippine nation.

The report of the ICJ dealt in detail with the rationalisations given by the Marcos government. Although it conceded that the martial law proclamation had been a proper exercise of presidential power under the circumstances existing at that time, it doubted that these circumstances still existed. The Philippine government's claim, that the Philippine Supreme Court had declared martial law to be constitutional and hence provided the necessary legality for the President's actions, could not be regarded as true. According to the ICJ, the Philippine Supreme Court had inquired only whether or not martial law was arbitrary or lacked any factual basis to justify it. Once the Supreme Court had declared martial law to be justified and hence "constitutional," the Court had effectively given up its constitutional right to judicial review and had not further inquired whether the justification for the proclamation still existed.

⁷⁹ Machado (1978: 207)

The Supreme Court's stamp of approval on martial law had had far-reaching consequences, however. The court had held all arrests which were made pursuant to Martial Law decrees to be legal.⁸⁰ While the Court's rulings could be regarded as being in line with national legislation in a formal sense, if judged according to international law and internationally accepted standards and norms, the matter was by no means resolved, yet. Given the judicial self-restraint on behalf of the Philippine Supreme Court, the ICJ felt compelled to ascertain for itself whether martial law was still justified or whether the Philippine authorities continued the state of emergency in order to perpetuate personal or military power. Thus, the ICJ explicitly shifted the jurisdiction over the constitutionality of martial law to an international level.⁸¹

In conclusion, the ICJ's verdict was unequivocal: There was sufficient evidence that the Philippine army was able to contain the Communist insurgents and there was no longer a serious threat of an armed overthrow of the government by the Communist Party. It concluded that "a continuation of Martial Law is no longer necessary, and we are driven to the conclusion that the contention of the President's opponents is well founded that Martial Law is being maintained in order to ensure the continuation and perpetuation of his personal power."⁸² Moreover, even under a genuine emergency threatening "the life of the nation" minimum human rights standards such as judicial control and remedies such as *habeas corpus* should always be available. The constraints on judicial independence had, according to the ICJ, precisely diminished the Supreme Court's right to inquire into the lawfulness of arrests.⁸³ Finally, the ICJ also disputed the Marcos Government's claim that torture was not systematic. It provided further evidence of cases of torture and prolonged detention without charges and trial, and also disputed that the Philippine government had made serious attempts to punish perpetrators. Punishment was usually too light and in some cases perpetrators were systematically exempted from prosecution. In sum, the organisation questioned the Philippine government's claim that torture was not part of systematic government policy.⁸⁴

Finally, the ICJ also destroyed illusions that the martial law regime enjoyed some procedural legitimacy, as Marcos had claimed. The national referenda, conducted between 1973 and 1976, on the governmental programs including the extension of the Marcos presidency, could not be regarded as democratic. These referenda not only lacked basic democratic procedures,

⁸⁰ International Commission of Jurists (1977: 7)

⁸¹ International Commission of Jurists (1977: 9)

⁸² International Commission of Jurists (1977: 13, 46)

⁸³ International Commission of Jurists (1977: 9f.)

⁸⁴ International Commission of Jurists (1977: 39)

but were most importantly used by the Marcos government to short-circuit the "normal" democratic process. Hence, "the results of these referenda cannot be considered, in any way, as a true measure of the will of the people."⁸⁵

In conclusion, the ICJ report generally affirmed Amnesty International's arguments by disputing every single argument the Philippine government had used to justify its policy. It had subjected the Marcos government's justifications to a plausibility constraint.⁸⁶ It had taken the justifications for human rights violations seriously, but on evaluation, they proved to be unconvincing. Against the backdrop of shared international standards of appropriate behaviour (whose content the Philippine government had not rejected) martial law was not a legitimate political order.

That these claims *had* an impact on Marcos became apparent in Marcos' reactions to the report. The ICJ had published its report in advance of the World Law Congress in Manila in August 1977. The Congress was accompanied by major anti-martial law demonstrations of domestic opposition groups, who used the Congress to stage a People's Conference on Human Rights. The demonstrations involved some 3000 participants.⁸⁷ The whole situation completely ridiculed the rule of law rhetoric of Marcos. Within days, he announced a "normalisation process." This would entail the lifting of restrictive measures such as the night curfew and the ban on international travel and the release of 500 martial law prisoners. He also unveiled plans to hold elections for a transitory legislature, referred to as the Interim Batasang Pambansa (IBP), in 1978.⁸⁸ And he repeatedly pledged his "irrevocable commitment" to human rights.⁸⁹

The announcement must be seen as an immediate reaction to the report of the ICJ. The ICJ's report had not only provided information on continuing human rights violations; it had also raised serious doubts about the legitimacy of the Philippine polity and the Marcos government's motivation in continuing martial law. The nature of the transnational network's claim now meant that Marcos needed to demonstrate that his actions were well-intentioned and that he was not merely acting out of a personal interest. Marcos had to make an investment in his international credibility and the announcement of "normalisation" was a viable strategy. By claiming that it was the ICJ report which provided the push for

⁸⁵ International Commission of Jurists (1977: 20f.)

⁸⁶ Elster (1998: 104)

⁸⁷ Machado (1978: 205f.)

⁸⁸ Corsino (1981: 239); Wurfel (1988: 129)

⁸⁹ (New York Times, September 10, 1977, 24)

“normalisation”, I do not claim that Marcos had become convinced of the arguments which the transnational network advanced. I argue that the decision for political “normalisation” and the lifting of important restrictions were a tactical concession in order to silence international and emerging domestic pressures. The debate demonstrates, however, that a transnational public argumentation process played a role in bringing Marcos into a situation where normalisation became a “rational” option. The network had virtually entrapped Marcos in his own rhetoric. Having consented to the validity of human rights norms, it had become extremely difficult for Marcos to reject the demands for political normalisation once he had run out of new justifications, and once observable political developments proved his critics to be right.⁹⁰

This account becomes plausible as the Marcos regime did not face financial sanctions from other governments, and the domestic opposition was still quite weak. Moreover, there was no economic crisis at that time, which would have increased the Philippine government’s vulnerability. On the contrary, the Philippines had even become self-sufficient in rice in 1977, which was a major gain for a developing country, and the Philippine economy still profited from the developments on the international commodity market.⁹¹

In accordance with transition theory, M. Rajaretnam (1980) explains the decision to move to political “normalisation” by reference to divisions between the military and Marcos. According to Rajaretnam, the military split into three factions: Loyalists, who occupied senior commands within the AFP, shared Marcos’ ethnicity (Ilocanos) and had financially profited from martial law, such as Chief of the Armed Forces Fabian Ver and the Deputy Defence Minister Carmel Barbero. The second faction comprised officers who had a professional background and had received their training mainly at the US West Point Academy. The third faction were officers in the middle ranks of command who were involved in most of the field fighting and felt increasingly frustrated with the corruption in higher ranks and the general direction of the New Society. Marcos felt increasingly threatened by the loyalists, who obviously wanted to gain a greater share of political power. At the same time, he could not rely on the loyalty of the other two factions, which had become disenchanted with Marcos’ politics. Marcos consequently “has been forced to broaden his political base of support among peasants, workers and regional elites”, and thus adopted several measures, including the IBP elections, geared toward gathering support among these groups.⁹²

⁹⁰ This is not in consonance with the “arguing” definition suggested by Risse et al., but is compatible with the assumptions of Elster (1998) about the effects of arguing among strategically motivated persons.

⁹¹ Tiglao (1988: 36); Machado (1978)

⁹² Rajaretnam (1980: 244-45)

This domestic explanation for the initiation of tactical concessions only becomes plausible, however, if one takes into consideration that the frictions among the military only deepened as a result of international pressure. The “West Pointers” among the military had good contacts with their military counterparts in the US and were consciously legitimised by the US policy of strengthening those elements within the AFP which exhibited a high professionalism and were not involved in human rights abuses. Marcos consequently castigated what he perceived as an attempt by the US Administration to destabilise him by promoting this group.⁹³ Hence, international influences, conditioned by the human rights debate in the US, must be accounted for to explain the power shift among contending factions within the AFP, which later influenced Marcos’ decision.

The “normalisation process” opened up a public sphere for domestic opposition groups, which was still contingent, however, on the latitude of Marcos. Nevertheless, it constituted the most significant effort since 1972 to legitimise the martial law regime.⁹⁴ It was introduced from above, but not solely as part of an internal split among authoritarian rulers, as O’Donnell et al. predicted it, but because international moral pressure generated by networks had echoed back into domestic politics in the Philippines. Moral pressure worked via two ways: International human rights groups engaged the Philippine government directly in a public discourse about its legitimacy, making it difficult to discursively justify continual repression. And international pressure for human rights change legitimated those factions within social groups, which shared its values, leading to shifts in the power balance within these groups. As the Marcos regime continued to undertake “tactical concessions” afterwards, one can date the transition to a phase of tactical concessions from 1977/78.

Indonesia 1985-1991: Human rights versus territorial unity and Islamic fundamentalism

As was the case of the Philippines, the transnational network, over the course of 1985-87, managed to entrap the Indonesian government in a substantial public argumentation process with regards to East Timor. As we shall see, the reframing of the East Timor issue from a case of self-determination to a human rights issue dramatically changed the interaction pattern which had prevailed among international actors, the Indonesian government, and organisations in civil society. In 1985, the international impasse which had prevailed regarding East Timor broke, with the emergence and consequent dissemination of evidence

⁹³ Rajaretnam (1980: 244)

⁹⁴ Wurfel (1990)

about human rights abuses. In June that year, Amnesty International published a major report on human rights in East Timor. As we shall see, the very structure of the arguments presented in the report did not differ from the one the network made concerning the Philippine human rights practice. The report essentially provided evidence for the claim that the Indonesian government engaged in gross and systematic human rights violations and systematically violated standards of the rule of law. Similar to the Philippines, transnational networks claimed that the government was not legitimate. The report also mirrored, however, Amnesty International's willingness to take a clear stance toward self-determination: It distanced itself explicitly from the East Timor network's central demand for the self-determination of the territory and focused exclusively on personal integrity rights.

In its report "East Timor Violations of Human Rights: Extrajudicial Killings, 'Disappearances', Torture and Political Imprisonment" the organisation took up the justifications of the Indonesian government and contrasted them with recent developments in East Timor. Although the government had claimed that life in East Timor had returned to normalcy, that East Timorese were successfully integrated and that it had been successful in extinguishing the military resistance in East Timor, human rights violations persisted. Amnesty International was particularly concerned that this information indicated that "at this time of supposed normality, arrests and extrajudicial executions were still being carried out."⁹⁵ There continued to be a militant resistance, Fretilin, in the territory, but the existence of it also proved that the integration had not proceeded as smoothly as the Indonesian government claimed.

As with the Philippines, Amnesty International tried to hold the Indonesian army accountable to the rule of law. It alleged that "Indonesian troops have generally acted outside the framework of the law, conducting themselves in an arbitrary fashion not simply towards people suspected of opposition to their presence but towards the general population."⁹⁶ It documented in detail individual cases of abuse and accorded clear responsibility to the Indonesian government. "Amnesty International believes that the evidence of this report indicates, that in the absence of clear efforts by the Indonesian Government to bring its forces within the framework of law, gross and persistent human rights violations have occurred in East Timor since 1975."⁹⁷

As the first pages of the report made clear, Amnesty International still struggled against an international discourse on the East Timor question that was almost entirely dominated by East

⁹⁵ Amnesty International (1985: 19)

⁹⁶ Amnesty International (1985: 19)

Timorese political organisations demanding the independence of the territory. As a result, Amnesty International justified in detail its method of information gathering and distanced itself from political demands. The way it presented its working principles and Indonesian arguments strongly supports the view that the report has to be seen in the context of an argumentation process with the Indonesian government. The report agreed with the Indonesian government that its information on East Timor could not be regarded complete and that it was not possible to assess the full scale of violations. However, it converted the argument to support its own statement, namely, that this shortcoming was due to repressive Indonesian policies:

“The strict controls imposed by the Indonesian forces have limited access to the territory and the flow of information out of it. The violations described in this report have occurred in a situation in which the fundamental freedoms of expression, assembly, association and movement have not existed and in the absence of the constraints of legality.”⁹⁸

Amnesty International equally rejected the Indonesian government’s allegation that it was either directly linked to Fretilin and therefore to anti-integration political forces, or that there was an indirect connection in the sense that Amnesty International relied on their information to write the reports. Amnesty International had tried to gather information in an independent way, and did not rely exclusively on sources identified with any one political party or social or religious grouping in East Timor. Most importantly, the organisation did not take a position on the status of the territory, but its concern related strictly to the protection of human rights falling within its mandate.⁹⁹ As these statements make obvious, Amnesty International accepted the Indonesian government’s definition of the situation that East Timor was a legal part of Indonesia. Based on this definition of the situation, however, the Indonesian government could be held responsible for the violations of human rights of East Timorese, which happened under its jurisdiction.

With regard to an international audience, the report had a profound impact on approaches to the East Timor question. The emergence of new and detailed evidence about state repression and the explicit acknowledgement of Indonesia’s jurisdiction on behalf of the network broke the impasse which had prevailed regarding East Timor in the United Nations. Not only did the report broaden the spectrum of supporting organisations and individuals, it changed the international discourse about the East Timor issue. The reference norm between the

⁹⁷ Amnesty International (1985: 19)

⁹⁸ Amnesty International (1985: 11)

Indonesian government and international and non-governmental organisations slowly switched from the right to self-determination to human rights norms related to the right to personal integrity.

This change now broadened the range of those supporting the demands of the network, as the former could choose how far they would go in their political demands. As mentioned before, organisations such as Amnesty International took a neutral stance on the issue of self-determination, while other organisations, such as Tapol, openly supported the independence of the territory. This change in the underlying norm can be reconstructed most importantly from United Nations documents on the issue. Although several organisations still demanded the right to self-determination, they now justified their demand on the ground that the human rights of the East Timorese people were systematically violated. While the differentiation between human rights concerns and concerns for self-determination had been the approach of individual governments and parliamentary commissions before,¹⁰⁰ it now emerged as a collective approach of several governments and international organisations. As a consequence, on an international level, pressures to open the territory of East Timor increased continually between 1986 and 1988.

The claims transmitted with this "information" exacerbated the public demands voiced by international forums such as the UN, and the Non-Aligned Movement (NAM), of which Indonesia is a member, to open the territory to outside observers. In 1986, the number of NGOs asking for presentations in the UN Commission on Human Rights multiplied. Specifically, they referred to "reliable information" that had recently been received "concerning the continued practice of torture."¹⁰¹ Based on the new information, the network revived activities in the United Nations and managed to persuade individual members of the US Congress, and the parliament of the European Community. Under pressure by the transnational advocacy networks, first the Sub-Commission on the Prevention and Discrimination of Minorities of the UN Commission on Human Rights¹⁰² and later the UN Commission on Human Rights took up the human rights situation in East Timor as proof that Indonesia had ignored the Timorese right of self-determination.

⁹⁹ Amnesty International (1985: 12f.)

¹⁰⁰ For example, the Australian Senate Standing Committee on Foreign Affairs and Defence and The Parliament of the Commonwealth of Australia (1983) in its report, had emphasised that Indonesia's concern for territorial integrity should not cloud the equally valid concern for the human rights of the East Timorese people.

¹⁰¹ United Nations Economic and Social Council and Commission on Human Rights (1986)

¹⁰² The Sub-Commission is composed of experts nominated by governments, while government officials form the members of the Human Rights Commission itself. As a result of these institutional differences, the more serious and more honest dialogues about human rights issues usually start in the Sub-Commission.

With regard to particular audiences, the newly framed debate on East Timor appeared much more convincing than the old one. In 1987, US Senate representatives signed a letter urging State Secretary George Shultz to ask President Suharto to open the territory of East Timor to outside observers.¹⁰³ The Senators repeated their demand in the following years, with the number of signatories continually increasing.¹⁰⁴ About the same time, Portugal was able to gain important backing from other European countries. Upon joining the European Community (EC), the Portuguese government had used its membership to broaden its political basis in the EC and making its human rights concern a common EC interest. The EC Parliament, from 1986 onwards, started issuing resolutions, which called for the opening of the territory.¹⁰⁵ The Indonesian government's claim that the reports about human rights violations were part of a misinformation campaign only exacerbated the demands of the transnational network, international organisations, and individual states that Indonesia open its territory to independent observers.

Only one year after the East Timor report, Amnesty International and Tapol led a second attack against the international legitimacy of the Indonesian government. They published comprehensive reports on Muslim political prisoners, castigating the Indonesian government's policy of human rights violations against alleged fundamentalist Muslims.¹⁰⁶ These reports dealt with the Tanjung Priok massacre in September 1984, in which security units had shot into a crowd of Muslim demonstrators, killing several of them. In a wave of arrests, the Indonesian government had arrested prominent Muslim politicians and governmental critics. The reports alleged that the military-backed Indonesian government was exaggerating the Islamist threat in order to escape demands for comprehensive political reforms, and demanded a comprehensive investigation into the massacre.¹⁰⁷ Even if the reports did not have any international repercussions, they increased the authenticity and credibility of the human rights networks in the eyes of the Indonesian Muslim community.¹⁰⁸ Moreover, the reports constituted a systematic attempt to link two taboos, which seemed to be completely unrelated, and make them an instance of the same argument: The Suharto regime used separatist opposition and Islamic opposition as rationalisations for maintaining

¹⁰³ New York Times, August 9, 1987: 10

¹⁰⁴ Taylor (1995: 242); Human Rights Watch (1990a: 305)

¹⁰⁵ The European Parliament first issued a resolution on East Timor in 1988. European Parliament (1988). Prior to this resolution, the Parliament had issued resolutions on the execution of Communist political prisoners in 1986 and 1987.

¹⁰⁶ See Amnesty International (1986) and Tapol (1987).

¹⁰⁷ I will deal with the question of Islam in Indonesia more comprehensively in chapter 7.

¹⁰⁸ This, at least, was the evaluation of the campaign by Tapol. The silence of other state governments on these

authoritarian rule, but these justifications were no longer appropriate and merely served power interests.¹⁰⁹

The Amnesty International report on Muslim political prisoners was published in June 1986. In July 1986, the then Minister of the Indonesian State Secretariat, Sudharmono publicly denied that the government in Indonesia was "run by one man in an authoritarian way."¹¹⁰ This statement seemed to directly reject the claims the transnational human rights network had aired for years, most recently in the Amnesty International report.

These public demands, while not threatening to the Suharto regime's power, were nevertheless annoying. Moreover, the transitions from authoritarian rule in the Philippines in 1986 and in South Korea in 1987, suggested themselves as possible models for Indonesia.¹¹¹ Given its good economic performance, but increased dependency on international funds, the Indonesian government proved to be financially vulnerable. However, as none of its international donors applied pressure, the Indonesian government's social vulnerability must be taken into account more seriously. The Indonesian Suharto regime, aspired to a greater international profile. For example, Indonesia wanted to become leader of the Non-Aligned Movement. The international attention that was focused on its human rights policy increased the costs of an international acknowledgement. This made the government more vulnerable toward international criticism in a moral sense. The new foreign minister Ali Alatas, in particular, felt that inaction regarding the issue of East Timor posed a major obstacle to achieving an increased responsibility in the international community.¹¹²

Moreover, international demands to open up the territory received surprising support from East Timor's Governor Mario Carrascalao. In June 1988, he wrote to President Suharto and asked him to lift the travel restrictions in order to allow the province to return to normalcy. Yet, it seems that his action was partly motivated by a desire to distance himself from the military and enhance his position in a domestic power struggle which had been going on among the civilian administration and the military in East Timor.¹¹³ Even advisors close to Suharto and cabinet members, such as interior minister Rudini, now supported the opening up. Hadi Soesastro, an economic advisor of Suharto, argued that "the maintenance of East

two reports is remarkable, given the immediate resonance of the East Timor report.

¹⁰⁹ van Langenberg (1990)

¹¹⁰ 'Sudharmono slams critics of Suharto', *Straits Times* (Singapore), 01 August 1986.

¹¹¹ David Jenkins, in fact, made such a comparison and drew a direct parallel between the authoritarian and corrupt Suharto regime and the Marcos regime in an article of the Australian newspaper "Sydney Morning Herald." He was consequently barred from Indonesia and the article caused a diplomatic rift between Indonesia and Australia. For the background of the article see Robison (1986a).

¹¹² Vatikiotis (1991); Vatikiotis (1988a); Schwarz (1994: 211)

Timor as a special and closed province results ... in a variety of abuses by the authorities and excessive rents enjoyed by particular companies."¹¹⁴ Given the international attention focused on the territory, Indonesia's Foreign Minister Ali Alatas became one of the most consistent advocates of a new approach to the East Timor question, and saw the opening of the territory to outside observers as an ideal opportunity to enhance Jakarta's international standing.¹¹⁵

In August 1988, the Indonesian government invited a delegation from the European Parliament in order to address continued criticism from the EC of the Indonesian human rights violations. According to press reports, the government feared that the criticism by the EC would harm trading links with Europe.¹¹⁶ In December 1988, Suharto issued Presidential Decree No. 62, providing for the opening of the previously closed province of East Timor and responded to the persistent demands of international actors. And in late 1989, Suharto replaced hard-line military commander Brigadier General Mulyadi with Brigadier General Rudolph Warouw who promised to promote a more "persuasive" approach to the anti-integrationists.

The opening of East Timor backfired: The Indonesian Government lost its information monopoly on the province. The enhanced access by independent organisations to East Timor produced more information about human rights violations. "What this meant, in effect, was that government's policies in the province since 1976 became more transparent, showing up what has and has not been undertaken in the province since integration. It also meant that more and better information was available with regard to various allegations of abuses in the province, thereby placing greater pressure on the government."¹¹⁷

Rising international pressure echoed back onto the domestic level in Indonesia. International criticism of human rights practices, especially the continuing condemnation of the dual function of the Indonesian military, exacerbated the divisions among the ruling elite, which had been developing since the late 1980s. In February 1988, Suharto suspended the long-time commander of the armed forces, Benjamin Murdani, from office and replaced him with Try Sutrisno. Murdani had been one of Suharto's most trusted and powerful advisers since the 1970s. In September that year, the controversial intelligence organisation Kopkamtib was dissolved, and was replaced by a civilian organisation (Bakorstanas), which – unlike Kobkamtib – had no powers to arrest and detain individuals.

¹¹³ Feith (1992)

¹¹⁴ Hadi Soesastro, cited in Singh (1995: 148), and Vatikiotis (1988c: 15)

¹¹⁵ Schwarz (1994: 209)

¹¹⁶ Vatikiotis (1988b)

¹¹⁷ Singh (1995: 150)

Although it is difficult to trace the rationale of these decisions, it appears plausible that human rights concerns fed into the decision-making process. It is difficult to imagine why Suharto should have made a series of military reorganisations in the absence of challenges to the Suharto regime's legitimacy. These actions only make sense if one takes a model of a democratic polity as a reference object and considers the pressures for human rights change, which ultimately suggested a retreat out of politics by the military. For example, transnational human rights groups had identified Murdani, a Catholic, as being responsible for atrocities committed in East Timor and the suppression of Muslim dissidents, such as the massacre of Muslim demonstrators at Tanjung Priok.¹¹⁸

In the course of 1988, public divisions emerged between the army and Suharto, a rift that was publicly denied by the army leadership under General Try Sutrisno.¹¹⁹ The governmental party, Golkar, appeared much more agile than in previous years and discussed ways to broaden its appeal by taking up populist issues critical of the government. In May 1989, US Ambassador Paul Wolfowitz left Jakarta and in his farewell speech urged more "political openness." The same month, Vice-President Dan Quayle visited Jakarta and met with leading human rights activists.¹²⁰ In his traditional Independence Day speech in August 1989, Suharto eventually announced a political liberalisation or opening (*keterbukaan*), encouraging more democracy and setting new rules of the game. According to Suharto, there should be four limits to political openness: opinions should be openly expressed only in a "rational manner"; they should not conflict with important interests of the people; national unity should not be damaged; and *keterbukaan* should not conflict with Pancasila as the basis of the nation.¹²¹ While Suharto accorded Indonesians the principle right to articulate their preferences, the new rules of the game essentially confirmed the old ones, especially the unity and the secular basis of the state, with the difference that these rules were being publicly stated as rules.

¹¹⁸ Adam Schwarz (1994: 282-85) takes a decidedly different position on the "demotion" of Murdani from ABRI commander to Defence Minister. Schwarz gives several – partially contradictory reasons – for why Murdani had to resign. First, he had lost Suharto's benevolence because he had criticised the Suharto family's business activities. Second, the military as an institution had lost power due to the military's loss in financial resources from oil revenues, and Suharto's need for military backing had continuously declined as credible opponents had been wiped out. In combination, these circumstances enabled Suharto to distance himself from ABRI's and dismiss its preferences. Finally, Suharto wanted to distance himself from the military in order to enhance his own legitimacy and to refute the argument that he relied on the military to stay in power. Finally, Suharto's policy of retirement or removal of influential competitors is responsible for the gradual weakening of ABRI's dual function in politics. Those explanations, which ultimately explain the weakening of the military in terms of a political power struggle between Suharto and the military, appear to contradict the explanation that the military had lost power anyway.

¹¹⁹ Yan Razali Kassim (1988)

¹²⁰ Asia Watch (1990: 83)

¹²¹ van Langenberg (1990: 137)

Given the long depoliticisation of Indonesians prior to *keterbukaan*, the re-emergence of civil society outside officially recognised state structures now proceeded with great rapidity: The occurrence of student protests increased dramatically between 1988 and early 1989. A demonstration on October 29, 1988 in Yogyakarta seemed to be particularly influential in giving birth to a new student movement. While this demonstration was mainly against the Suharto government's policy of preventing political activity on campuses, in late 1989, demonstrations in favour of human rights and against the repression of protests and activists became more frequent.¹²² In 1990, the Indonesian Front for the Defence of Human Rights (Infight) was established. Several "first generation" human rights activists were involved in the establishment of Infight that distanced itself from the bulk of Indonesian development NGOs, which had prospered in the 1980s, but were perceived as too moderate and accommodating by the new activists.¹²³ The establishment of Infight is particularly notable, as it was an attempt to establish a coalition of pro-democracy groups in Indonesian that dared take up political taboos in the Indonesian political discourse: the alleged Indonesian Communist Party (PKI) political prisoners and East Timor. Infight immediately linked up with Western human rights NGOs and gained wide publicity when it met Dutch Development Minister Jan Pronk in April 1990.

The students' activities were now included in the reports of international human rights organisations, which documented cases of human rights violations and made this information available to an international public. As a result, Indonesian activists received some protection from international actors. Interestingly, the boomerang effect, namely, the internalisation of domestic issues to bring pressure on the target government, was reinforced on the domestic societal level. Students used the information from the reports of international human rights organisations in their defence speeches in trial, and thus legitimised their views.¹²⁴ Now, the mounting criticism of non-state actors received cautious support from individual actors.

At the same time, East Timorese political organisations seeking major political changes developed strategies geared toward mobilising an international public. They took advantage not only of the increasing information they received about visits by international delegations, but also of ABRI's less repressive approach, which reduced the fear of persecution in the province. East Timorese opposition groups used every opportunity, such as the Pope's visit to

¹²² Aspinall (1993: 16)

¹²³ H.J.C. Princen, founding father of LPHAM, was one of the earliest supporters of Infight, and Indro Tjahyono, a student activist in 1978, was a leading figure. See Uhlin (1995: 108) for a detailed description.

¹²⁴ Uhlin (1995: 115)

Dili in October 1989 and the visit of US ambassador John Monjo in December 1990. to publicly protest against Indonesian integration.¹²⁵

Given the enhanced moral pressure, the Indonesian government agreed, under the terms of the UN-sponsored Portuguese-Indonesian negotiations, to invite a Portuguese delegation and the UN Special Rapporteur on Torture to the territory in 1991. The invitations provoked that very ambivalent breakthrough for the networks, the Dili Massacre of November 12, 1991. The massacre occurred, when around 2500 East Timorese were celebrating a mass for two of their fellows who had been killed by Indonesian military a couple of days earlier in the heightened tension preceding the visits. Some of the participants began demonstrating and one Indonesian soldier was stabbed. The Indonesian military opened fire on the participants. The Indonesian Armed Forces Commander Try Sutrisno defended the army's actions vigorously. The official figures the army gave were that 19 people had died and 91 had been injured.¹²⁶ The transnational network immediately questioned these figures. They believed that the number of victims was considerably higher, and that between 150 and 270 people had been killed. Moreover, they alleged that in the wake of the shootings more than 200 people had involuntarily disappeared.¹²⁷

The presence of foreign journalists, among them journalist and UN special envoy Pieter Kooijmans, made the Dili massacre "instant international news", and triggered an international reaction, leading to temporary financial aid cuts by several countries. Several international non-governmental organisations such as Asia Watch, the International Committee of the Red Cross and Amnesty International condemned the shootings immediately and demanded an impartial investigation. The foreign ministers of the European Community, meeting in Noorsdviik, Norway, on November 13, 1991 issued a declaration on East Timor condemning the killings.

Canada, the Netherlands and Denmark announced that they would suspend financial aid and supported calls for an investigation. Even members of the Japanese Diet called for a conditioning of financial aid to the outcome of an investigating commission.¹²⁸ A wave of anti-Indonesian demonstrations broke out in Australia.¹²⁹ However, criticism was not confined to Western countries and organisations, but was articulated by Indonesian NGOs as well. LBH, Infight (The Indonesian Front for Human Rights), LPHAM (Institute for the

¹²⁵ Pinto and Jardine (1996: Chap. 6); Vatikiotis (1991)

¹²⁶ Schwarz (1994: 213)

¹²⁷ United Nations Economic and Social Council and Commission on Human Rights (1995: para 21-23)

¹²⁸ (Feith 1992: 69); Schulte-Nordholt (1995: 148f.)

¹²⁹ Tirtosudarmo (1992: 135)

Defence of Human Rights) and the League to Uphold Justice denounced the killings and urged authorities to set up a fact-finding commission.¹³⁰

In face of almost unanimous international and notable domestic criticism, the Indonesian government decided to form a National Investigating Commission, led by a retired Supreme Court judge (Major General Djaelani). Within a month, on December 26, 1991, it came up with a report, which was exceptionally critical given the previous latitude toward any human rights issues. The report revised earlier army figures on the victims upwards and criticised the army for not using proper riot-control procedures. The report also demanded action against all who were involved in the "12 November incident."¹³¹

It is difficult to determine exactly why the National Investigating Commission did not try to make a "white wash" of the army's conduct. According to Schwarz, there are several reasons. First, Suharto seemed to be genuinely angry at the army's mishandling of the demonstration. Second, the report was meant to seize the middle ground between the earlier findings of an army investigation, whose conclusions were questionable, especially in regard to the number of East Timorese victims, and the considerably higher numbers of victims presented by domestic and international human rights groups. Finally, in the end, a 'frank' report was seen as the only solution to lessen international pressure.¹³² As these explanations make evident, however, international human rights concerns played a role, and human rights networks had provided a critical yardstick, which not only Western governments applied in order to judge the Indonesian government, but the Indonesian government itself began integrating into its utility function. Based on the findings of the Djaelani report, President Suharto retired two Indonesian Generals and prosecutions were sought against 17 other members of the military. As a consequence of the willingness to seek clarification over the military's role in the killings by the Indonesian government, the major aid donors US, Japan and the World Bank withdrew their threats to continued financial aid, and the three countries which had suspended aid disbursements resumed them.¹³³

In contrast, the transnational network, backed by small donor countries including the Netherlands, continued criticising the lack of independence of the investigating body.¹³⁴ The

¹³⁰ Human Rights NGOs meet DPR members (1991); Indonesian Army kills at least 20 Timorese: LBH tells army to investigate (1991)

¹³¹ Schwarz (1994: 214)

¹³² Schwarz (1994: 214-215)

¹³³ Feith (1992: 70); Schulte-Nordholt (1995: 149)

¹³⁴ The Dutch position proved to be particularly threatening to Indonesia as the Dutch Government chaired the Intergovernmental Group on Indonesia (IGGI) and its function suggested comparably great influence within IGGI.

action provoked a nationalist backlash on behalf of the Indonesian government. It singled out for punishment the government of the Netherlands, for the way its development minister Jan Pronk had interfered in Indonesian domestic affairs.¹³⁵ The Indonesian government requested the dissolution of the Dutch leadership and its subsequent restructuring under the auspices of the World Bank. Dutch aid, mainly directed at Indonesian NGOs, notably LBH, was to be suspended by April 24, 1992, an action which demonstrated vividly where the Indonesian government was looking for scapegoats for the international shaming.¹³⁶ At the same time, the Indonesian government started a diplomatic offensive and was able to secure a major loan from the Japanese government, totalling 91.4 million US\$ and far exceeding the Dutch share of development assistance. The gesture carried a great symbolic weight and allowed the Suharto Government to temporarily mobilise nationalist sentiments in Indonesia against foreign intervention. Despite these spectacular actions, the Indonesian government now faced vehement international criticism, to which it had to respond.

As these explanations make evident, the potential reactions of international actors figured quite highly in the considerations of the Indonesian government. The Suharto regime implicitly based its interests on a calculation of the potential international repercussions its decisions would provoke and, hence, cannot be regarded as being solely determined by domestic developments. The fact that the obvious norm violation was subject to sanctions by other states placed clear restrictions on the Indonesian government's available options for action.

However, this does not explain why the Indonesian government also prosecuted members of the military, who were found guilty of human rights violations. This action constituted a deviation from government policy, as human rights violators hitherto had hardly faced prosecution. In this case, a rational domestic explanation would argue that the action enabled Suharto to weaken the military in the domestic power struggle, which had been going on since 1988. According to this logic, the instrumental use of the human rights issue was a rational response to the domestic political power struggle.

This explanation is also the standard reading of Suharto's decision to implement the recommendations of the Djaelani report and prosecute some armed forces members. Yet, this explanation is only convincing if one focuses solely on the military and Suharto as key actors and assumes that the prosecution of the military was an autonomous decision taken by Suharto. For example, given the speedy reaction of President Suharto in setting up the

¹³⁵ Schulte-Nordholt (1995); Baehr (1997)

¹³⁶ Human Rights Watch (1993: 176)

commission, some observers concluded that events in Dili did not have much negative impact on international support for Indonesia. The surprisingly critical investigatory report which satisfied an international audience, and the fact that Indonesia received slightly more development aid from the new Consultative Group on Indonesia for the 1992-93 term (US\$ 4.94 billion compared to US\$ 4.75 billion in 1991-92) were taken as indicators for this assessment. Additionally, considering the internal balance of power in Indonesia, it was claimed that Suharto emerged from the Dili massacre with his military support strengthened. "What seemed at first like a dilemma for Suharto – whether to side with Armed Forces Commander Sutrisno or appease international critics – proved instead to be an opportunity to weaken his opponents."¹³⁷

Yet, this reading overlooks the extent to which the Indonesian government's acknowledgement of misconduct introduced a different action logic into the intercourse with other states and domestic civil society. The action had two important consequences. Due to the exalted place of ABRI in society and the fact that public criticism of it was almost unheard of, the findings of the Djaelani report and President Suharto's comments were a major blow to ABRI's prestige. The court-martials opened the floodgates for an unprecedented public criticism of ABRI, especially for its incompetence during the Dili massacre.¹³⁸ Second, the disciplinary action violated important rules of conduct that had hitherto existed between Suharto and the army. The army had so far hardly been held accountable for its human rights violations. Now, it could no longer count on impunity. The international scrutiny of the Indonesian government's human rights policy changed the interaction between the civilian and military parts of the government and deepened the split between ABRI and Suharto.¹³⁹ Suharto began to vacillate between competing behavioural expectations – those of the international human rights community, which wanted to see disciplinary actions, and those of ABRI, which expected loyalty and support from Suharto. This increased the inconsistencies in Suharto's behaviour and contributed to rising suspicions about his sincerity ("Does he really mean what he says?").

As we have seen, due to the wide attention the human rights policy of the Indonesian government now received, it was virtually impossible to deny the legitimacy of human rights norms and to reject allegations of abuses as unfounded. The information which had been gathered by a transnational network of human rights and church organisations and the claims

¹³⁷ Schwarz (1994: 217); Schulte-Nordholt (1995)

¹³⁸ Singh (1995: 166); Liddle (1992)

¹³⁹ Liddle (1992)

that the network developed on the basis of this information had led to the opening up of East Timor and to sustained pressure to answer questions concerning Indonesia's human rights practice. The Dili massacre had gained such a symbolic meaning because it seemed to prove for an international public that there was some truth in the claims human rights groups had been making for a decade.

The reactions of donor countries and international organisations to the massacre indicate that they shared the network's definition of the situation and started to consider the Indonesian government's behaviour as breaches of human rights norms. Due to the higher social vulnerability of the Indonesian government at the end of the 1980s, and its relatively greater financial dependency on foreign capital, which constituted more than 60 % of its GNP, the Indonesian government had something to lose in terms of its international image and financial transfers if it did not show some response. However, this international moral pressure alone would have certainly been less effective if it was not matched by rising domestic pressure. The domestic base of human rights organisations, which had been strengthened at the beginning of the 1990s, was crucial in this regard. This situation induced the Indonesian government to enter into a phase of tactical concessions in which international and domestic pressures increasingly fed one another and contributed to the dynamic of "tactical concessions."

To sum up, neither the Philippine nor the Indonesian governments reacted to international human rights reports with an outright rejection of international human rights standards. Both presented a principled defence of their policy. They did not simply argue that the human rights reports constituted an undue intervention, but justified their actions based on universal principles. Both governments initially claimed that there had been a state of emergency (Indonesia 1973-79; Philippines 1972-77), or that they faced subversive or separatist movements. The transnational network's strategy aimed precisely at challenging these justifications and exposing them as invalid, in order to undermine the credibility of the two political regimes and ensure transnational mobilisation.

As the descriptions of argumentation processes have shown, human rights organisations framed their claims in very similar ways, regardless of the cultural, historical and developmental preconditions in the respective countries. They tried to prove that the governments violated human rights, that these violations were legitimated domestically in part by executive manipulation of the judiciary, and that human rights violations were thus part of a systematic policy. Given the doubts about the target states' impartiality, international human

rights organisations explicitly shifted the jurisdiction onto an international level. As the descriptions make evident, standards of rule of law provided the central frame of reference for these accounts and legitimated the action of network activists and the domestic opposition. International human rights organisations acted on the basis of a collective human rights frame. In both cases, transnational networks were able to engage the governments in a substantial debate over human rights practices and expose contradictions between rhetoric and action. It was these contradictions which cast doubt on the credibility of the two target governments, spurred a transnational mobilisation, legitimised the pressure of more powerful actors and eventually contributed to a shift in action repertoire from "denial" to "tactical concessions."

Apart from the availability of information on human rights abuses, it seemed to be crucially important that the transnational network was credible. Because the government's strategy, in the phase of denial, tried to undermine the network's credibility by linking it to the very enemies of the state, it was important that the network appeared as impartial as possible. The example of the Philippine and Indonesian networks demonstrates that a strategy of undermining credibility soon failed because the networks in the Philippines, and in Indonesia after 1984, had incorporated church organisations which provided important information. This contributed decisively to the impartiality of the international network and undermined arguments which attempted to show that individual network organisations had political interests in the overthrow of the government.

From a network perspective, church organisations only entered the network after the initial network members had increased their credibility in the eyes of the church. The change of identity of Fretilin from a military Communist organisation to a nationalist, non-military organisation was a case in point. Once these criteria were met, government strategies no longer worked and they had to respond in more detail to the accusations, and their claims were subjected to a rational evaluation. It was here that the conditions of "arguing" served as evaluative criteria between the target governments and the networks, as well as transnational audiences, such as other state governments and domestic constituencies which mobilised only after public argumentation processes had undermined the credibility of the target governments. As a result, the Marcos and the Suharto Government invested some costs in order to prove their sincerity. These initiatives transformed the interaction pattern to one of tactical concessions and ensured transition to the next stage of the spiral model.

Phase 3: Tactical concessions

In both cases, the Philippines and Indonesia, transnational pressure slowly undermined the autonomy of the two governments in the area of human rights. The sheer increase in information on human rights abuses on the one hand, and the fact that other governments began criticising the human rights practice of the target states, increased the pressure on the Marcos and the Suharto regimes to respond to these demands. They adapted to these pressures for purely instrumental reasons, in order to get rid of the international pressure. Although the Indonesian government first made tactical concessions toward the East Timor network in 1988, concessions only became a behavioural pattern which influenced mobilisation in East Timor and Indonesia after 1991-92. In the Philippine case, tactical concessions gained dominance in the action repertoire of the Marcos regime after 1978. While both countries' economic dependence on development aid and international credits had increased at that time, it was only due to the intervention of transnational networks and their human rights campaigns, that economic dependence translated into material vulnerability.

Despite a pattern of concessions to international demands, the Marcos and Suharto regimes initially were still in control of the domestic political process. Their greatest advantage was the factionalisation among the domestic political opposition. By trying to divide the domestic opposition on the one hand, and increasing political repression on the other, both governments tried to delay political reforms. Once they faced a unified opposition, however, the Philippine as well as the Indonesian authoritarian rulers gradually lost control over the political process. As they lost control, both governments tried to silence the opposition by increasing repression, and thereby accelerated their political demise. The elements of argumentative rationality which were present in the phase of denial continued to operate in the phase of tactical concessions, too. Demands for serious human rights reform, and the inability of the Marcos and Suharto regimes to initiate these reforms quickly, and with the necessary sincerity, ultimately spurred demands for comprehensive democratic reforms or a revolution of the repressive system and legitimated the struggle for regime change. Regime change, occurring in the Philippines in 1986 and in Indonesia in 1998, eventually marked the transition toward "prescriptive status" of the norms.

By the second half of the 1970s, the Philippines had come under increasing pressure from a transnational human rights community to change its human rights practices. As I have described above, due to the continuing doubts raised by international human rights organisations, the Philippine government had manoeuvred itself into a situation where it ran out of justifications for its high degree of repression. In 1977, Marcos reacted with an initial

set of tactical concessions, which marked a significant deviation from former responses to allegations of torture and other abuses. It was no longer sufficient to rhetorically justify the use of repression. Transnational actors, including the US Administration, demanded credible action demonstrating that Marcos was serious about liberalising the political system. This concession can only be fully explained if one takes into account the international moral pressures with which Marcos was confronted in 1977. The decision to pursue "normalisation" set the stage for a series of concessions Marcos made to network demands, so that it is justified to speak of a transition to the tactical concessions phase after 1978.

Yet, the phase of "tactical concessions" proved to be a long one. While the political dynamics described by the spiral model developed smoothly in the first two phases, the third one presents a more complicated picture. The domestic political opposition remained divided and unable to agree on a common stance toward the Marcos regime. The domestic opposition's disunity undermined domestic mobilisation "from below." Moreover, due to the change in the US Administration from Carter to Reagan, the human rights network lost an important international ally, incapacitating the dynamic of international pressure. As a result, human rights violations continued, and even increased in the early 1980s. It was only when opposition candidate Benigno Aquino was assassinated that domestic mobilisation gained a momentum which finally removed Marcos from power and brought the transition to democratic rule in 1986. This transition also marked a move to the prescriptive status of international human rights norms.

Indonesia entered the phase of tactical concessions shortly after the Dili massacre, around 1991-92. Between 1992 and 1996 the international pressure on the Indonesian government was overwhelmingly generated and sustained by a very outspoken and dense network of NGOs and activists working on East Timor. It had a crucial support base, however, in a domestic network of Indonesian non-governmental (human rights) organisations working in all kinds of sectors. These Indonesian organisations provided the crucial link and political transmission mechanism which facilitated consensus-gathering on the East Timor question in Indonesia and ensured that East Timor was only seen as *one* "instance" of the Suharto Regimes repressive practices. As in the case of the Philippines, however, the domestic opposition was initially divided, most importantly along religious lines, as Muslim organisations emerged claiming political space. International pressure helped to keep open the domestic political public sphere for these divisions to be fought out, so that by the mid-1990s a consensus had emerged among opposition groups on human rights and the rule of law. This consensus ensured the unity of the opposition despite obvious efforts by hardliners in the

ruling elite and the military to exploit ethnic, religious and nationalist sentiments in order to divide the opposition and delay political reform. The phase of prescriptive status can be dated after the change of power in 1998.

The Philippines 1978-1986: Divided opposition

Based on the information and the claims of the Philippine transnational network, other actors stepped up their criticism considerably. There was a common definition of the situation: There was no doubt that the Marcos regime committed gross violations of human rights. In 1977, the US Department of State listed the Philippines as nation that violated human rights. Marcos branded this action a "provocation."¹⁴⁰ The Philippines were still, however, to continue receiving American military aid, although the US Department of State explained that the Philippines would receive no increase in military aid over the then annual level of 37.5 million US\$ because of systematic human rights violations.¹⁴¹ In multilateral lending agencies, the US Administration abstained from voting on the issue of credit for the Philippines. Although not a single credit was prevented due to the abstention, it sent a strong symbolic signal to the Marcos government.¹⁴² The Carter Administration denied Marcos the privilege of an official state visit. Individual officials, such as Assistant Secretary of State for Humanitarian Affairs Patricia Derian, openly criticised the human rights violations of the Marcos regime, an action annoying Marcos personally.

Due to the continuing flow of information supporting the transnational network's claims, Marcos was under continual pressure to demonstrate that he was responsive to the concerns of human rights groups. Marcos had to stick to his words in order to invalidate these doubts. The IBP elections were held in April 1978, albeit under several political restrictions. The Liberal Party (LP), headed by Jovito Salonga and Gerry Roxas, announced a boycott of the election, which they called a "useless exercise."¹⁴³ Some liberal politicians, most importantly Benigno Aquino, however, decided to participate and established their own People Power Party (Lakas ng Bayan: LABAN). The establishment of LABAN was one of the first efforts toward cooperation among the liberal opposition and the moderates among the CPP in Manila.¹⁴⁴ Marcos had created a governmental party, the New Society Movement (Kilusang Bagong Lipunan: KBL), which was headed by his wife, Imelda Marcos, to contest the elections.

¹⁴⁰ New York Times, January 2, 1977: 14

¹⁴¹ New York Times, February 10, 1978: 1

¹⁴² Stohl et al. (1989: 200)

¹⁴³ Quoted in Wurfel (1988: 131)

¹⁴⁴ Abinales (1988: 34)

The election campaign did not necessarily serve to restore the Marcos government's image. The campaign was uneven; the opposition had limited access to the media and was allowed to hold a certain number of rallies – but not without harassment. Pre-election surveys indicated that some LABAN candidates, certainly Aquino, would win. On election day, opposition poll watchers were forcibly evicted from many precincts and at others the KBL vote was higher than the total number of registered voters. Members of the LABAN party, who protested against the election fraud, were detained and charged with sedition. Marcos justified this action by claiming that most of the reported election cheating was the fault of the opposition, which had been infiltrated by subversives.¹⁴⁵ The opposition received some protection from international actors, however. In May 1978, Vice-President Walter Mondale visited the Philippines and met leading critics of Marcos. He warned Marcos that the continuing reports of political arrests, torture and election fraud were eroding support for the Philippines in the US Congress and among the American public.¹⁴⁶

In sum, the claims, which had been circulated by a transnational network of human rights organisations, had managed to shape public debates in the US and the Philippines. It was beyond doubt that the Marcos regime violated fundamental human rights and this collective knowledge translated into moral pressure, via the US media, which helped to influence the policy of the US Administration. The most important outcome of this phase of pressure on the Marcos government was the creation of a political arena in which a growing domestic opposition and a more critical media could develop. External moral pressure and Marcos' tactical concessions internally legitimised the human rights discourse and increased the human rights network's density. As of 1977, domestic opposition groups increasingly legitimated their political action with a reference to "human rights." A Filipino attorney commented: "Since so much can now be done in the name of 'human rights' which was previously forbidden, it is not surprising that there is much curiosity about these human rights." And a sociologist observed the results: "[H]uman rights groups are springing up all over."¹⁴⁷ Even if this statement might be exaggerated, organisational activity rose significantly. TFD as well as FLAG expanded their membership and their organisational structure. Initially affiliated to the AMRSP, FLAG reorganised under the Civil Liberties Union of the Philippines (CLUP) in 1977 and recruited more lawyers mostly from the provinces. By 1982, FLAG had expanded to a network of about 150 lawyers.¹⁴⁸

¹⁴⁵ Wurfel (1988: 130-133)

¹⁴⁶ New York Times, May 3, 1978: 8

¹⁴⁷ cited in: Claude (1978: 222)

¹⁴⁸ Free Legal Assistance Group (FLAG) (1994: 10)

The political opposition in general gained in strength after 1978, and was taken more seriously by the media and the government. The number of demonstrations increased, and domestic opposition groups were keen to use international conferences, such as the UNCTAD V Conference¹⁴⁹ convening in Manila, to stage protests. Domestic opposition groups were able to capitalise on the worsening economic situation. Human rights groups such as the Civil Liberties Union particularly exploited the deteriorating economic situation by according the Marcos government responsibility for rising prices in the wake of the second oil crisis.

International pressure and tactical concessions in particular opened up public space for liberal opposition. Unlike the underground opposition CPP and MNLF, the liberal opposition had, in the period 1972-75, refused to operate from underground and join more radical forces. In 1975, it had articulated its timid opposition to the Marcos regime in a pamphlet entitled "A Message of Hope to Filipinos Who Care" and developed a concept of a third alternative to support for Marcos on the one hand, and Communist revolutionary struggle on the other. It was not until 1978, in the course of normalisation, that the "third alternative" was translated into a concrete project.¹⁵⁰ Church opposition became more vocal, too, and united in opposition toward human rights abuses.

The Government tried to delegitimise the rising opposition by alleging that it was all linked to the Communist movement eager to topple the government. Defence Minister Enrile, accused radical religious groups of helping the Communist movement, a statement which Cardinal Sin, as leader of the Catholic Bishops Conference of the Philippines, immediately rejected. He argued that the people were turning to the church, as they no longer had recourse to the courts of law.¹⁵¹

There was some truth in the Marcos government's allegations that the CPP had embarked on a strategy of linking up with other opposition forces in its struggle against the Marcos regime. It is common knowledge today that the CPP was able to infiltrate a wide variety of these groups and convert them into fronts actually controlled by members of the CPP underground. Church and student bodies were particularly vulnerable because of their extensive involvement in social action. The infrastructure to support this campaign was every bit as extensive as that in the countryside. Outlined in detail by the CPP's Political Program for 1983 was the necessity of forming highly disciplined, clandestine cells for infiltrating "cause-

¹⁴⁹ United Nations Conference on Trade and Development

¹⁵⁰ The message was published in Manila on October 1, 1975 and signed by, among others, Jovito Salonga, Joaquin Roces, Francisco Rodrigo, Joker Arroyo, Horacio de la Costa, Cirilo Rigos, Aurora Aquino, Rene Saguisag and Eva Kalaw. See Malay (1988: 19)

¹⁵¹ Rajaretnam (1980: 249)

oriented groups" – and then using their work to further party goals. When the Social Action Center (SAC) of the Catholic Church, Paul VI SAC in Catbalogan, capital of Samar Province, was raided in September 1982, documents and interrogations revealed that virtually the entire framework for social work and human rights assistance in the Visayan region – stretching across the central Philippines – had been co-opted. In the Philippine province of Samar, the office of the Task Force Detainees of the Philippines, an organ which regularly provided documentation on alleged human rights abuses to international cause-oriented groups such as Amnesty International, was – according to Thomas A. Marks – headed by a Catholic sister taking CPP orders.¹⁵² This information was consequently used by Marcos to corroborate his repeated claims that the human rights network had been subverted by Communist elements and reports about human rights violations exaggerated.

The interesting feature of this strategy was that the extent and character of the links between the CPP as an underground organisation and the semi-legal organisations were not publicly discussed and remained unclear.¹⁵³ In public, however, the CPP framed its offer for cooperation with other political opposition groups in human rights terms and in terms of the struggle for democracy. The CPP was one of the few organisations able to consistently conceal its true preference. The CPP leadership used human rights in an exclusively instrumental way to further its genuine interests in revolutionary struggle. It sought to manipulate not only international actors, including Amnesty International, but also domestic organisations. Its strategy had the positive effect that the CPP, as part of its consciousness-raising efforts, brought knowledge about human rights standards into almost any Philippine village. The CPP relied on its own underground media, which was distributed widely. By 1979, there were about thirty underground publications circulating throughout the country. The CPP newsletter *Ang Bayan* appeared fortnightly, the organisation had its own newsletter and operated its own radio station.¹⁵⁴ Its importance for framing and organising opposition to the authoritarian Marcos regime cannot be underestimated, although for an international public, the Catholic Church appeared visible as the most consistent critic of Marcos.

Yet, apart from these increasing activities at the level of civil society, conflicts between the old elite politicians interested in re-establishing the status quo ante, and more radical opposition figures who struggled for more fundamental reforms of the Philippine society, remained. In terms of this study, the domestic political opposition did not find a collective action frame, enabling a common position towards Marcos. The liberal politicians believed

¹⁵² Marks (1993: 97); For the "united front" strategy of the CPP in general, see Magno (1988) and Malay (1988).

¹⁵³ Rocamora (1994: 188f.)

that they would eventually win over the US Administration and concentrated on lobbying individual representatives of US Congress and the Department of State. Their belief that they would eventually succeed if they just provided more evidence of the authoritarian nature of the regime decreased the need for alliance politics with other anti-martial law forces to bring down Marcos. Due to the weak domestic position of the liberal opposition and their positive perception of US support, the liberal opposition's strategy basically focused on persuading the Marcos regime to induce an orderly transfer of power through negotiations. It honestly hoped that "normalisation" would increase their chances of participation in the political process.¹⁵⁵

The liberal opposition's reluctance to take a stance opposing the military bases alienated it from nationalist and radical opposition groups who had rallied on a common nationalist position. Thus, the different groups opposing the Marcos regime remained split, and Marcos just had to play one group against another. In 1980, he offered the liberal opposition under Aquino a power sharing deal. When Aquino entered into negotiations with Marcos, press reports raised serious doubts about the credibility of Aquino as an opposition figure.

The radical Left, headed by the CPP continued its double strategy of offering cooperation on the basis of a "united front" strategy, while internally denouncing the liberal opposition for its status quo orientation and orientation toward the US. The liberal opposition's strategy of seeking US support confirmed the radical Left opposition's view of the liberal opposition as status quo-oriented and unwilling to deal with the root causes of violence and human rights violations, the unequal distribution of wealth. For them, Aquino and other liberal elite politicians of the pre-martial law order were "anti Marcos reactionaries," and alliance building with them not desirable.¹⁵⁶ The *Ang Bayan*, the internal journal of the CPP warned:

"In all their actions against the Marcos regime, their main purpose is to secure privileges for themselves, not to push forward the basic rights of the people. Some of them are riding on the great popular discontent against the fascist regime, but only to strengthen their bargaining hand with the dictator and US imperialism."¹⁵⁷

The liberal opposition, on the other side, tried to consciously distance itself from the Communist underground opposition to Marcos and was equally wary of cooperation efforts. They presented themselves as an alternative to authoritarianism and Communism, but were not able to gather much domestic support, as most of them were too tightly linked to the old

¹⁵⁴ Rajaretnam (1980: 250)

¹⁵⁵ De Dios (1988: 71); Abinales (1988: 32)

¹⁵⁶ Abinales (1988: 30f.)

¹⁵⁷ *Ang Bayan*, 3 March 1978 (Special Issue on the Interim Batasang Pambansa Elections), as quoted in Abinales (1988: 33)

establishment and the Philippine oligarchy, against which the Communist movement struggled so effectively, given that large segments of the Philippine working force were peasants. The Catholic Church as corporate institution equally remained divided between a radical camp advocating comprehensive socio-political reforms and a conservative faction, but – in their firm defiance of the regime in defence of human rights – seemed to be providing legitimacy to a leftist-led rebellion.¹⁵⁸

As a result of this mutual distrust, the years between 1978 and 1981 were fundamentally characterised by the inability of the human rights network and supporting organisations to achieve major changes in the human rights practices of the Marcos regime. Gross and systematic human rights practices persisted, and even increased in magnitude. Cases of extralegal executions increased markedly, obviously because Philippine security organisations wanted to delete evidence of torture and other human rights abuses. International moral pressure managed to keep the public political sphere open so that the internal divisions among the domestic political opposition could be debated to a certain degree.

Marcos not only capitalised on these divisions, but took advantage of several developments in international politics which increased US dependence on the military bases in the Philippines. The Carter Administration and the Marcos Government had begun negotiations on the extension of the Military Base Agreement (MBA) in April 1976. From the beginning, the negotiations were overshadowed by the allegations of human rights violations, and had politicised the whole issue of the US military presence in the Philippines. Marcos and his opponents similarly used the military bases question as a symbol of US support. For the political opposition, the bases provided a collective symbol unifying the nationalist and the human rights movement in the Philippines, backed by individual groups in the US. They opposed not only US presence as such, but also financial compensation for the bases. On Christmas day, 1978, leading opposition figures, among them human rights advocate Jose Diokno, released a statement demanding that the bases should be dismantled immediately. Neither 'rentals' nor 'compensations' for the use of the bases would confirm the sovereignty of the Philippine people. "On the contrary, these payments will support, strengthen and prolong dictatorship."¹⁵⁹

This gave Marcos the ideal justification to back up his main argument for US support, that US interests and the US military presence in the Pacific would only be guaranteed under his rule. Vital US interests would be harmed as neither the nationalists, nor the Communists would

¹⁵⁸ Abinales (1988: 59)

¹⁵⁹ Wurfel (1988: 188)

provide access to the military installations. The US Administration consequently remained deadlocked in a paralysing domestic debate on human rights vs. forward defence, or support for political change vs. support for the status quo. By the end of 1978, Marcos' tactical concessions and international developments finally turned out to be the decisive factors for continuing US support for Marcos. First, the Iranian revolution of 1977-79 increased the importance of the Clark Air Field and Subic Naval Station as essential way-stations to the Middle East. Global détente between the US and China on the one hand, the intensifying conflict between the Soviet Union and China, on the other, further increased the importance of the bases for the US, since China wanted the US to retain its presence in the Philippines.

Second, the national assembly elections of April 1978 in the Philippines effectively tamed those critics who linked the military bases to human rights questions. In mid-1978, several articles in the *New York Times* took a more supportive stance of Marcos. Although the authors conceded that the Marcos government was authoritarian, they expressed their conviction that he was also serious about eliminating violations of human rights and about reinstating democracy. The US government, in turn, was advised to urge the Marcos regime to speed up the process of liberalisation.¹⁶⁰ Thus, by December 1978, Washington and Manila had concluded a new MBA, providing more financial compensation for the Philippines and symbolising a clear sign of US support for Marcos.

At the level of Philippine civil society, the finalisation of the MBA constituted a clear setback. As one observer put it, "antimartial law groups felt betrayed by the U.S. action."¹⁶¹ The shared understanding between the US Administration and Marcos only marked the beginning of a series of actions, which symbolised a deviation from the US Administration's support for human rights reforms in the Philippines. The change in power from Jimmy Carter to Ronald Reagan further accelerated this development and placed the US Administration clearly outside the human rights network's consensus.

To sum up, from an interaction perspective, the tactical concessions phase, in the period 1978-81, created a distinct interaction pattern among the transnational network, the US Administration, the Marcos regime and Philippine civil society, which replicated the "boomerang effect", but without exerting influence on the human rights situation. The transnational network was able to maintain the international moral pressure necessary to make the relevant US Administrative agencies pressure Marcos into undertaking tactical concessions. It legitimised the activities of domestic opposition groups. As long as the

¹⁶⁰ *New York Times*, June 22, 1978: 23; *New York Times*, July 10, 1978: 18.

¹⁶¹ Rajaretnam (1980: 255)

domestic opposition remained divided, however, Marcos could conveniently give in to demands for change as these tactical concessions never challenged his power base from below. The interaction between international actors and the Marcos government followed a logic of appropriateness, which translated into symbolic adaptations of the regime in the human rights area, such as disciplinary measures, but these adaptations were decoupled from the actual human rights situation, which remained unaffected.

The tactical concessions even deepened the splits among the opposition, as they quarrelled not only over substantive issues, such as the future of the military bases and a schedule for regime change, but also over tactical questions, namely how to respond to the tactical concessions. Here, the question of participating or boycotting national elections loomed considerably high. The opposition remained divided in distrust and was unable to unite on a collective action frame. As a result, the human rights situation remained unchanged and even deteriorated. As another observer put it aptly: "The liberalisation of the political process since 1978 is not necessarily something that Marcos wanted. But he appears to have made a virtue out of necessity: partly pressure from the United States in the days of former US president Jimmy Carter's human rights policy; partly a build up of opposition steam (...)." ¹⁶² There were several political developments which provided a decisive shift in this pattern of interaction. First, the drastic US policy change toward the Philippines after the change from Carter to Reagan prompted the opposition to unite. Second, the assassination of Benigno Aquino led to a full mobilisation of Philippine civil society – including the previously more or less apolitical middle class.

When the Reagan Administration was inaugurated in 1981, Marcos regained an important ally and source of international support. The US Administration took to new extremes the US policy toward the Philippines, which had already become visible under Carter in the course of 1978. The Reagan Administration unconditionally supported Marcos. This support was consistent with the new US emphasis on the military competition with the Soviet Union. However, there was also a personal component in it, as Ronald Reagan and Ferdinand Marcos had been long-time friends. ¹⁶³ The Reagan Administration explicitly subordinated human rights concerns to its geopolitical interests. Assistant Secretary of State for Human Rights and Humanitarian Affairs, Elliott Abrams, explained that the Administration would not only address the "symptoms" of human rights violations, but also "their causes", most importantly,

¹⁶² Bowring (1982: 10)

¹⁶³ For two detailed accounts of the extent of the relationship between Marcos and Reagan, see Karnow (1989) Bonner

"Communism."¹⁶⁴ While this did not constitute a dramatic departure from US policy, the explicit and official support for the authoritarian Marcos regime was unprecedented, and the consequences were immediate: In June 1981, Vice-President George Bush visited the Philippines and heralded Marcos' "adherence to democratic principles." In a clear reversal of the Carter Administration's policy, Marcos was invited for an official state visit to the USA for September 1982. Such action was characterised as "a blow to the opposition who had long dissuaded the United States from supporting Marcos."¹⁶⁵

The Reagan Administration's unconditional support for Marcos immediately relieved the Marcos regime from constantly justifying its policies to the US Administration, though public criticism from human rights organisations, individual US Congress members and, most importantly, the media, continued. On 17 January, 1981, bowing to long-term external public and domestic pressure and preceding the Pope's visit in the Philippines only for a couple of weeks, Marcos revoked martial law. However, Marcos had provided that all powers remained in his hands even after the formal return to democracy. It was a paper lifting of martial law. Marcos' state visit to the US in September 1982, went by almost undisturbed. The visit was accompanied by the timely release of an Amnesty International report on human rights practices in the Philippines after the lifting of martial law, which reaffirmed the position of the transnational network.¹⁶⁶ Marcos' immediate reaction to the report was an outright rejection of the charges. Confronted with the allegations in interviews he affirmed that torture was not a policy of the Philippine government and called the allegations in the report "exaggerations."¹⁶⁷ At the same time, he admitted that 7,000 soldiers had been released from the armed forces since 1972 for misconduct.¹⁶⁸

He released another book, in which he justified his government's actions, especially the proclamation of martial law, and again projected his vision of a New Society. He basically repeated the arguments the government had made in its reply to the Amnesty International report of 1977 and emphasised that it was necessary to dismantle the insurgency movement, as well as the whole system of violence and criminality that had "virtually imprisoned our society in fear and anarchy."¹⁶⁹ An observer for the *Far Eastern Economic Review*

¹⁶⁴ For the ideological underpinnings of the Reagan Administration's human rights policy, see e.g. Jacoby (1986); Kirkpatrick (1983); Orentlicher (1991: 53)

¹⁶⁵ Sodusta and Palongpalong (1982: 288)

¹⁶⁶ Amnesty International (1982)

¹⁶⁷ *Asiaweek*, New York Times September 23, 1982: 12.

¹⁶⁸ Youngblood (1983: 214)

¹⁶⁹ Marcos (1981: 48-49) In fact, phrases such as this one reveal Marcos's rhetorical capacity in playing with words his adversaries were using! The illegal imprisonment of a few insurgents and enemies of the state is

commented: "The Philippine President obviously regards a good offence as the best form of defence. No apologies were offered to the persistent critics of his regime. Instead, in a manner that was at once didactic and droll he presented the audience in Washington with his own record of accomplishments."¹⁷⁰ Marcos' justification strategy seemed to become increasingly irrational in the sense that he did not submit his actions to rational argumentation.¹⁷¹ This, in turn, fuelled the public perception that the dictator just survived because of external support from the White House in Washington.

The Reagan Administration's ostensible support for Marcos had a domestic spin-off, which eventually broke the political stalemate. Since 1980, Benigno Aquino had been a crucial link between the domestic and international opposition toward the Marcos regime. In May 1980, Marcos ordered the conditional release of Aquino, who had been imprisoned in Manila since 1972, to enable him to undergo a heart surgery in the US. In the US, Aquino organised the factionalised overseas opposition and became more offensive toward the Marcos regime. In the Philippines, the old opposition party establishment, the Liberal Party and the Nacionalista Party, agreed on principled cooperation, and thus contributed to a more unified Philippine domestic opposition.¹⁷² George Bush's remark on Marcos' credibility with regard to democratisation now provoked the final push leading to a greater cooperation among domestic opposition groups.¹⁷³ The liberal opposition's belief in alliance building with the US Administration evaporated, leading it to reassess conditions for domestic alliances. There was a nationalist turn in the moderate wing of the Marcos opposition, which provided the preconditions for alliance-building with the radical Left and nationalist opposition.¹⁷⁴

In 1981, in an interview with the *Far Eastern Economic Review*, an obviously disappointed Benigno Aquino recounted that the main difference between the moderate opposition and the radical Left had been the position on the question of the US military bases. He continued:

"The situation is now that Marcos has almost eliminated the legal opposition. However, the legal opposition in the Philippines now – the moderates and the radicals – are moving closer together because some of the main differences have been eliminated.

justified by the fact that without martial law the whole society would be "imprisoned in fear and anarchy" through the very acts of these few.

¹⁷⁰ Nations (1982)

¹⁷¹ It is interesting to note here that his unwillingness to respond to the valid arguments of his international and national critics spurred rumours that a chronic illness affecting his kidneys was responsible for his irrational behaviour. See Wurfel (1988: 289f.). One might argue that he was declared insane and hence believed to be unable to participate in a rational discourse.

¹⁷² Ocampo (1980c); Ocampo (1980b); Ocampo (1980a)

¹⁷³ For a vivid journalistic impression see Tasker (1982)

¹⁷⁴ Dissidence and detente (1981)

After the Bush statement, there has been a shift ... and with this shift I feel there could be a greater working relationship."¹⁷⁵

Interestingly, the domestic alliance emerged on partly converging interests, but not a collective action frame in the sense that coalition-building processes were based on identical reasons. While the nationalist and liberal opposition seemed to be united primarily on a common stance toward the restoration of the pre-martial law democratic system and shared a common belief in the root causes of human rights violations (a state operating under martial law), the nationalist opposition and the CPP shared a genuine interest in nationalism. They were united in demands for the US to withdraw from the Philippines. The CPP did not share with the other groups the collective belief in the root of human rights violations. They viewed the oligarchic structure of society as the ultimate cause of human rights violations and struggled to overthrow the state. All agreed, however, on the need to remove Marcos. This alliance paved the way to a working relationship between the moderate opposition and the more radical Left/nationalist opposition, and ended their previous strategy of non-cooperation. The rallying cry "Dismantle the US-Marcos dictatorship" expressed their common understanding.

During the course of 1982, the political opposition became more active. In April 1982, Salvador Laurel of the Nacionalista Party announced the formation of the United Nationalist Democratic Organization (UNIDO), a broad-based coalition of several Philippine political parties. The coalition partners signed a unity charter in May that included a five-point program of eliminating dictatorship and restoring the people's sovereignty, establishing human rights and social justice, emphasising economic development and social reconstruction, eradicating graft and corruption, and maintaining friendly relations with all nations. The formation of this "Grand Coalition" was prompted by a desire to offer a viable, non-radical political alternative to Marcos and the governmental party KBL.¹⁷⁶

One could object to such an "international" reading of coalition-building processes among the Philippine opposition that Philippine politicians opposed to Marcos were impressed by the NPA's armed strength and its allied "mass-based" organisations and thus cooperated with the radical Left.¹⁷⁷ This interpretation, while not wrong, misses important aspects of the coalition-building processes, in the sense that it does not really reflect on whether the coalition was based on a joint goal (overthrow of Marcos regime) for which each group had its own justification, or on a collective goal, the overthrow of the Marcos regime based on a collective

¹⁷⁵ Tasker (1981)

¹⁷⁶ Youngblood (1983: 208)

understanding that this would entail a democratic regime change based on the rule of law. It is thus unable to fully account for the reasons why this coalition broke up after regime change. My argument in this regard is that the coalition was a strategic reaction to changes in international context (the Reagan Administration's support of Marcos), and a consensus on the nature and causes of human rights violations did not exist at that time. If it had existed, it would have been unlikely that human rights violations would have gained such a magnitude after regime change.¹⁷⁸

In the early 1980s, the economic sources of support for the Marcos government evaporated. A World Bank study, published in 1981 pointed to the wide income gaps and impoverishment of the Philippine population, which had been generated by Marcos' economic policies. The Philippines fell victim to the world-wide recession. Declining commodity prices cut the revenues for sugar exports and additionally worsened the state budget. Due to the fall in commodity prices for sugar and copper, the Philippines suffered a 42 % deterioration in its terms of trade. The departure, in 1981, of a Chinese business tycoon (Dewey Dee) with 635 million pesos set the stage for a massive capital flight, which harmed the Philippine financial market severely. Most of the leading Marcos-associated manufacturing firms suffered financial crises, leading to an emergency bailout program by the government. The economic crisis further tarnished the Marcos government's image. Because his credibility had already been in doubt, the economic crisis, and the Philippine government's inability to cope with it, focused public attention on political patronage and the extensive links between Marcos and his cronies. The state monopolies, which were in the hands of Marcos friends, came under particular public attack. On an international level, the demands of the International Monetary Fund and the Asian Development Bank to dissolve the state monopolies provided crucial financial leverage to pressurise the Marcos regime.

The massive impoverishment among the Philippine peasants virtually forced them into the arms of the radical Left, which considerably gained in strength. In the international media, such as the FEER and the New York Times, reports became more frequent which argued that the opposition had no other choice than to turn to violent struggle to get rid of Marcos. Increasingly, the growth of the radical Left opposition was explained by the lack of legal instruments to fight the "alliance" between Marcos and Reagan. International journals

¹⁷⁷ Thompson (1996: 184)

¹⁷⁸ In this regard, the counter example Thompson (1996: 188) gives is instructive: In the case of Spain, transition was negotiated and included the Communists, who pledged their loyalty to the new democracy. I see no reason why such an outcome could not have happened in the Philippines.

regularly reported the growth of the NPA in the Philippines and portrayed the movement as a legitimate opposition group against the authoritarian regime.

In Washington, this development alerted the US Department of State in particular. During US Department of State Secretary George Shultz's visit to Manila in June 1983, a senior aide was quoted as saying that "future instability in the Philippines might jeopardise American access to vital military bases" in the country, and that Washington wanted to begin positioning itself to deal with the forces which were likely to replace Marcos."¹⁷⁹ There were clear signs that perceptions of Marcos were changing in the US due to the increasing activity of the Philippine domestic opposition, and especially the growth of the NPA.

It was in this atmosphere, that Benigno Aquino decided to return to the Philippines to file his candidacy for the national assembly elections. Given the rising opposition in the Philippines and the US Administration's announcement that they might distance themselves from Marcos, Aquino's return posed a major challenge to Marcos' continued rule. Aquino's murder, on August 21, 1983, at the Manila International Airport consequently surprised no one. The Marcos government and its military were immediately suspected of involvement.

The assassination initialised the decisive "boomerang" hitting the Philippine government and finally leading to its end. It propelled protests which had been developing since the 1970s to an unprecedented level and mobilised anew the whole network nationally, as well as internationally. It provoked a stern condemnation by the US Department of State, which supported demands of the human rights network for the establishment of an independent commission of inquiry. A Reagan trip scheduled for November to Southeast Asia had to be postponed indefinitely because of public pressure in the US.¹⁸⁰ In a rare reaction of a European country, British Prince Philip cancelled his planned visit of the Philippines.¹⁸¹

Due to the public outcry, Marcos was virtually forced to set up an investigating commission. The commission lacked credibility, and a Delegation of American lawyers visiting the Philippines in October 1983 confirmed the allegations made by domestic human rights NGOs, that Marcos was guilty of continuing human rights violations and that the commission investigating the assassination of opposition leader Benigno S. Aquino was not credible.¹⁸²

The second investigative commission, the Agrava Board, consequently repudiated the official

¹⁷⁹ Ocampo-Calfors (1983)

¹⁸⁰ 45 members of the US Congress urged Reagan to cancel his trip. A separate Hearing, on 22 September 1983, of the Subcommittee on Human Rights and International Organizations of the Committee on Foreign Affairs discussed immediate action to be taken (Reagan's trip) and future US policy (promote democratisation of Philippines).

¹⁸¹ In August 1982 Marcos had submitted a formal protest to the British government because of a documentary movie produced by the BBC on Marcos' martial law rule.

version of the Aquino assassination, which had claimed that the assassination had been the action of an individual. The investigative commission alleged that the assassination had been part of a military conspiracy, possibly involving Fabian Ver, Marcos' Chief of the Armed Forces. As a result, pressure, in particular from the US, increased to retire Ver and to nominate Fidel Ramos instead, advice which Marcos first followed and later revised. These pressures and Marcos' contradictory reactions to such, only confirmed the opposition's suspicion that Ver had only been a scapegoat, but that the real culprits sat at Malacañang Palace. Moreover, the Aquino assassination caused massive capital flight and set the stage for an economic decline which would eventually contribute to the removal of Marcos.¹⁸³

In the Philippines, the assassination provoked a broadly-based social movement, which encompassed a diverse set of social groups, including the previously more or less apolitical middle class. Mass protests following the murder of Aquino, spontaneous and unorganised at first, were channelled into political groupings and movements and became more organised after 1984.¹⁸⁴ The assassination united political organisations of various kinds. In Manila, various political umbrella movements developed. Their political demands regularly included the freeing of all political prisoners, restoration of the writ of habeas corpus, and a repeal of repressive decrees.¹⁸⁵ Although fissures remained in this opposition, too, the general spirit was, according to an observer, constructive. Political manoeuvring of opposition politicians was done within the context of a search for unity.¹⁸⁶ The widening moderate opposition explicitly rejected the olive branch proffered by the US Administration and Cardinal Sin for "national reconciliation" and hence forming a pact with the regime. As human rights lawyer Jose Diokno emphasised: "There cannot be a national reconciliation until militarization has ended, human rights and the sovereignty of the people restored, real democratic processes started, and martial law institutions removed."¹⁸⁷ As becomes evident, human rights norms, or more precisely the rule of law state which human rights entail, provided the counterfactual ideal around which action was oriented and which pushed the process of transition forward. By 1985, clearly identifiable splits had developed among the ruling coalition and the military. Seeing Marcos' power decline, factional infighting began between Fabian Ver and Marcos'

¹⁸² *New York Times*, 7 October 1983: 9

¹⁸³ Overholt (1986)

¹⁸⁴ Sacerdoti (1983); Nations and Sacerdoti (1984: 22f.)

¹⁸⁵ See e.g. "KAAKBAY Supports Cory Aquino's Quest for Freedom and Democracy," December 9, 1985; and BAYAN "Preserve in Correct Struggles, Boycott the Sham Snap Election," both are reprinted in Schirmer and Shalom (1987: 344-348). For excellent general overviews over the 1984-87 period see Diokno (1988) and Lane (1990).

¹⁸⁶ Youngblood (1985: 226)

wife, Imelda, on the one side, versus Marcos on the other as hard liners. These two factions immersed themselves in an endless power struggle over the succession of Marcos. They hardly realised that the real power struggle was occurring outside Malacañang palace, the power centre of the Philippines, and pitting a widening civil society against the warring factions within Malacañang. This opposition rallied support on a moral platform, by justifying its case for democratic change in human rights terms. These developments precipitated further splits in those institutions which had hitherto supported Marcos and his cronies. Within the governmental party, KBL, cracks became visible as several Cabinet members began criticising Marcos for issuing presidential decrees and for his patronage network. The military split, too, into two factions, headed by General Fabian Ver on the one hand, and Fidel Ramos as head of the Philippine Constabulary on the other. The Ramos faction was not only actively supported by the US, but domestically legitimated itself by urging the investigation of human rights violations allegedly committed by army soldiers.¹⁸⁸ In late 1984, the Reform of the Armed Forces Movement (RAM) was launched, making discontent within the AFP publicly visible. RAM was founded as a reaction to the arrest of General Ver and 24 other military men in connection with the Aquino assassination, coupled with the embarrassment of many officers over military abuses, graft and corruption.¹⁸⁹ RAM members were subsequently protected by international actors from reprisals by the conservative wing of the army close to Fabian Ver.

The assassination mobilised the previously overwhelmingly apolitical Philippine middle class and led to the establishment of several hundred so-called cause-oriented groups, of which one of the most important one was *Justice for All, Justice for Aquino*. Alternative newspapers sprang up again, such as *The Manila Paper* and *The People's Voice*, and individual magazines developed into critical voices, such as *Mr&Mrs* and the *Midweek*, which became important platforms for the political opposition. Several of the papers covered governmental corruption and military and police abuses.¹⁹⁰ There is a broad agreement that this largely urban mass movement distinguished itself from the previous opposition mainly by focusing on issues rather than individuals, and came together (although there was not consensus) primarily on three principles: Human rights, national sovereignty (with a focus against military bases) and social justice.¹⁹¹ Around 1984-85, the Catholic Church finally emerged as a serious broker

¹⁸⁷ As quoted in Aquino (1983: 269).

¹⁸⁸ Tasker (1984b)

¹⁸⁹ Youngblood (1985: 226, 232); Tasker (1984a)

¹⁹⁰ Gander and Rohter (1983)

¹⁹¹ Lane (1990: 25); Diokno (1988)

between the authoritarian regime and opposition forces. It was Cardinal Sin's intervention, which persuaded Salvador Laurel to take a back seat in the scheduled presidential elections in 1986 and let Corazon Aquino be the presidential candidate of UNIDO. As private documents reveal, however, Sin had been well prepared by aides who had intensively weighed the advantages and disadvantages of Salvador Laurel and Corazon Aquino for the election campaign. The choice finally fell on Aquino because she had more credibility in terms of the struggle for human rights and, unlike Laurel, was not linked to pre-martial law politics. Her inexperience in politics was seen as an advantage, rather than a disadvantage.¹⁹² In other words, the decision to support Aquino rather than Laurel was shaped by the rationale that the candidate had to fit the dominant discourse – human rights – and be distanced from pre-martial law politics, not vice versa.

In the US State Department in particular, support for Marcos began to wane and resulted in pressure to hold national elections, in an effort to test the legitimacy of the Marcos regime.¹⁹³ Despite these pressures, the US assessment of the situation did not significantly change as compared to 1982. The NPA remained the primary threat to US interests. The Pentagon and the US Department of Defense, backed by Ronald Reagan, was aware of the rising instability in the Philippines, but considered Marcos the problem as well as the solution. Apart from trying to persuade the moderate political opposition and Marcos to ensure an orderly transfer of power, military reforms were envisaged in order to tackle the continuing human rights violations by the military, while at the same time enhance the combat capability of the AFP against the NPA. The Pentagon and Department of Defense openly supported the 'soft liners' in the AFP, as the Reform of the Armed Forces Movement (RAM), and Enrile and Fidel Ramos.¹⁹⁴

A consensus emerged among the US Administration and US Congress, which found expression in a common US House of Representatives and US Senate resolution. It expressed the US' view that it could get through the crisis with its interests intact since – unlike in Iran or Nicaragua – no one in the mainstream Philippine opposition was thought to be irretrievably anti-American. Officials believed that even oppositionists such as Jose Diokno would moderate their criticism of the US bases if they gained a share of power. Democratic reforms and, within this definition, human rights reforms, were considered conducive to maintaining the US presence in the Philippines. To pursue that aim, the Reagan Administration mainly contemplated regaining popular support for the long-term Philippine-American connection,

¹⁹² Diokno (1988)

¹⁹³ Bello (1984)

including the bases. It viewed the support of the church and the business community, as pro-American forces, as instrumental in moderation between the more radical Left forces. Finally, the US Administration wanted to use a new commission of investigation into the assassination of Aquino as an instrument to seek reconciliation between Marcos and the opposition.¹⁹⁵ US efforts at this point in time thus concentrated on influencing the political transition and ensuring that the outcome did not harm its security interests. As then Assistant Secretary of State for East Asian and Pacific Affairs, Paul D. Wolfowitz, explained in a Committee on Foreign Affairs hearing in 1985:

“We do not fear the democratic reforms that are coming in the Philippines. We welcome them. We believe that these reforms are the key to preventing a communist victory which would end, at one and the same time, both our hopes for democracy in the Philippines and our vital security relationship with that country, including our access to the vital strategic facilities at Clark and Subic.”¹⁹⁶

With regards to human rights, the US did not support human rights issues out of principle but for instrumental reasons. It considered reforms as consistent with its strategic-military interest. Given this interest, the US consequently supported continued security assistance to the Philippine military because it regarded it as an appropriate means to enhance the combat capability of the military against the NPA. This structure of the US argumentation reveals that it was irrelevant whether US officials had become convinced of the human rights issue. Their definition of the situation did not allow for persuasion with regard to human rights issues. They were able to maintain their preferences by choosing different means.¹⁹⁷ Under the leadership of the US Department of State, the Reagan Administration dispatched several personal envoys who tried to persuade Marcos to undertake genuine political reforms and to hold early presidential elections. In 1985, the US Congress, for the first time since 1972, cut military aid to express its concern over Marcos' unwillingness to pursue serious reforms. These pressures added leverage to the domestic demands and together provided crucial pressure that made Marcos follow US advice.

¹⁹⁴ Chanda (1985)

¹⁹⁵ Nations (1983)

¹⁹⁶ US Congress and House of Representatives (1985: 13f.)

¹⁹⁷ This interpretation is widely undisputed among critical Philippine specialists such as Kessler (1986); Hawes (1986: 22); Bello (1984), but contrasts with the judgements of Diamond (1997: 347f.) and individual members of the US Administration, which accord US influence quite some weight in the transition to democracy. If based on a systematic focus on human rights, however, the conclusion that for the US support for democratisation was a means to maintain access to the bases is well justified. By the same token, it does not preclude, of course, that the US subsequently did a good job in helping organising the transition, especially in assisting the elections.

In November 1985, Marcos finally announced that he would hold snap elections the following year, and after the intervention of the Roman Catholic Church. Cory Aquino emerged as the consensual candidate of the political opposition. The National Democratic Front (NDF), as the official representative of the CPP, announced a boycott of the elections. The international media played a major role in providing Aquino with the recognition and legitimacy that the controlled media under Marcos denied her.¹⁹⁸ Aquino made human rights a key issue in the campaign leading to presidential elections. Had Marcos not manipulated the results during the elections on February 7, 1986, she would have received a majority of the votes. Marcos announced himself the winner of the elections. As a consequence, Aquino called for a campaign of civil disobedience leading to mass protests.

Regime change was eventually initiated by a coup of the 'soft liners' within the AFP. On February 22, 1986, Enrile and Ramos staged a coup attempt, which caused the final ousting of Marcos. Initially, the plotters obviously intended to unseat Marcos and establish a military junta. Given the predominance of the human rights issue in the domestic discourse and the primary responsibility which the human rights frame accorded the military as institution, these plans were simply not viable without impinging on the AFP's public image. A crackdown on the military rebels was avoided through rising people-power outside the military camp, and because the US warned Marcos that it would immediately cut off military aid if the rebels were attacked by troops loyal to Marcos. After the US withdrew its support and offered asylum to him and his family, Marcos finally resigned.

In sum, tactical concessions in response to pressure had become a major characteristic of Marcos' rule between 1977 and 1986. Tactical concessions were a response to domestic pressures backed up by international ones. The transnational network was instrumental in generating this pressure due to its information-gathering and lobbying of the US governments. The Marcos regime's tactical concessions themselves created political space for domestic Philippine actors to criticise the Marcos government and thereby enabled collective action.

Marcos, personally, was never truly persuaded to change his human rights practices, despite the human rights rhetoric he employed. In terms of the distinction between instrumental adaptation and an argumentative logic drawn in the spiral model, it can be best understood as a process of instrumental adaptation to domestic and international demands. While the US Administrations of Carter and Reagan were crucial reference actors for Marcos' own calculations, the overall process cannot be understood without the activities of transnational human rights networks and the changes in collective understandings which these activities

¹⁹⁸ Timberman (1987: 242)

had brought about. The overall dynamic and process at work in the Philippine situation was captured by Paul Wolfowitz, US Assistant Secretary of State at the time. During a hearing in 1985, in response to the question whether there was any hope that Marcos was going to go through a metamorphosis and pursue serious reforms, he replied:

“He is obviously not going to do it just because he wakes up some day and says, ‘Oh, my, this is what has to be done.’ But I think there are a great deal of forces operating, and not just from the United States, and in fact, I think not principally from the United States, that push in the direction of reform.”¹⁹⁹

To sum up, the process as described in the spiral model worked particularly well in the first two phases, in which the network had to establish its claims based on the information it received from domestic actors, and in which it helped to create political space for domestic actors. In the period 1978-81, the interaction between transnational networks, the US Administration, and the Marcos regime developed its own logic, virtually stalling efforts to change the human rights situation. This interaction was sufficiently effective to keep the transnational public sphere open, to legitimate the actions of the Philippine opposition, and to pressure Marcos to proceed with tactical concessions. Yet, given the diverging understandings or frames of the political situation among the domestic opposition, the latter could never fully take advantage of these concessions and utilise them to further pry open space for domestic reform. At this stage, Marcos’ tactical concessions only deepened the frictions among the opposition, despite their supposed joint interest in bringing down dictatorship. The opposition now not only quarrelled over substantive issues, the bases, but also over tactical issues. The question of what kind of polity would follow constitutional authoritarianism remained contested, especially between the CPP and the moderate opposition. The activities of transnational human rights networks lacked the domestic reinforcement on the part of the domestic opposition.

On an international level, the dynamics lost spin between 1979 and 1981, as the US Administration tempered its criticism of Marcos. The US Administration openly justified the continued support of authoritarian regimes and virtually isolated itself from pressures for human rights reforms in the Philippines. These circumstances made it more difficult for the Philippine transnational network to pressurise the Marcos regime, with significant effects on the human rights situation, which consequently worsened. Yet, it is important to emphasise that moral pressures for human rights change were not entirely dependent on US support. Such a realist interpretation of normative efficacy underestimates significantly the extent to

¹⁹⁹ Statement of Mr. Wolfowitz, US Assistant Secretary of State, in: US Congress and US Senate (1985: 69).

which the Reagan Administration itself came under attack for its disregard for human rights. US support for a dictatorship was widely perceived to be illegitimate and deeply split the US Administration. As a result, the Reagan Administration largely followed events than actively shaping them.²⁰⁰ The price, it appears, was ultimately paid by the moderate opposition in the Philippines, which was forced into an alliance with the radical Left opposition in order to make up for the lack of external support.

If the tactical concessions phase can tell us anything about when and under what conditions actors argue and change their preferences it is that ideologues do argue, but cannot be convinced. In the Philippine case, two actors present this actor type best, the Reagan Administration on the one hand, and the CPP on the other. These two actors only changed their preference as a result of an external stimulus. The US presents an almost classical example of a rationalist, utility maximising actor. Based on fixed preferences in maintaining the military bases in the Philippines, the Reagan Administration calculated the costs and benefits of supporting Marcos. It only started to support democratisation when it realised that Marcos himself threatened its interest. Similarly, as internal documents of the CPP reveal, the organisation had never fully subscribed to the validity claims of human rights norms as promoted by the human rights network. It promoted a socialist definition of human rights, which linked human rights not to the rule of law, but to the overthrow of a bourgeois political system, which had brought about the economic exploitation of the masses. The CPP stuck to its preference of an eventual Communist revolution, and used human rights in the liberal tradition mainly as a tactical device in order to ally with other organisations and instrumentally to protect its members from repression.

As we have seen, the fact that the Marcos opposition was united on the basis of strategic-instrumental interests rather than a collective action frame, did not foreclose the removal of Marcos and democratic change. This begs the question whether it really mattered in the Philippine situation of 1983-85 that the moderate opposition, the CPP and the US Administration had *not* agreed on a collective action frame based on the network definition of human rights, but were mainly pursuing pre-existing interests. As we shall see, the lack of consensus on human rights norms decisively mattered only after the change of power from Marcos to Aquino, when the broad anti-Marcos coalition broke up and human rights violations emerged again.

Indonesia 1992-1998: Linking East Timorese

²⁰⁰ Kessler (1986); Hawes (1986)

patriots and Indonesian democrats

A similar process in the phase of tactical concessions is observable in the Indonesian case. In response to the increasing pressure from "above and below", tactical concessions and instrumental adaptation as a response began to dominate the action repertoire of the Indonesian government. The government took several unprecedented measures, which have to be seen as a result of an ongoing struggle against charges of gross and systematic human rights violations which threatened its legitimacy. From 1991 onwards, for example, the government began to respond in detail to criticism of its human rights policies by NGOs and international organisations. As it could not claim that information on abuses committed by the military and the police were part of a plot engineered by "separatist elements" in East Timor, the Indonesian government now tried to persuade its audience that abuses did not reflect governmental policy, but were isolated incidences.²⁰¹ In particular, the government's unprecedented action against members of the military after the Dili massacre convinced individual governments that the Suharto regime was serious about eradicating the problem. For example, the Japanese, Australian and Canadian governments, though expressing their displeasure over the massacre through private channels, regarded the human rights violations as aberrations rather than the results of systematic policies.²⁰²

The transnational network, however, backed especially by the Dutch Government, took full advantage of the publicity which was focused on Indonesia. It lobbied continuously to achieve resolutions from the various United Nations bodies. Indonesian human rights activists, such as H.C.J. Princen and Bonar Tigar Naipospos, testified before individual UN Commissions. These activities yielded less success than activists hoped for, but were remarkable given the previously muted attitude of the international community toward human rights in Indonesia. In 1992, due to the immediate action the Indonesian government had taken after the Dili shootings, the government escaped the adoption of a resolution by the UN Commission on Human Rights. A draft resolution failed due to the vehement opposition of the US Government. The UN CHR issued a "chairman's statement" instead.²⁰³

In 1993, the UN CHR members tried to persuade the Indonesian government to accept again a "chairman's statement," which criticised the Indonesian government's lack of cooperation

²⁰¹ United Nations Economic and Social Council and Commission on Human Rights (1993)

²⁰² Kingston (1993: 46)

²⁰³ There was even something to gain from the consensus statements which were adopted by the UN Subcommission on the Prevention and Discrimination of Minorities, and the Commission on Human Rights. Although these had much less moral force than resolutions, they at least indicated that the Indonesian government officially subscribed to its critics' definition of the situation. Having agreed to the consensus statement, the Indonesian government, on the other hand, could not argue that the description of the human

with regard to investigations into the Dili massacre. The Indonesian government vehemently rejected this proposal, as a result of which the Commission members adopted a resolution.²⁰⁴ The resolution censured Indonesia for its human rights violations in East Timor, and was supported by the United States, which had for many years voted in favour of Indonesia.²⁰⁵ It provided additional leverage on Indonesia to take steps to address human rights criticism. More importantly, however, was the symbolic message the resolution entailed. It lent legitimacy to Indonesian human rights activists to press their government harder on important human rights issues.

The Indonesian government's defence included three strategies: It tried to show that the Dili incidence could not be generalised but constituted only an incident of human rights violation. For example, in the UN Commission on Human Rights, where the Indonesian delegation faced harsh criticism for its policy toward East Timor, the Indonesian government insisted that the Dili massacre was only an "incident", but not an *instance* of *systematic* human rights violation. It emphasised that it had taken appropriate steps after the "Dili incident", and reaffirmed that Dili was not representative of the Indonesian human rights policy. It directly attacked human rights NGOs and accused them of providing "exaggerated and dramatised" statements, or distributing "false and uncorroborated allegations or incitements" of separatist elements.²⁰⁶ Hence, the definition of the situation remained contested and the Indonesian government put some effort in getting the words "12 November Incident," rather than "Dili massacre" into the resolution, which was how human rights organisations called the event. In the domestic discourse, the government and the military primarily focused on reviving the Communist threat and trying to demonstrate to Indonesians the likely consequences of political liberalisation. Both actors basically argued that the democratisation of Indonesia would lead to political instability comparable to the 1965-1967 massacres. In particular, official documents, released at the 30th anniversary of the coup attempt against Sukarno, reflect this argument most vividly.²⁰⁷

The Dili massacre marked a turning point for the human rights movement, extending the mere investigation of the Dili shootings in national and international forums. It had a profound impact on the network structure and on domestic and international mobilisation. The Dili

rights situation which the text of the statement entailed had been "imposed" on it and was thus unacceptable.

²⁰⁴ Personal communication with David Weissbrodt, December 08, 1998.

²⁰⁵ Schwarz (1994: 223); Human Rights Watch (1994)

²⁰⁶ United Nations (1996)

²⁰⁷ Goodfellow (1995) provides a very lively description of these efforts to justify the maintenance of the New Order in terms of the threat Communism posed. Goodfellow argues that these attempts only held up to ridicule the Suharto regime in the eyes of the domestic public.

massacre provided activists with a unique possibility to “return the East Timor case to international prominence” in a longer-term perspective and link it to demands for democratisation of Indonesia. The density and size of the network suddenly increased as the movement incorporated new supporters from among academics, students and church leaders in and outside Indonesia. In Jakarta and other major cities, new organisations, which focused on human rights and democracy, were founded.²⁰⁸ The East Timor issue emerged as a political issue for the new generation of activists. These activists placed human rights above the unity of Indonesia: “Many new activists do not regard the unitary state of Indonesia as sacred. The struggle for democracy and for human rights is regarded as more important than rigid views about nation states.”²⁰⁹

With regard to transnational networks, international and domestic NGOs changed their strategies and brought together the two previously weakly connected network structures of East Timor and Indonesia and finally enabled domestic mobilisation. Many Western NGOs, which had previously focused exclusively on either the Indonesian democracy movement or the East Timor solidarity, movement now supported both. AKSI, an Australian NGO, is a good example: Having focused on Indonesia first, the upsurge in the East Timor solidarity movement in Australia meant that AKSI’s campaigns began to orientate toward solidarity with East Timor, too. As East Timor solidarity groups developed even within Indonesia, the NGO began to emphasise the links between the fight for democracy in Indonesia and the struggle for self-determination in East Timor. It consequently renamed itself in Action in Solidarity with Indonesia and East Timor (ASIET) in January 1996. This strategy was made possible by an emerging collective understanding or action frame on the nature and causes of human rights violations in Indonesia. As one Indonesian activist has put it: “The bullets which kill the East Timorese patriots are the same bullets which kill the Indonesian democrats.”²¹⁰ Human rights violations in East Timor were used as an international peg on which to hang criticism of repressive practices in Indonesia. This also becomes evident in a statement of East Timorese resistance member José Ramos Horta: “I am fully aware that the fate of East Timor and the democracy movement in Indonesia are intimately linked, each supports the other. [...] The more pressure that is focused on Suharto about East Timor, the more space there is for the opposition to push for change in Indonesia.”²¹¹

²⁰⁸ Aditjondro (1997b); Uhlin (1995)

²⁰⁹ Liem Soei Liong (1991)

²¹⁰ As quoted in Action in Solidarity with Indonesia and East Timor)

²¹¹ Lane (1996)

Suharto's most consistent critics remained human rights organisations. Domestic human rights organisations, such as Infight, were not willing to let the government get away with this "tactical concession." Infight's analysis of the Dili massacre and its aftermath is a good example of the micro-dynamics at work. The organisation simply did not believe that Suharto was really committed to improving the human rights situation. According to Infight, through taking disciplinary action against individual military members, Suharto appeared to have assumed the role of discipliner of deviant elements within the military. Yet, by appearing as a hero of human rights, Suharto had carefully controlled and clearly delineated the limits of the public debate on East Timor. "[I]n reality, Suharto is clearly no human rights hero, and there can be little improvement in the Indonesian human rights situation without significant structural change."²¹² Their assumption that Suharto's action was not motivated by commitment, but rather by power seeking, provided continued motivation to pressure for change. Hence, crucial for any explanation of what pushed democratisation and hence structural change, forward was that human rights organisations tried to hold Suharto accountable and judged him according to his authenticity. In order to prove that Suharto's actions followed a logic of consequentiality, their strategies now aimed precisely at increasing "audience costs," and challenging the new boundaries in order to test the Suharto regime's sincerity.

In liberal states, a host of new solidarity groups and human rights organisations sprang up, which supported the East Timor cause and human rights in Indonesia in general. European, North American and even the Japanese governments now faced vehement domestic pressures to be more outspoken on human rights issues toward the Indonesian government. In the US, the East Timor Action Network (ETAN) was founded shortly after the Dili massacre and quickly developed its own grassroots network in the US. It mainly focused on limiting US arms sales to Indonesia, lobbying US Congress members and their staffs, and trying to coordinate legislative strategies with other religious and human rights groups in the US in order to bring pressure on the Indonesian government. In Germany, Watch Indonesia!, a human rights NGO based in Berlin, was established in 1991 which tried to influence the policy of the German Bundesregierung. Like ETAN, Watch Indonesia! particularly aimed to link human rights to the issue of weapon exports and linked up with German peace and anti-military NGOs to give its demands more leverage.²¹³ In Japan, a Japan NGO Network on

²¹² Infight (1992: 20f.)

²¹³ East Timor Action Network (2000); Watch Indonesia! (2000)

Indonesia (JANNI) was established, which petitioned the Japanese government and tried to change its policies.

The broadening of the Indonesia-East Timor network multiplied the channels of influence through which the Indonesian government was challenged on its human rights policy in East Timor and in Indonesia. Thus, the resolution by the UN Human Rights Commission was only one of many reactions of international actors which made the Indonesian government understand that its human rights policies elicited the disapproval of a community of liberal states. Although these actions never came about automatically and had to be hard fought for by human rights organisations, they did not miss their target. In October 1992, the US Congress voted to cut off aid to Indonesia under its program for military education and training (IMET), because many solidarity groups in the US had made the training controversial due to the human rights violations the Indonesian military committed. A US Congressional Committee was even obliged to investigate whether members of the military who had been involved in the Dili shootings had received US training, testifying that the US government stood under constant moral pressure to justify its action to its own constituency.²¹⁴

On June 25, 1993, the US threatened to withdraw export benefits under the Generalised System of Preferences (GSP), if Indonesia made no progress on the protection of workers' rights. In the midst of the GSP-review, the Indonesian government made the counterproductive effort of banning the national congress of the independent labour union, SBSI, leading to increased US criticism.²¹⁵ SBSI had been founded in Medan in 1990 and was headed by Muchtar Pakpahan, who had by then become a popular government critic.

The establishment of the national Commission on Human Rights

One of the most far-reaching concessions of the Indonesian government in the area of human rights was the establishment of a National Commission on Human Rights (Komnas-HAM) in 1993. It marked the institutionalisation of human rights on the state level. The decision had been preceded by several international events. The Lawyers Committee for Human Rights had issued a report in February 1993 dealing with torture and the right to redress in Indonesia. The report essentially argued that torture was a standard procedure and that its elimination would require a change of political regime.²¹⁶ In March the same year, the UN Human Rights Commission had issued a resolution that – for the first time – was supported by the United

²¹⁴ US General Accounting Office (1992)

²¹⁵ Human Rights Watch (1994: 168)

²¹⁶ Lawyers Committee for Human Rights (1993)

States.²¹⁷ Finally, the announcement of the establishment of the national human rights commission came just one week before the World Conference on Human Rights was scheduled in Vienna in June 1993.

The National Commission on Human Rights began operating in January 1994. The creation of the commission was based on Presidential Decree No. 50, Year 1993. It comprises 25 commissioners with a staff limited to one dozen. The first commissioners were appointed by President Suharto in December 1993. It is mainly government funded. On 24 January 1996, a branch office of the Komnas-HAM was inaugurated in Dili, East Timor. Although many human rights activists in Indonesia and international human rights groups believed that the commission had been mainly instituted to silence international criticism, they were willing to give it the benefit of the doubt. Only one member of an Indonesian NGO joined the commission upon request, Asmara Nababan of INFID. In the end, nobody expected Komnas-HAM to be more than a "window-dressing" device for the Indonesian government. Human rights organisations criticised that it was "extraordinary weak" and lacked clearly defined powers as well as a legal basis. They questioned whether "Komnas has or can develop the capacity to challenge authority in Indonesia and survive."²¹⁸

Yet, despite of its dependency on the whim of the President, Komnas-HAM was able to gain some credibility and provides evidence that an institution set up for strategic-instrumental reasons can develop a life of its own. Komnas-HAM's stance toward the government was surprisingly critical. This was partly because of the commitment of individual Commission members, but most importantly because of pressure from domestic NGOs. In individual cases of human rights violations, it often adopted positions which diverged from or partially contradicted official government interpretations.²¹⁹ For example, in the murder of a famous labour leader called Marsinah, Komnas-HAM contradicted the official government version which denied that Marsinah had been taken into custody by military members and alleged the involvement of the military in the murder.

Backed by the demands of domestic NGOs, Komnas-HAM recommended revocation of the Anti-Subversion Law and ratification of the Convention against Torture, which the Indonesian Government had signed in 1985. Komnas-HAM's activities were regularly featured by domestic and international newspapers and served as an important arbitration

²¹⁷ UN Human Right Commission Resolution 1993/97, 11 March 1993, adopted by a roll-call vote of 22 to 12, with 15 abstentions (E/CN.4/1993/122); Schwarz (1994: 223)

²¹⁸ Human Rights Watch/Asia (1994: 126)

²¹⁹ Bertrand (1997: 448); Human Rights Watch (1997: 129-134)

mechanism which was immune from governmental attempts to portray human rights concerns as partisanship for enemies of the New Order.²²⁰

Although Komnas-HAM developed a positive track record with regard to human rights issues in Indonesia and did so mainly by taking seriously the criticism of the Suharto regime's critics, President Suharto did not resort to such a drastic measure as closing down Komnas-HAM's office. This would have been a rational strategy and, in fact, was widely expected to happen when Komnas-HAM published the first results of its investigations in the Marsinah case. One could argue that the approach of Komnas-HAM had always been to "discuss human rights violations without turning the government's face red", and that the commission hence did not threaten authoritarian rule in Indonesia. Moreover, in cases where findings were critical of the government or disagreed with the government's perspective, it received "thinly veiled government rebukes and warnings" or the government "tended to ignore" recommendations.²²¹

This would imply that the Suharto government acted in a strategic-instrumental mode and calculated that it could gain much from the existence of Komnas-HAM in terms of its international prestige, but did not lose much because it just ignored the commission's findings. Komnas-HAM, in this line of thinking, was only an instrument of the government to increase or maintain its power. This interpretation neglects, however, that Komnas-HAM was regarded as playing an important role in political developments in Indonesia. It was widely argued that the creation of Komnas-HAM legitimised the human rights discourse in Indonesia. For example, a noted Indonesian human rights lawyer was reported as stating that the commission "has significantly contributed in increasing people's courage in reporting human rights violations."²²²

The commission became a point of reference for foreign countries as well as NGOs, which enhanced its otherwise delicate domestic standing.²²³ It is not overstated to argue that Komnas-HAM became part of the human rights network.²²⁴ Hence, although the Suharto government's reasoning might have been strategic-instrumental, its strategy in the end did not pay off because Komnas-HAM, through the commitment of individual commission members as well as the protection of international actors, developed a life of its own. In fact, it had to develop an independent stance in order to lend credibility to the Indonesian government's

²²⁰ Richburg (1998); AFP (1996)

²²¹ US Department of State (1997: Sec. 4)

²²² Eldridge (1996: 304)

²²³ Jones (1996: 274)

²²⁴ Interview with Sidney Jones, Director of Asia Watch, New York, December March 1997.

claims that it wanted to improve the human rights situation, even if that was eventually costly to its international image. For example, one could argue that the diverging figures between the government and Komnas-HAM were just a kind of "number crunching." In the context of the Indonesian domestic human rights discourse, however, these figures assumed a crucial function for the credibility of Komnas-HAM on the one hand, and the Indonesian government on the other. In this context it comes to no surprise that Komnas-HAM's independence was celebrated most when its public position deviated markedly from the government's.

Given the common definition of the situation, namely that the Indonesian government faced a human rights problem, it became salient what the causes of these violations were. The transnational network's belief about the underlying causes had accorded the military-backed government primary responsibility. The reports of human rights organisations had articulated the network's position in every report issued. For them, the authoritarian nature of the Indonesian government, the military interference in the political sphere and the lack of rule of law were the root causes of human rights violations. The reports issued by individual organisations of the network had constructed this causal relationship since the 1970s. For example, the report of the Lawyer's Committee on Human Rights published in 1993 had claimed:

The power of state institutions in Indonesia devolves from the primary sources of state power, the president and the army. There is a constitution, but no constitutionalism. [...] The judiciary [...] is a minor player within the state bureaucracy. It does not function as an independent branch of government, but subservient to the executive and powerless before the military."²²⁵

Even if the Indonesian government had been able to rebuff the claims by challenging the factual assertions and arguing that the documented abuses were exaggerated or constituted only exceptions, it now had to adopt a position on the causes of human rights abuses, because the same claims were made by domestic NGOs, too.

It is in this context that the Indonesian government's argument that the Western concept of civil and political rights was not applicable to Asia in general and Indonesia in particular, gained importance. The Indonesian government had made this argument way back in the 1970s, but the debate between the Indonesian government and its critics had never reached a level where this claim had become part of the debate. The Indonesian government now started to argue that international standards of human rights were Western concepts which did not suit the Indonesian culture. It thereby tried to take advantage of an international debate about

²²⁵ Lawyers Committee for Human Rights (1993: 6)

the “clash of civilisations” and Asian values. This debate had reached its climax during the World Conference on Human Rights in Vienna, and Asian countries, especially China, Singapore and Malaysia were the main advocates of Asian values.²²⁶ The members of the Association of Southeast Asian Nations (ASEAN) even issued their own declaration on the human rights and duties of citizens in Southeast Asian states which were meant to pose a major challenge to the World Conference’s consensus on international human rights norms.²²⁷ This debate also fed into the discourse among the transnational network and the Indonesian government. Consistent with this claim, the Indonesian human rights commission which was established in 1993, was specifically designed to broaden the understanding of Indonesians toward human rights.

Yet, due to the increasing networking activities among Asian NGOs and because a regime transition was already underway in Indonesia, contrary to the academic discussion, these arguments were never regarded serious by human rights organisations. Because the Indonesian government had already acknowledged the human rights problem and was publicly perceived as not credible anymore, the Indonesian government’s defence was regarded a strategic device to deflect the criticism.

Thus, the government’s appraisal of the situation came under increasing pressure from domestic organisations in the civil society. Various newly-established NGOs assumed a highly critical attitude and used the network’s arguments to pry open space for their own political activities. They essentially adopted the transnational network’s action frame. For example, the domestic network “Indonesian NGOs for Democracy (in-DEMO)” published its own “country report” on Indonesia in 1993, castigating the Indonesian state for human rights abuses. The report stated that it was “precisely this domination and action by the state to maintain the status quo which are at the root of human rights abuses in this country” and went on to criticise the state’s strategy of suppressing “any form of opposition, whatever its form or strength, a strategy which has led to the widespread abuses of human rights and suppression of democracy.” In-DEMO acknowledged that the constitution laid down specific human rights norms but held that these norms lacked “implementation for their law enforcement.” Correspondence went as far as identical examples which were cited for human rights violations. These included the student movement in the 1970s, the mysterious killings, the Tanjung Priok incident and the Dili Massacre.²²⁸

²²⁶ For a selection of contributions to the so-called Asian values debate see Ng (1997); Kausikan (1997); Kausikan (1994) and Chan (1997).

²²⁷ Association of Southeast Asian Nations (1993)

²²⁸ Indonesian NGOs for Democracy (In-Demo) (1993: 2-8). In 1995, an Asian human rights organisation

These claims posed a major challenge to the constitutive norms of the Indonesian political system and the rules of appropriateness in the domestic public debate, such as the dual function of the military, the Suharto family's business interests, and various other authoritarian means to control dissent and opposition. The transnational human rights network, through its critique of dictatorship, had helped to institutionalise informal rules of public democratic discourse. These rules, firstly, provided a constraint on governmental action against the opposition, and increased the audience costs for the Indonesian government. The latter had to provide evidence that it really wanted to eliminate human rights violations and that the network's allegations were not true. This legitimacy challenge not only split major political institutions, such as Golkar and the military, but translated into visible changes in governmental attitude toward political opposition in Indonesia and hence shifted the overall balance of power to the advantage of civil society. For example, the government did not apply the Anti-Subversion Law to its domestic critics between 1992-96, and hence waived one of its most intimidating legal weapons.²²⁹

To the surprise of the domestic political opposition, and indicative of the broadening of the public sphere, the Indonesian government tolerated (though did not officially acknowledge) the formation of new political parties, such as the United Democratic Party of Indonesia (PUDI),²³⁰ in May 1995, which was chaired by Sri Bintang Pamungkas, and the Peoples Democratic Party (PRD),²³¹ in June 1996, both of which assumed a critical attitude towards the government. Both political parties placed emphasis on human rights issues and provided a corrective to the officially acknowledged parties, which until then had not been very outspoken on human rights issues.²³² In 1994 an independent alliance of journalists was founded. Finally, activists created an independent election monitoring organisation, KIPP, in order to observe the 1995 parliamentary elections. In the judiciary, despite executive intervention in its decisions, there was a trend towards more independence and an increase in prosecutions sought against human rights perpetrators.²³³

published a report on the Indonesian human rights practice whose claims were almost identical to the one of international NGOs like Amnesty International and Human Rights Watch. It, too, argued that the Suharto regime was an authoritarian regime backed by excessive military intervention into political affairs.

²²⁹ The government resorted to a provision forbidding the spreading of hatred (*Haatzaai Artikelen*), instead. Yet, the restraint is significant, given that the Anti-Subversion Law had been routinely applied since the late 1960s. See Yayasan Lembaga Bantuan Hukum di Indonesia (1995).

²³⁰ Partai Uni Demokrasi Indonesia: PUDI

²³¹ Partai Rakyat Demokrasi: PRD. In the case of the PRD the office of LBH served as the location in which the party was officially established.

²³² For example, the PUDI party statute explicitly expressed the party's commitment to human rights and democracy and the promotion of the rule of law. See Partai Uni Demokrasi Indonesia (1996: Bab II, Pasal-4, 9)

²³³ Human Rights Watch (1997: 164); Bouchier (1992)

Yet, the very arbitrariness and contradictions in the Suharto regime's approach further consolidated the understanding that the durability of these measures remained in question. The revocation of publishing licenses for three outspoken Indonesian magazines (*DeTIK*, *Monitor* and *Tempo*) by Indonesian information minister Harmoko in 1994, the violent suppression of student demonstrations in the Indonesian cities of Bandung, Medan and Yogyakarta, as well as the arbitrary detention of leading opposition figures such as Sri Bintang Pamungkas and labour leader Muchtar Pakpahan, were cases in point. Because there now occurred numerous violations of the Suharto regime's explicit "rules of appropriateness" in the domestic discourse and silent mechanisms of terror lost effectiveness in dealing with the opposition, the government and the military used increasingly violent means to deal with the ever-increasing domestic opposition. It could not even count on the loyalty of the judiciary in giving governmental action the appearance of legality. For example, in a rare demonstration of judicial independence, in 1995, an Indonesian Administrative Court declared Harmoko's action illegal.²³⁴

As the government seemed to be committed to regaining control over the political process, its line toward the opposition hardened in 1996. Following a crackdown on an expanding opposition which was rallying around Megawati Sukarnoputri, the head of the Partai Demokrasi Indonesia (PDI), on July 27, 1996, the government and the military returned to its uncompromising stance toward political opposition.²³⁵ In September 1997, the government banned all organisations affiliated with the People's Democratic Party (PRD) which was alleged to have masterminded riots which had followed the raid on the PDI office. A wave of disappearances of students affiliated with human rights and democracy organisations occurred in April 1998 and alerted the transnational network.²³⁶ In May 1998, large scale riots in Jakarta left around 1200 people dead and many female ethnic Chinese were raped. The government initially implicated fanatical Muslims and members of the traditional Muslim organisation, NU, in the riots.²³⁷ Thus, whilst the government and the military used these events to bolster their claim that democratisation would only unleash ethnic religious conflicts and lead to the disintegration of Indonesia, the human rights movement's appraisals of these events regularly implicated the military and traced these seemingly unconnected events to one single logic: Struggles of the status-quo oriented factions within the authoritarian ruling coalition to preserve their power and authoritarian rule. Human rights organisations and press

²³⁴ Bourchier (1999)

²³⁵ Human Rights Watch (1997: 164); Liddle and Mallarangeng (1997: 168f.); Bertrand (1997: 447f.)

²³⁶ SiaR (1998)

²³⁷ Eklöf (1998)

reports publicly alleged that the military special unit, Kopassus, which was headed by Suharto's son-in-law, Prabowo, was responsible for the raid on the PDI office, the disappearance of the students, and ultimately, the inciting of the riots in Jakarta. Although these allegations were initially denied by General Wiranto as Chief of the Army, emerging evidence subsequently implicated the military, and especially Kopassus.²³⁸ As a result, the status quo oriented factions in ABRI connected to Prabowo gradually lost power, while moderate factions gained in leverage. At that time, General Wiranto, Chief of ABRI, was regarded as belonging to the moderate camp.

In the opposition, prominent Muslim opposition figures such as Amien Rais and Abdurrahman Wahid became important critics of the Suharto regime and managed to attract quite some public attention. In particular, Amien Rais' popularity was obviously based on his consistent critique of the Suharto regime, and his defence of human rights and the rule of law. This contrasts significantly with the image of Megawati Sukarnoputri, who had been one major opposition focus in the 1993-96 period, but failed to take a supportive stance on central human rights issues such as East Timor. In sum, the firmly-established human rights discourse legitimated and virtually nurtured those actors who professed most consistently their adherence to human rights and the rule of law.

As with the Philippines, the extensive patronage network of the Suharto family became a subject in the public debate, as the political opposition tried to trace the impediments to democratic change. Corruption, collusion and nepotism (KKN) became the catch words in the public debate. The Asian financial crises that erupted at the end of 1997 had a trigger effect on these developments. Within a year, the crisis contributed to a rise in external debt from 64% to over 150% of Indonesia's GDP, the Indonesian currency (rupiah) saw significant devaluation. Negotiations with the IMF over rescheduling of foreign debt did not restore business confidence. In mid-January 1998, market analysts started to regard Suharto as the main obstacle preventing the Indonesian government from dealing effectively with the crisis and to restoring overall market confidence in the Indonesian economy.²³⁹ The sudden jump in external financial dependency certainly increased international leverage on decisions of the Indonesian government. But the economic crisis itself does not explain why Indonesia was hit so hard in terms of the political repercussions the economic crisis had. Crucial for any explanation are the persistent doubts about President Suharto's willingness to initiate serious

²³⁸ Interestingly, there were rumours that Prabowo was behind the riots in Jakarta, but that he had wanted to use them as a means to weaken Wiranto in the power struggle among reformists and hard-liners in ABRI. See Eklöf (1998: 189f.)

²³⁹ Eklöf (1998: Chapter 5)

reforms. Because Suharto's international reputation had been effectively questioned by transnational networks, the financial crisis gained a different meaning than, let's say, in Thailand and South Korea, but also in the Philippines. Consequently, in these three countries the crisis did not have such serious political repercussions.

In this situation of growing political unrest, and an immense economic crisis, the "rubber stamp" appointment in March 1998 of Suharto as president for another five years proved to be the final trigger that intensified a wave of student demonstrations which spread around Indonesia. Protests escalated and involved more and more supporters of all social strata. Violent riots in Jakarta on May 13 and 15 left an estimated 500 dead and escalated demands, backed by the US, for Suharto to resign. Pressure from the great powers only provided the last and belated push that made Suharto resign. On the eve of May 21, 1998, he finally resigned and named Baharuddin Jusuf Habibie, his vice president, as his successor.

In sum, as with the Philippines in the mid 1980s, there were observable changes in the Indonesian government's behaviour toward allegations of human rights violations which can be traced to the activities of human rights networks. These doubts had been fuelled by transnational human rights networks. They had nourished a deep-seated crisis of legitimacy and had managed to transform to an unprecedented extent the picture of the country from one of political stability coupled with economic expertise and steady growth rates, to one of lack of public accountability, systematic human rights violations and corruption.

Phase 4: Prescriptive status

Human rights norms gained prescriptive status almost immediately with the change of political regimes in the Philippines in 1986 and in Indonesia in 1998. Human rights were officially acknowledged by the state. Significant progress in the implementation of human rights norms in the domestic structure was thus only accomplished with democratic regime change. The Aquino Administration revealed a consistent rhetorical attitude toward international human rights norms from 1986-87 and her Administration quickly institutionalised the prescriptions domestically by signing and ratifying the respective international human rights instruments and issuing appropriate laws. The President established an individual complaints procedure for human rights abuses almost immediately after coming to power and ensured that NGOs gained direct access to the decision-making process. Yet, human rights violations were on the rise again after 1987, as the Aquino Administration was unable to control the military. It took another international human rights campaign by the transnational network in the early 1990s, which set clear constraints on the action repertoire of the Philippine military and the NPA and strengthened the rule of law. In

terms of the spiral model, this ensured further progress and eventually a slow movement toward rule-consistent behaviour. For the Philippines, the end of phase four can be set around 1992.

Similar to the Philippines, the Indonesian government has undertaken important steps, which point to the prescriptive status of the norm since the change of power from Suharto to Habibie. An individual complaints procedure, Komnas-HAM, had been established since 1993, but its mandate was subsequently expanded after regime change. Some of the most repressive laws had been revoked, the Government envisioned the ratification of the ICCPR and the ICESCR in a National Action Plan on Human Rights. The Indonesian parliament ratified the Anti-Torture Convention in 1999. Although the Habibie government and the new government under Abdurrahman Wahid revealed an overall consistent rhetorical pattern toward human rights norms, human rights violations do continue. Unlike under the Suharto regime, human rights violations are no longer officially authorised. In the domestic discourse these violations are interpreted as a conscious strategy of an independent military and paramilitary forces to destabilise the democratically elected government and ensure a continued political role for the military in politics. Yet, despite these serious shadows of doubts concerning the implementation of human rights, important political developments reveal that the human rights discourse exerts a strong moral power enabling and legitimating action against recalcitrant military elements, which would have been unimaginable without strong normative pressures.

The Philippines 1986-1991: Reaching consensus on human rights norms

After the inauguration of Corazon Aquino, almost instantaneously, human rights gained prescriptive status. Corazon Aquino integrated several respected human rights activists into her Administration or administrative bodies and thus publicly demonstrated a willingness to improve the human rights situation. Most importantly, Jose Diokno, founding father of FLAG, became the chairman of the Presidential Commission on Human Rights which had been established as an individual complaints procedure in 1986. Rene Saguisag, a lawyer active in the human rights organisation MABINI, became her Secretary of State. Due to the commitment of these individuals, for the Aquino Cabinet, the ratification of international human rights instruments became so taken-for-granted that it no longer generated an internal debate. As Rene Saguisag remembered: "We tried to carry out all commitments. Otherwise,

we would have lost our credibility. (...) I think that it did not even lead into a debate because we were all so philosophically committed to supporting any human rights initiatives."²⁴⁰

An Interims Freedom Constitution guaranteed all civil and political rights, but also extraordinary Presidential powers to Corazon Aquino. The president not only had executive, but also legislative power. Within a year, the Freedom Constitution was ratified by a popular plebiscite.²⁴¹ Within three years, the Aquino Administration ratified the International Covenant on Civil and Political Rights (1986) the First Optional Protocol (1989), and the International Convention against Torture and Other Inhuman or Degrading Treatment.²⁴² In 1987, the government created an independent agency, which dealt with individual complaints of human rights violations, the Constitutional Commission on Human Rights (CHR). Human rights provisions were also incorporated into the domestic legal structure. Legal guarantees such as habeas corpus were restored and supported by a more independent judiciary. The new Constitution, ratified in a popular plebiscite on February 2, 1987, outlawed torture and all forms of secret and incommunicado detentions, protected citizens from random searches and seizures, provided for a permanent Commission on Human Rights, and called for the dismantling of private armies and paramilitary units.²⁴³

The convergence on human rights norms had thus almost immediately translated into concrete action toward their domestic legal implementation. Despite isolated incidences of abuses, the judgement of international human rights organisations of the human rights situation was unequivocal: They saw a profound improvement in the human rights record of the military. Serious abuses that had been characteristic of the armed forces during the final years of the Marcos Administration had become the rare exception.²⁴⁴ Amnesty International concluded that "(...) the Aquino Government's commitment to the protection of human rights and the establishment of legal safeguards [have] led to major improvements."²⁴⁵

The situation changed, however, in the beginning of 1987. A series of massacres committed by Philippine security forces, the most notorious one the so-called Mendiola Massacre in January 1987,²⁴⁶ the slow pace of badly needed reforms, especially land reforms, the

²⁴⁰ Interview with Rene Saguisag, Manila, 07 April 1996.

²⁴¹ Rüländ (1998: 50-67)

²⁴² United Nations Human Rights Committee (1995a)

²⁴³ Green (1989: 188f.); Rüländ (1998: 64)

²⁴⁴ Amnesty International (1988b: 3); Lawyers Committee for Human Rights (1988: x)

²⁴⁵ Amnesty International (1988b: 3)

²⁴⁶ On 22 January 1987, about 15,000 members of militant farmers' groups demonstrated against the Aquino Administration's failure to implement genuine agrarian reform. As the villagers moved toward Malacanang Palace and passed the Mendiola Bridge, soldiers shot at them and killed 17 demonstrators. 62 were wounded.

breakdown in peace negotiations and the launch of the counter-insurgency campaign by the Philippine military all contributed to a deterioration in the political consensus around the Philippine democratic system. The following escalation of violence contributed to gross violations of human rights between 1987 and 1991. In 1988, Amnesty International observed that "(...) a pattern of widespread human rights violations committed by the military and paramilitary groups" had re-emerged.²⁴⁷

The newly created human rights institutions appeared incapable of dealing with the new cases of human rights violations: Between 1987 to 1991, only four out of a hundred military personnel accused of human rights abuses were convicted.²⁴⁸ Although the Presidential Committee on Human Rights (PCHR) documented the human rights violations of the Marcos and the Aquino governments, it was unable to use the evidence to initiate prosecutions against members of the military. Due to its limited mandate, the PCHR could only recommend specific action, but did not have prosecution powers.²⁴⁹ A gap between *prescriptive status* and *rule consistent* behaviour emerged. The subsequent constitutional Commission on Human Rights initially earned itself a reputation of being principally an "an apologist for the government." The CHR (especially under its chairwoman Mary Concepcion Bautista) did not distance itself from human rights violations committed under the Aquino government. This became manifest in her repeated remarks that there were no human rights violations in the Philippines, because they were forbidden by national laws.²⁵⁰

The relative ease with which these changes in the human rights area were undertaken overlooks, however, the extent of political competition which dominated the Aquino Cabinet. Due to the RAM's participation in people power and the political polarisation which had prevailed during that time, the 'soft liners' in the military headed by Juan Ponce Enrile and Fidel Ramos had increased RAM's popularity among the Philippine population. The politicised military viewed the change of power from Marcos to Aquino basically as their accomplishment. They argued that the military had handed power to Aquino in some kind of power-sharing arrangement, which had made them partners in the military-civilian coalition.²⁵¹ The explicit support this faction had from the US military establishment further tended to raise their political power. US officials regarded the professional wing of the

²⁴⁷ Amnesty International (1988b: 3)

²⁴⁸ Human Rights Watch (1992: 445)

²⁴⁹ Clad (1987); Wurfel (1988: 317)

²⁵⁰ For a discussion of the limitations faced by the Philippine human rights institutions see Human Rights Forum (Manila), Vol IV, No.1, 1st Semi-Annual 1994.

²⁵¹ Aquino (1988: 204), see also Beltran (1986)

Philippine military as necessary to combat the NPA, which still controlled approximately 20-25 % of countries 40,000 villages and – as the NPA claimed – even controlled some larger cities. By mid-1986, the NPA leadership claimed to have 23,000 armed regulars under its command.²⁵²

The perceived need to combat the NPA and the popularity that the 'soft liners' in the military had, in good part, neutralised the moral constraints which the shaming campaigns of the transnational human rights network had put on the military as an institution and on its behaviour prior to February 1986. The military was integrated into the Cabinet and retained important political functions. It remained extremely sceptical toward Cory Aquino's attempts at reconciliation with the National Democratic Front (NDF), and the NPA. Enrile openly criticised Aquino's approach of holding peace talks with the NDF, which had started in August 1986, as too soft and urged her to be more decisive in crushing the Communist underground movement. The military argued that the NDF would use peace negotiations only to reorganise and gain strength, and in the long-term to overthrow the newly installed government. However, the military, renamed the New Armed Forces of the Philippines (NAFP), was not united. It was split between those who had followed the revolution and those who had remained loyal to Marcos, and also between those within the influential RAM movement who were loyal to Enrile and those who supported Ramos.

For their part, the radical, but also parts of the moderate, Left forces remained sceptical toward Aquino, too, as they had hoped to gain a little bit more from the people power revolution and the "parliament of the streets" than just a restoration of the pre-martial law political democracy. They demanded more grassroots participation and an institutionalisation of the parliament of the street.²⁵³ They considered the people power revolution an "unfinished revolution", but were particularly angered with the extent of military influence in the Cabinet. The military impeded, in their view, the dismantling of Marcos' repressive machinery and the prosecution of human rights violations committed by the military under Marcos. While this criticism did not threaten the new democratic polity as such, the mutual distrust which held sway among Left-oriented and Right-oriented Cabinet members paralysed the political decision-making process and contributed to a general disaffection with the political system.

In July 1986, Cory Aquino faced the first coup attempt by Marcos loyalists, which was quickly defeated by Ramos and Enrile. In January 1987, peace negotiations between the government and the NDF broke down and both sides accused each other of insincerity. When

²⁵² Timberman (1987: 253)

²⁵³ Lane (1990)

security units killed unarmed peasants during a demonstration for comprehensive land reform in February 1987, the political situation escalated. The NPA officially took up its armed struggle in the countryside and continued its fight against the "US-Aquino dictatorship." The military felt that its worst concerns had been confirmed and enhanced counter-insurgency efforts. The subsequent political polarisation increased political instability and led to six coup attempts by disenchanted military hard liners against Aquino within 18 months. Paramilitary units, so called vigilantes, organised. While these groups apparently organised primarily for self-defence reasons and were unarmed, they quickly developed into fully equipped paramilitary units, which became notorious for their human rights violations. The military and the Left accused each other of destroying the democratic system and each claimed to struggle for human rights. The Catholic Bishops Conference in a pastoral letter eventually urged parties not to use human rights in order to manipulate the political process. Human rights initiatives got stuck in the political process and further ignited accusations that the Aquino Administration was not serious on human rights. The ratification of the ICCPR by the Philippine Congress was delayed for more than one and a half years.

Human rights violations would have surely not gained these proportions under the Aquino Administration had the transnational network been able to provide a moral constraint on military and paramilitary abuses and been able to hold other actors accountable to human rights, as well. Yet, the strong international legitimacy of the Aquino Administration and its credibility in the area of human rights actually stopped the mobilisation of the transnational network and led to the defection and deactivation of some of its parts. As Legaspi notes:

"The Aquino Mystique took its toll particularly on anti-Marcos lawyers groups such as the New York-based Filipino Lawyers Committee on Human Rights. With some members recruited into the new government and many others convinced of Aquino's pro-human rights stance, the lawyers committee and other groups which came together around a strictly anti-Marcos agenda were deactivated."²⁵⁴

The undisputed credibility of Corazon Aquino and her Administration's continual efforts to institutionalise mechanisms for the protection of human rights provided a profound challenge to the principled transnational network. The frame which the transnational network had employed under Marcos did not work in the case of the Aquino Administration. Under Marcos, human rights violations had clearly been those acts of repression committed against alleged or real political dissenters. The perpetrators were the representatives of a monolithic oppressive machinery, led by a dictator. The context of human rights violations was clearly

²⁵⁴ Legaspi (1993: 95); Angeles (1994: 51)

political. Torture, warrant-less arrests, disappearances etc. could be traced back to an explicit and systematic government policy with the goal of perpetuating Marcos' power. "This context facilitated a tacit consensus as to what human rights violations were and who the perpetrators and the victims were, whatever the conceptual and philosophical differences among human rights advocates might have been."²⁵⁵

Under Aquino, this interpretation became increasingly contested. For the radical Left, Aquino, due to her family background, represented the Philippine oligarchic system and American neo-colonialism, hence a mere continuation of Marcos' oligarchic rule. They continued to regard human rights violations as acts predominantly committed by state agents and thus a logical outcome of political repressive practices. For human rights advocates sympathetic to the goals of people power, things were more complex. On the one hand, they appreciated the visible improvements in formal political institutions such as the release of political prisoners, the restoration of formal democratic institutions such as freedom of press, and the establishment of a Presidential Committee for Human Rights. On the other hand, human rights violations continued, especially in the countryside, which they blamed on the legacy of the Marcos regime and its repressive machinery which was largely intact.

These diverging perspectives precipitated different strategies to deal with human rights violations. Unconditional campaigning against Aquino, suggested by the radical Left, was at odds with the option of unconditional support for her. Support was needed because the alternative, a military take-over, was worse. Given this dilemma, action was primarily dominated by strategic action. Aquino was supported just for the fact that the alternative was worse. "Cory's popularity shielded her from culpability with most opinion-makers blaming the military and excusing the president. The coup attempts and endless threats by various factions of the AFP threw the sympathy of many behind Cory."²⁵⁶

As the domestic human rights movement was split in its assessment of the Aquino Administration, the transnational network was unable to make clear proposals which would end human rights violations. The clear strategy of polarisation which had proved so effective under the Marcos regime did not work. The transnational network was unable to provide conclusive evidence that the human rights violations constituted *deliberate* government policy. Such a strategy was effectively prevented by the fact that Aquino was popular and a perception that independent paramilitary units, rather than a monolithic state security

²⁵⁵ Bakker (1994: 76)

²⁵⁶ Lim (1993: 82)

apparatus, were the main perpetrators, in other words, that the military as institution was not involved.²⁵⁷

Inherent network properties on the domestic level additionally weakened the domestic network. The end of dictatorship publicly laid open the extent to which the CPP had subverted local human rights organisations in the countryside. Although there had been indications of connections between human rights organisations and the radical Left during the Marcos regime (see above), these connections were not publicised and were regarded as uncontroversial, as the radical Left enjoyed some popularity due to its consistent opposition to Marcos. Democratic regime change changed this perception. Because the CPP's struggle against the new regime was not regarded as justified, the overlap among the CPP and domestic human rights groups suddenly became problematical. It provided an ideal target for the military, which used this evidence to discredit the whole human rights movement. This placed a heavy burden of proof on those human rights organisations which were committed to improving the human rights situation. As Fides M. Lim summarised: "[A]most every human rights groups stood on the need to consistently uphold the basic rights of individuals accused of any wrongdoing to due process and to condemn torture and all other forms of cruel punishment committed by either government or opposition groups."²⁵⁸ The human rights situation deteriorated remarkably, and activists became a legitimate target within the counter-insurgency campaign, legitimated by the military's allegation that they were communists.²⁵⁹

Network action remained paralysed for about one and a half years after President Aquino's coming to power. Efforts to mobilise an international audience anew started around 1989-90. These activities were accompanied by a public debate over the network's collective action frame. It basically pitted proponents of the radical Left, which had constituted a large constituency of the Philippine human rights movement against those who argued for the application of a basically liberal human rights concept. This debate eventually led to the split of the domestic human rights movement, and enabled the liberal faction to emerge as a credible actor in the domestic power play between Aquino and the military. Based on this framework, new Philippine solidarity organisations joined the established transnational network and expanded their international network.²⁶⁰

²⁵⁷ Bakker (1994: 77)

²⁵⁸ Lim (1993: 81)

²⁵⁹ Amnesty International (1992: 23)

²⁶⁰ Nemenzo (1995: 122). Philippine groups, with the help of international donor agencies, established various offices in Europe and in the USA for the promotion of human rights. In Brussels, the Philippine International Center for Human Rights was set up to lobby the European Community, and the National Council of Churches sent Alvaro Senturias as representative to the UN Commission on Human Rights in Geneva. In New York a UN

Between 1986 and 1992 international human rights organisations conducted 25 fact-finding missions in the Philippines. Amnesty International and the Lawyer's Committee on Human Rights published a substantial number of reports, which criticised the human rights violations of paramilitary groups and the impunity of human rights perpetrators in general.²⁶¹ This campaign resulted in a series of human rights reports by national and international human rights organisations and was based on a renewed understanding of the definition of the situation: The State had to be made accountable for human rights violations, be they deliberate or due to omission. Rather than focusing on Corazon Aquino as guardian of the new democratic system, international NGOs such as the Lawyers Committee on Human Rights (LCHR) and Amnesty International, applied a two-tiered strategy in which they denounced human rights violations of governmental security forces, paramilitary units and the NPA alike,²⁶² and strictly argued for the validity of human rights norms. This enabled the transnational network to retain an impartial stance toward political developments in the Philippines and increased its moral weight.

The network documented a vast number of human rights abuses victimising ordinary peasants, church workers, human rights activists, and labour activists. It provided evidence that the NAFP was implicated in setting up, training and equipping with weapons the paramilitary units. Individual reports, such as the one by US General Ramsey Clark, even implicated the US Central Intelligence Agency (CIA) in conducting a low intensity conflict in the Philippines and thereby contributing to political instability.²⁶³ Yet, the network also documented abuses by the NPA, which were not human rights violations according to international usage, but constituted violations of the rules of war and hence the Geneva Conventions. With this strategy, the network not only contrasted the military's strategic use of human rights and democracy in their battle against the Communists, but – for the first time – held Communist organisations accountable for their human rights commitment, which they had professed during the anti-dictatorship struggle. They finally held the State accountable for

Task Force was created to lobby the U.N. Commission. In the Philippines, in 1987, an amalgamation of over 100 NGOs decided to found a network and established the Philippine Alliance of Human Rights Advocates (PAHRA) as umbrella organisation, which submitted yearly reports about the human rights situation to the UN Commission on Human Rights. This information activated UN mechanisms and ensured that the Philippine government remained under constant need to justify the continuing human rights violations. The Philippines submitted its first state report on the implementation of human rights norms in the domestic legal structure, in April 1989, according to the obligations of the ICCPR.

²⁶¹ Amnesty International published three reports in 1988 and one in 1992. The Lawyers Committee for Human Rights published reports in 1988, 1990, and 1991. Thus, especially for the post-transition period, the activity of human rights organisations has been high.

²⁶² In 1990, Human Rights Watch/Asia even issued a separate report dealing with abuses committed by the NPA and the military. See Human Rights Watch (1990b)

²⁶³ Philippine Alliance of Human Rights Advocates (1987)

ensuring human rights, and thereby targeted Aquino, because it had created the vigilantes in the first place, and because it did not bring sanctions against abuses committed by members of the paramilitaries.²⁶⁴

Through this strategy, the network reversed the deadly argument of status-quo oriented forces which had claimed that the newly established democratic system was so fragile that preserving the system was an end in itself, justifying any means to protect it against attacks. In particular, the Reagan Administration had continually justified its toleration of human rights abuses by pointing out the complexity and fragility of the democratic transition. Transnational human rights networks promoted the idea that paramilitary forces, counter-insurgency campaigns, but also unqualified support for Aquino, all contributed to the deterioration of the democratic consensus. It was this idea which finally prompted an international mobilisation of other state governments, provided a collective action frame and reduced uncertainty, given the quickly changing political alliances in the post-dictatorship period of 1986-92. Contrary to her first enthusiastic welcome immediately after the change of power, during her second visit in the US and in Europe, Cory Aquino faced vehement criticism and demonstrations. In 1988, the country report of the US Department of State for the Philippines for the first time since the change of power officially acknowledged that the human rights situation was deteriorating. Individual Congress members began criticising US support for paramilitary groups in the Philippines.²⁶⁵ During her visit to Germany in 1989, Aquino was greeted by protests. On presenting its first state report on the implementation of the ICCPR, the Philippine delegation faced tough questions from the UN Human Rights Committee members who had been prepared and provided with information by the transnational network about continuing human rights violations. They pointed directly to the great gap between the incorporation of human rights norms into the legal system and actual practice.

Due to its principled stance and consequent condemnation of abuses, the human rights network emerged more and more as the sole arbiter of truth in the human rights area. This judgement is supported by Fides M. Lim's observation: "The human rights movement has

²⁶⁴ As the report of the Lawyers Committee for Human Rights (1988: xvii) notes: "In short, the Philippine government has in many cases been unwilling or unable to hold vigilante forces legally accountable for grave abuses. It may well be the case that armed citizens groups employed on a wide scale to aid the government's counterinsurgency efforts – at least those that fall outside the regular military command structure – simply cannot be adequately controlled. Certainly, the record of abuse examined in this report is sobering testimony to the propensity of such groups for lawless violence. That record demonstrates that the Philippine nation has paid a heavy price for the military's experiment with vigilantism. Accordingly, the Lawyers Committee calls upon the Philippine military to end its support for so-called vigilante forces, and urges the Aquino government to adopt vigorous efforts to bring to an end the era of armed vigilantism."

²⁶⁵ Green (1989)

become a player in national politics because it now stands on its own right as an entity sought by media and government on human rights problems and issues of civil and political rights."²⁶⁶

This genuine consensus on the validity of human rights norms was a pre-condition for a further movement toward rule-consistent behaviour. The clear position of the transnational network on the nature of human rights violations in the Philippines increased its effectiveness and contributed to a continued decrease of human rights violations from 1991. Constant lobbying of the United Nations Commission on Human Rights and the US Congress changed their perception that Corazon Aquino was the guarantor of stability and human rights improvement.

Indonesia after regime change

After the change of power, international human rights organisations immediately demanded several measures which the international community would be looking for to improve the human rights situation in the long run. Human Rights Watch/Asia requested the new Indonesian government to free all political prisoners, such as Sri Bintang Pamungkas, Budiman Soedjadmiko, Muchtar Pakpahan, and Xanana Gusmao. It demanded concrete moves toward the repeal of laws and regulations that curbed dissent and prevented the formation of political parties, a timetable for a fair election, the initiation of a dialogue with the people of East Timor on reform and human rights protection, and Indonesia's signing and ratification of major international human rights treaties. Finally, it suggested the establishment of a high-level civilian/military commission to review the "dual-function" of the Indonesian military.²⁶⁷

One week after Suharto's resignation Habibie and the new Justice Minister Muladi declared that the government would free selected political prisoners such as Sri Bintang Pamungkas and Muchtar Pakpahan. On June 25, 1998, the government announced a National Action Plan on Human Rights providing a five-year schedule for the ratification of major human rights instruments, such as the Anti-Torture Convention and the International Covenant on Civil and Political Rights. Thus, Habibie set out to implement crucial demands of the transnational network. As if to confirm the argument that is being made here, President Habibie, upon the publication of the plan, stressed the legitimacy of international norms in a community of states:

²⁶⁶ Lim (1993: 92)

²⁶⁷ Human Rights Watch (1998)

"As a member of the international community in the United Nations we have to *respect and abide by* the human rights norms, recognised by the international community. This will constitute a concrete contribution to our common endeavour to bring about a new international order predicated upon justice, social welfare and equality. It is in this regard that the Government of the Republic of Indonesia has decided to accelerate the ratification of and accession to various United Nations human rights instruments."²⁶⁸

Compared to the Philippines, international and national mobilisation did not decline after the change of power from Suharto to Habibie. It is likely that this lack of credibility and domestic popularity actually explains the speed and the extent of reforms the Habibie government undertook. The framework which human rights organisations had successfully applied over the last decades still worked after regime change. Habibie's résumé did not necessarily identify him as a committed democrat. Western media emphasised that he had experienced a functioning parliamentary system in Germany. However, on a domestic level, opposition forces continually questioned his commitment to democratic reforms. For them, Habibie represented the old Suharto system, as Suharto had been his long-time protégé since the early 1970s. The military disliked him, too, because his ambitious technology projects had provoked distributional conflicts with the military over the state budget in the 1980s.

Under his government, in June 1999, Indonesia saw the first free parliamentary elections since 1955 and formally ended the democratic transition phase. Habibie restored press freedom by revoking some of the most repressive laws pertaining to the press. He took advantage of the window of opportunity which had opened due to the reform process and signalled his government's willingness to hold a referendum on the status of East Timor. The domestic institutionalisation of human rights norms into the legal structure continued in 1999. In July 1999, the Indonesian House of Representatives amended the Judiciary Law of 1970 as part of the government's campaign of legal reform. This law places all judicial courts under the supervision of the Supreme Court. Under the new law, criminal cases involving civilians and military personnel will be heard by a civil court.²⁶⁹

The criticism which Habibie's policies provoked indicate that it was distrust in President Habibie's commitment to human rights which provided a crucial reform drive. Habibie had to live up to his repeated promises of democratic and human rights reform, if his new

²⁶⁸ Address by President B.J. Habibie of the Republic of Indonesia at the official launching of the Indonesian national action plan on human rights at the state palace, Jakarta, 25 June 1998; author's emphasis.

²⁶⁹ "House amends judiciary law as part of legal reform drive", in: Jakarta Post, 31.07.1999.

government wanted to gain credibility. Over time, at least in the eyes of an international public, Habibie's personal credibility seemed to increase.²⁷⁰

Domestically, however, his authenticity as a speaker remained in question. Human rights organisations, student groups and political parties maintained their critical attitude towards Habibie and openly criticised governmental attempts, for example, to restrict their freedom of expression as well as the security forces' severe maltreatment of demonstrators and ethnic Chinese. They successfully protested against new legislation which would have placed limits on the size and scope of demonstrations and argued that it contradicted repeated claims by Habibie that he wanted to introduce greater democratic freedom and human rights.²⁷¹ Their scepticism finally seemed to be confirmed when tapes of phone calls between Habibie and the then Attorney General Andi Ghalib emerged in February 1999, in which Habibie apparently advised the Attorney General to obstruct investigations into the Suharto family's wealth.

Yet, the rise of democratic rule and the power vacuum which emerged, enticed an open struggle over power, which could not even be ameliorated through parliamentary elections. Parliamentary elections provided everyone with a measure of real power relations, but they did not resolve questions related to the future of Indonesia's political system. For example, the important question of ABRI's prospective role in the political system could not be resolved through elections, and ensured that actors had to rally support for their preferences and justify their actions. In these conflicts over collective preferences, the conflicts in the Molukkas, East Timor and Aceh assumed an important role. They provided a litmus test for the reform-oriented coalition among Indonesian democracy activists, East Timorese patriots and Islamic clergies.

In particular, the conflict in the Molukkas was widely seen as one indicating the disintegration of Indonesia and future ethnic-religious clashes. The term "Balkanisation" of Indonesia condensed this frame most accurately. However, domestic debates still reveal a high normative consensus about the need for a thorough implementation of human rights norms and a retreat of the military from politics. As I will demonstrate in the remaining sections, this collective understanding has enabled several decisions, which would be unthinkable only a decade ago. The conflict in the Moluccas, which erupted at the end of 1998, illustrates how transnational networks reinterpreted the frame "ethnic-religious conflict" symbolising a conflict between human rights norms and territorial integrity into one of military

²⁷⁰ see McBeth (1998)

²⁷¹ (Dow Jones Newswires, 29 September 1998)

accountability. They thus managed to maintain the public consensus over human rights norms and legitimated action against status quo oriented military factions.

The violent outbreaks in the Moluccas seemed to follow a common pattern: Driven by rumours that members of the Christian minority on the Moluccas had tortured and murdered Muslims, Muslims attacked Christians, destroyed churches and burned houses. According to official figures, 1500 people have so far died in this conflict. In the national and international press, this conflict was initially interpreted as an ethnic-religious conflict between the Christian majority and the Muslim minority population, but later interpreted largely as attacks of Muslims against Christians. For example, the International Herald Tribune titled in November 1998: "Muslim Mob burns Christian Churches" to characterise such an outbreak of violence.²⁷²

Interestingly, the Habibie government refused to resolve the conflict by military means, obviously because it feared that given the military's dismal human rights record, it would only deepen the conflict, and because it seemed to be concerned about the political repercussions. Military intervention would seem to signal that the military was still indispensable, justifying in turn its political role. Yet, these considerations initially worked to the detriment of human rights. In particular Muslim groups interpreted the hesitancy as a violation of their rights. Thus, when the appeals from the Habibie government that the warring factions should restrain themselves, yielded no results, public demands, especially by Muslim clerics, became louder, encouraging the direct intervention of Muslim organisations in the conflict. Fundamentalist Muslims called for a *jihad*, a holy war, against the Christian population in the Moluccas. The conflict simmered until after the election of Abdurrahman Wahid in October 1999.

In January 2000, the conflicts erupted again. In Jakarta, Muslim organisations protested almost daily against the suppression of Muslims in the Moluccas. These groups openly argued in human rights terms. The Indonesian Council of Ulamas (Masjid Ulama Indonesia: MUI), for example, called the murders "cruel and barbarian", and the General Secretary of the Jakarta branch of MUI stated: "There are concrete violations of human rights which constitute the persecution of Muslims." He supported demands for a holy war against Christians,²⁷³ fuelling international concerns that the democratisation process might eventually lead to an Islamic State. The new President Wahid and other members of MUI immediately rejected

²⁷² International Herald Tribune, 1 December 1998

²⁷³ Islamic Clerics Back Call for Maluku Holy War. Associated Press, 15 January 2000

these calls. For example, the acting chairman of the MUI, Amidhan, argued that the Council would not support a holy war as it damaged the nation.²⁷⁴

The debate changed considerably, chiefly due to the intervention of individual human rights organisations, such as Commission for Missing Persons and Victims of Violence (Kontras). Kontras members were among the first to visit the Moluccas at the end of 1998. They had gathered information proving, in their view, that military intelligence agents had provoked the violence. They reframed the ethnic-religious conflict into one proving that the military not only provoked the conflict, but helped to deepen it because it refused to take responsibility for ensuring public order. The military, according to this account, used the conflict to weaken the government, and justify its continued political role. This information was now disseminated to a broader transnational audience via news reports. Komnas-HAM organised its own fact-finding mission and confirmed the reports of Kontras.²⁷⁵ Initially, specific allegations were couched in terms such as "third parties were involved" or that the violence was directed from Jakarta. Over time, however, these claims became more substantial. They were interpreted as deliberate attempts of Kopassus forces headed by Prabowo to exploit tensions in order to legitimise anew the role of the military as a "stabilising force."

In the domestic debate, the interpretation of the Moluccas conflict fit nicely into the dominant debate on human rights and persuaded crucial domestic actors. For example, the Indonesian Communion of Churches (PGI), an organisation which must be regarded as representing the Christian minority in Indonesia, publicly stated that it believed the violence was inflamed by the military and police and that they must be held accountable.²⁷⁶ Hence, unlike in the 1970s when the authoritarian rulers managed to exploit religious divisions in order to maintain their power, this time the coalition among organisations of civil society against the military seemed to hold. Moreover, even international news reports now continually reported the involvement of parts of the military in violent outbreaks.

In January 2000, against the backdrop of rumours that the military would rebel against Indonesia's elected President Abdurrahman Wahid, Wahid himself adopted this interpretation. He argued: "We know there are evil hands which try to create chaos in the life in Maluku, create chaos in the life in Aceh ... Papua and are maybe also active in other regions."²⁷⁷ Wahid

²⁷⁴ Gus Dur vows to be tough on jihad issue in Maluku, Jakarta Post, 12 January 2000

²⁷⁵ Maluku Carnage blamed on inability to control military. Indonesian Observer, 14 January 2000; Komnas-HAM finds documents provoking Ambon clashes. Suara Merdeka, 12 January 2000, cited in BBC Worldwide Monitoring, 13 January 2000.

²⁷⁶ Treatment of Christians, power struggle fuel Maluku unrest: analysts, AFP, 16 January 2000

²⁷⁷ Indonesia's Wahid warns 'provocateurs' in Maluku patience is waning. AFP, 15 January 2000

himself now continually referred to the power motivation of the army and managed to enhance his own position in this power struggle.

The systematic evidence which human rights groups and other opposition groups had gathered together in conflicts such as East Timor and the Moluccas, thus enabled them to continually point to the involvement of military services in these violent outbreaks, and to portray the military's engagement as a deliberate attempt to maintain power. They essentially showed that the military was involved in creating the very instability it claimed justified its continued political role. As a consequence, in the national as well as international media, the military was now repeatedly depicted as an institution "ready to kill its own people" in order to gain power, but not as one acting to the benefit of the Indonesian nation. It is interesting to note here to what degree information about human rights abuses by the military could be used in an instrumental way to increase the power position of Abdurrahman Wahid. Norms exerted significant power in this power struggle, were used in an instrumental way, but ultimately legitimated only the actions of those who had previously exhibited a consistent attitude toward human rights.

Several decisions by the Wahid government reflect the interaction among international and domestic actors, especially state governments and non-governmental organisations. Reform-oriented actors and international actors frequently referred to each others' position in order to enhance the force of their demands and enable the implementation of several unpopular decisions. An example is the investigation of human rights abuses in East Timor in connection with the referendum on national independence conducted in August 1999. Human rights organisations and members of the United Nations Mission for East Timor (UNAMET) accused the military under General Wiranto of supporting pro-integration militias in East Timor by procuring weapons and, based on this information, demanded the establishment of an international tribunal. Various Indonesian NGOs and NGO networks, such as KontraS and the International NGO Forum on Indonesian Development (INFID) almost immediately backed the planned development.²⁷⁸ The status quo oriented military, however, initially resented such an international investigation.

The Indonesian government hoped to prevent the establishment of this commission, which it interpreted as damaging to its international image. More importantly, however, it feared that an international tribunal would provoke a nationalist backlash and give human rights violators

²⁷⁸ Munir/KontraS on Indonesia and an International Tribunal. Jakarta Post, 28 September 1999; International NGO Forum on Indonesian Development (INFID): INFID statement on State Violence in East Timor, 12th INFID Conference, Bali 14-17 September 1999.

the chance “to wrap their bodies in flags”.²⁷⁹ It argued that it was able to conduct its own investigation and announced the establishment of a national human rights court. Governmental activities subsequently focused on lobbying other state governments in order to prevent the establishment of the international tribunal by pointing to its good intentions. These activities immediately put the transnational network on alert, suspecting that the Government wanted to slow down the reform drive and exempt top military leaders from criminal prosecution. The network questioned the credibility of the government in pursuing badly needed reforms in the legal and human rights area.

Proponents of human rights continued to rationalise their actions and strengthen their own position by referring to the “shadow” of an international investigation. The Indonesian Foreign Minister Alwi Shihab, as well as human rights lawyer Lubis, stressed that they would try hard to prevent an international inquiry because it would damage Indonesia’s international image. However, they also argued that whether or not such an international tribunal was imposed ultimately depended on the credibility of the national commission. This view was also shared by newspaper editorials. For example, Indonesian political scientist Arbi Sanit stated that “(...) whether a military tribunal will be applied or not will also be determined by the trial process in here.”²⁸⁰

On September 27, 1999, the United Nations Commission on Human Rights adopted a resolution paving the way for the establishment of an international commission of inquiry to investigate human rights violations in East Timor.²⁸¹ Although the resolution stopped short of establishing an international tribunal comparable to the one on Yugoslavia and Rwanda, the decision symbolised a major diplomatic defeat for the Indonesian government.

Yet, although official statements demonstrated concern for the resolution’s impact on Indonesia’s international image, the decision did not provoke the much-feared “nationalist backlash”. Instead, important officials including President Wahid and Attorney General Marzuki Darusman took advantage of the dynamic and justified their own position and decisions against the military by international pressure. Shortly after the resolution, parliament issued Law No. 39/1999, foreseeing the establishment of a national court human rights court.

²⁷⁹ Indonesian Foreign Minister Alwin Shihab in a speech in the US, as reported by Reuters: Indonesia campaigns against UN Court for East Timor, 20 January 2000.

²⁸⁰ Team proposes foreign judges in Timor trial. Indonesian Observer, 26 January 2000

²⁸¹ The resolution was adopted by a roll-call vote and passed with 32 in favour and 12 opposed, with 6 Commission member States abstaining. United Nations, Press Release (HR/CN/99/70): Special Session of Commission on Human Rights Adopts Resolution on East Timor, 27 September 1999.

Marzuki Darusman, former head of Komnas-HAM, and Attorney General of state under the Wahid government, welcomed the decision. He argued that the international inquiry will "teach Indonesia and everyone else not to think that they can go on violating human rights and concealing this from their own people and from the international community." Although Marzuki conceded that he was disappointed about the resolution, he also conceded that this was because the government had such a bad record in the eyes of the international community.²⁸²

On November 29, 1999, a parliamentary subcommittee questioned six of former President Suharto's top generals regarding the military's human rights record in Aceh. The questioning was transmitted nationally via TV. The inquiry was widely seen as a struggle to satisfy the political pressure for legal sanctions against the military and part of a broader push to consolidate civilian rule in Indonesia. Thus, a member of the parliamentary commission on human rights abuses in East Timor, Heri Akhmadi, stated: "We are trying to control the extent of military power over national affairs...Everyone expects that within the next five years the military will no longer play a political role." An army Colonel commented on this statement: "If they succeed in shaking the strongest pillar of national unity, Indonesia is finished."²⁸³ As these statements demonstrate, actors were quite aware of the power of human rights norms and the army perceived these norms as contradictory to the territorial integrity and unity of Indonesia.

In a situation in which the military and civilian leaders were involved in a deep power struggle, the information which was leaked about the military entanglement in human rights abuses in Aceh, the Moluccas, and East Timor, provoked a decisive shift in the power balance. It provided Abdurrahman Wahid with the authority and legitimacy to launch a major reshuffle within the Indonesian military. In January 2000 he sacked the military's spokesman Major-General Sudrajat because Sudrajat had questioned Wahid's authority over military affairs. In February, he dismissed the coordinating minister for political and security affairs, General Wiranto, when the national commission for human rights abuses in East Timor presented evidence showing Wiranto's involvement in the establishment of pro-integration militias in East Timor. As a result of this reshuffle, Wahid was able to position several reform-minded generals in the military and increase his influence over the institution. While this was certainly in his own power interest, the action was legitimated by the strong

²⁸² Approval for Human Rights Violations Court Provided with Reservations. *Kompas*, 01 October 1999.

²⁸³ Cohen (1999)

consensus that the military had to be reformed to end human rights violations. It was the moral power of human rights, which authorised such a step.

However, the power of human rights norms not only ensured sanctions were brought against deviant behaviour, as in the case of the military. For human rights organisations, it raised expectations and created pressures to act in line with the norms. For example, when Muslim groups demanded that several instances of human rights violations against so-called extremist Muslims be investigated, the Commission on Human Rights had to show that it would handle these demands with as much impartiality and commitment as, say, the Dili case. Thus, in Jakarta, several Muslim organisations demanded the resignation of the Christian members of Komnas-HAM, especially Asmara Nababan, when they felt that the commission was not acting swiftly enough. As a result, in March 2000, Komnas-HAM agreed to set up a commission to investigate abuses in the case of Tanjung Priok. The significance of this step was realised by human rights activist Munir, himself a Catholic. He argued that the future reputation of Komnas HAM would hinge on the success or failure of the KPP HAM Tanjung Priok. "If this investigation commission fails, the credibility of Komnas-HAM will be seriously undermined."²⁸⁴ As this example illustrates, human rights norms had assumed validity independently of the interests of particular actors.

One could accept my argument that transnational human rights networks had a significant impact on shaping the preferences of the Indonesian government and still maintain that domestic developments were part of a power struggle among political organisations. In this perspective, Islamic organisations might use the human rights discourse as a strategy to gain power, dethrone the military and eventually establish an Islamic state. The argument would be that, as a salient and persuasive idea, human rights norms were ideally suited to garner domestic support, but are only used in an instrumental fashion to mask power interests. This would be comparable to the strategy of the CPP in the Philippines. This proposition then suggests that actors conceal their real motivation. While it is never possible to determine exactly whether actors lie to others over a longer period of time, the available evidence so far does not support such a claim. Key Islamic scholars, such as Abdurrahman Wahid and Nurcholish Masdjid, have been consistent defenders of human rights and the rule of law.

²⁸⁴ KPP HAM for Tanjung Priok to be set up. Ad hoc court essential, says Munir, in: Kompas, 01 March 2000

Phase 5: Rule-consistent behaviour

The Philippines

The Philippine state's human rights practice moved towards rule-consistent behaviour after 1992, with the ascension of Fidel Ramos as Aquino's successor. Several circumstances allow one to code the early 1990s as a transition to the fifth phase of the spiral model. First, and most importantly, the human rights situation has continually improved since the early 1990s and the number of reported human rights violations remains at a low level.²⁸⁵ Second, under Ramos, some of the laws which had been issued by Marcos and opened the door for abuses but had not been repealed by the Aquino Administration were revoked or drastically modified to fit with accepted standards of human rights. Second, Ramos disciplined the military and initiated peace talks with the two subversion movements, the NPA and the MNLF. These peace initiatives dramatically lowered the number of clashes between the military and these two organisations. Finally, the judiciary was subsequently strengthened, leading to an increased adherence to the rule of law. Despite these undeniable positive developments, crucial problems remain which are only inadequately addressed by the Philippine government. Corruption among the judiciary is endemic, undermining many initiatives to fully implement the rule of law. The Philippine police continues to violate human rights standards during arrest and detention, and views some forms of violations, such as extrajudicial killings, as appropriate means to fight organised criminality. Independence struggles in the Muslim dominated South of the Philippines have recently revived again, which Philippine President Joseph Estrada has answered with harsh political rhetoric and a counterinsurgency campaign. However, the Philippine human rights community remains vigilant, operates freely and unimpeded, and remains a critical observer of governmental human rights practices. Their struggle for human rights takes place within a consensus on the need to further strengthen the Philippine state and improve the democratic system.

Due to the international campaign which the transnational network had waged during the course of 1988-1991, Aquino's successor, Fidel Ramos, faced strong demands to introduce measures that would improve the human rights situation upon his coming to power. Because Ramos was a former General and had already served under Marcos, the Philippine human rights community was united in its distrust toward him. Given the high international pressure, and his weak domestic position (he had won only 23.6 percent of the votes during the presidential elections in 1992), Ramos made human rights reforms an important pillar of his

²⁸⁵ See chapter 3, figure 3.1 on the number of reported human rights violations in the Philippines.

reform program. Shortly after coming to power, he repealed the Republic Act 1700 which effectively legalised the CPP and enabled peace talks with them. He initiated peace talks not only with the NPA but also with the MNLF. In the case of the NPA, human rights had been explicitly included in the negotiations, obviously in order to commit both actors to adhere to principles of human rights during armed conflicts (the Geneva Convention).

Ramos revoked several repressive decrees of the Marcos era. Presidential Decree 1850, prescribing that a military court shall try members of the military, was repealed. Human rights organisations had long criticised this law as particularly harmful for human rights protection, and did not trust military courts. Most importantly, Ramos was extremely successful in disciplining the armed forces and dissolving vigilante forces. These individual actions were important because they signalled a different governmental approach to the challenges to the state than, for example, the one under the Marcos and Aquino Administrations. Ramos profited, however, from the fact that the extreme Left and Right wing forces no longer posed a serious challenge to the Philippine state. The transnational network had had a significant impact in discrediting these forces. It had convinced Filipinos and the US Administration that the deficiencies of the Philippine state themselves posed the most serious challenge to the protection of human rights.

Moreover, Ramos – to a greater extent than the Aquino Administration – managed to de-link the economic discourse from human rights concerns. Since the 1950s, the CPP had based its political struggle on the polarisation between Philippine oligarchs and poor Filipino peasants. In its discourse, it had firmly established a nexus between the economic interests of the Philippine landed oligarchy, US multinational corporations, the exploitation of peasants, and their violations of human rights. This discourse had been so dominant, that even the Marcos and Aquino Administrations had viewed comprehensive agrarian reform programs as solutions to these structural problems. The failure to implement these reforms in a comprehensive way had always benefited the CPP, which had accused these Administrations of unwillingness and had thereby legitimised their struggle against the bourgeois political system. Ramos de-linked these issues. His economic reform program centred on a comprehensive industrialisation strategy, poverty alleviation, the liberalisation of foreign trade and foreign-exchange transactions and especially infrastructural reforms, which had been targeted as a priority project.²⁸⁶ He thus gave the Left no target for systematic criticism. The nationalist Left campaigned against “imperialist globalisation”, but agitation never reached a level threatening the consensus on the Philippine state. Equally, human rights

²⁸⁶ Canlas (1993)

organisations documented human rights abuses related to what they coined “development aggression”, such as the forced eviction of people from squatter areas, but conceded that human rights violations related to torture, disappearances, extralegal execution and arbitrary arrests declined. Unlike under Marcos and during the first years of the Aquino Administration, the struggle of the human rights organisations took place within a clear consensus on the democratic political system and on improving it, but not on overthrowing it. The strength of the NPA steadily declined after the change of power from Marcos to Aquino, and reduced the Philippine state’s perception of insecurity. Apart from the end of dictatorship, which had greatly contributed to the growth of the NPA under Marcos, the global demise of Communism has had its influence on the Philippine CPP, too. Yet, the slow loss of power of the CPP cannot simply be reduced to these influences. In the domestic debate the radical Left still had a persuasive frame, given its project of social justice. Similarly, the gradual decrease in human rights violations cannot simply be explained by the decrease in the number of clashes between the military and the NPA. They have to be seen as much as a result of the transnational network’s ability to persuade Philippine citizens that the NPA was more interested in gaining power than in making serious proposals for reform. Human rights were the primary means to delegitimise the NPA. Thus, the NPA lost much of its popularity when information about internal purges and extra-legal executions of alleged governmental collaborators emerged. Such revelations alienated the NPA from its clientele, since they contradicted its official image as a human rights-promoting force.²⁸⁷ In sum, human rights increased pressures on the military to discipline itself, and diminished the numerical strength of the NPA. Together, these developments reduced the number of clashes between the underground movements and the army, and further contributed to a decline in human rights violations.

The Philippine state continued to commit human rights violations, even if the number of human rights violations remained at a low level. Widespread corruption among the judiciary, and a non-professional police, still pose a threat to human rights protection and are regularly criticised by international observers and domestic human rights NGOs.²⁸⁸ Philippine authorities partly justify these violations by budgetary constraints for civil servants and the lack of appropriate investigation methods. Although the truth of these justifications needs to be questioned, there seems to be a clear understanding of this predicament in the international community and among broad spectrums of Philippine society, and international pressure on

²⁸⁷ cf. Casiple (1995: 84)

²⁸⁸ US Department of State (1998)

the Philippine government to further promote human rights is almost absent. The Philippines remains an imperfect but stable democracy.²⁸⁹

The preceding sections have demonstrated that the spiral model of human rights change provides a framework for human rights development in Indonesia and the Philippines. Although it is too early to tell what course the human rights situation in Indonesia is going to take, there have been observable changes in the public discourse, and partly in behaviour, which justify a cautious optimism that these changes are likely to be sustained if international pressures continue. From the perspective of the spiral model, Indonesia's time lag can be mainly explained by the inability of the East Timor and Indonesian transnational networks to find a collective action frame able to mobilise transnational publics to pressurise the authoritarian Suharto regime. Although the East Timor network had been remarkably successful in challenging some of the constitutive pillars of the Suharto regime, a unified transnational network had basically only developed in the late 1980s. By focusing on these developments and basically bracketing the development of the Indonesian network from the 1970s onwards, I have been able to show that the interaction among international norms and domestic politics exhibited a specific pattern, which was quite similar in the Indonesian and Philippine case.

The next chapter will deal with the development of the Indonesian network in the 1970s and constitutes a case of variation in the dependent variable, human rights change. An Indonesian transnational human rights network which had developed in the 1970s and had put the Indonesian government's human rights practices on the international agenda was not able to change constitutive norms of the New Order. The international campaign was a major success in reaching its primary goal, the release of more than ten thousand political prisoners. It failed, however, in bringing about a sustained change in human rights practices. The next chapter, therefore, provides evidence of the need for international pressure to change human rights practices *and* a transnational consensus on human rights norms, or – in the language of social movement theory – a transnational collective action frame.

²⁸⁹ Putzel (1999) and Thompson (1996)

CHAPTER 7

Explaining the variation: A failed spiral dynamic in Indonesia, 1973-1979

When Amnesty International conducted its first global campaigns targeting human rights-violating governments, along with the Soviet Union and the German Democratic Republic, several Asian authoritarian regimes came under international scrutiny. These were Indonesia, the Philippines, South Korea, and Taiwan. Indonesia was targeted for its large number of Communist political prisoners, most of whom had been detained for more than 10 years. Three out of these four countries, namely the Philippines, South Korea and Taiwan experienced transitions to democracy in the mid-1980s and have since slowly improved their human rights record. The only regime that escaped serious pressures for political liberalisation was Indonesia's Suharto regime. It was not until the late 1980s that the Suharto government announced a political liberalisation, or opening (*keterbukaan*), leading also to significant changes in approaches to human rights and a democratic regime change in 1998.

The previous chapter explained these changes with reference to the "spiral model of human rights change." Yet, a significant variation in the time this change has taken becomes evident when a comparison is made between Indonesia and the Philippines. The process of "norm socialisation", which the spiral model seeks to explain, has taken much longer in the Indonesian case than in the Philippine one. This is the more obvious, as transnational networks formed in both countries in the early 1970s, and the first reports by international human rights organisations were published at almost the same time. Amnesty International published its first report on the Philippines in 1976, while the one on Indonesia was published in 1977.

How does the spiral model account for this variation? According to Risse et al., there are several explanations: The first one is "world time." By world time they refer to the international institutionalisation of human rights norms and claim that countries which were targeted in the early 1970s, such as Chile and South Africa, were able to be in denial for longer because the human rights regime did not have that much moral power. This explanation fails in the Indonesian and Philippine case because both were apparently targeted

at the same time. The second hypothesis concerns the reactions of target governments. If they repress the emerging opposition forces, the spiral model is likely to be delayed. This is what happened to the Indonesian political opposition after 1978. But why was the Indonesian government able to suppress the opposition, while the Philippine government failed to do so? The claim of this chapter is that in the public debate between the transnational network and the Indonesian government on the human rights situation in Indonesia, the Indonesian government seemed to have the better argument, for the continuation of martial law. It essentially argued that political liberalisation would lead to an Islamic state. Thus, the lack of a public consensus on the normative validity of human rights norms enabled different reactions from the Suharto and Marcos regimes to transnational mobilisation. Thus, the Indonesian case seems to suggest a classical example of a normative conflict between the rule of law (secularism) inherent in the human rights concept and Islam, accounting for the break-off of the spiral dynamic. Amnesty International's campaign was successful, but after the release of the Communist political prisoners, domestic mobilisation led to international demobilisation and subsequently enabled the Suharto regime to return to repression. A slow re-mobilisation of transnational forces only occurred in the second half of the 1980s, via the East Timor network. Thus, the variation in time between the Indonesian and Philippine cases can be largely explained by the failure of the network's first campaign.

If the first case study demonstrated that international human rights norms, which are promoted by transnational networks, influenced policies in the area of human rights, this chapter probes a case of failure. Transnational networks were unable to bring about a sustained improvement in human rights discourse and in practices. On a discourse level, political Islam intervened in the promotional activities of transnational networks and stalled efforts to bring about a sustained shift in human rights practices. The case study, thus, provides further evidence of the argument that a rational consensus on human rights norms provides a necessary, though not sufficient, condition for sustained changes in human rights practices.

To students of Indonesia, this argument seems to be fairly absurd. Until recently, the standard account for understanding the Indonesian government's resistance to pressures for a greater respect of human rights emphasised the following issues. Firstly, the Philippines and Indonesia varied greatly with regard to democratic experience and regime type, effectively delaying democratic change in Indonesia.¹ Secondly, the Indonesian government's major source of legitimacy was economic success, and its expertise in this realm and hence its

¹ For this argument, see Putzel (1997).

legitimacy, was not seriously challenged until the Asian financial crises of 1997.² Thirdly, the Indonesian government was of great strategic importance to great powers such as the US and Japan and could therefore ignore demands for changes in human rights practices. Finally, some have advanced a cultural-essentialist explanation for the Indonesian case, claiming that mystic Javanese values of authority and subordination and the emphasis on the collective rather than the individual did not resonate with a Western concept of human rights. The variation between the Philippine and the Indonesian cases, according to this last explanation, is thus not surprising as the Philippines exhibits a political culture which is strongly influenced by Western values.³

The next sections will reject these explanations. I will argue that despite the great diversity between the Philippines and Indonesia in cultural terms, a transnational network of human rights organisations was able to pose a major legitimacy challenge to the Indonesian government in the 1970s. Given the strategic importance of the Philippines for great powers, in comparative perspective, the argument that strategic military interests played a role cannot be sustained. Finally, the argument that economic development priorities hindered the efficacy of international human rights norms can only be sustained if one acknowledges that a collective understanding about the need to circumscribe the influence of political Islam legitimated the preference for maintaining the authoritarian system.

To substantiate my argument, the chapter will proceed as follows. In order to make the claim that a transnational network of human rights organisations was able to challenge the Indonesian government's legitimacy in the 1970s, I will describe the major arguments of the Amnesty International report and international reactions to it – mobilisation. The section on domestic mobilisation and discourses will describe how domestic political mobilisation affected the international understandings of the Indonesian government's human rights problems and ultimately led to international demobilisation. This demobilisation enabled the Indonesian government to return to a policy of repression. The last section deals with the change of Islamic discourse in Indonesia in the 1980s, in order to make this account more plausible.

² Thompson (1997: 98); Robinson (1996)

³ See, most importantly, Pye (1985) and for a German contribution Graf (1998). In contrast to these conceptions, several authors have emphasised that political culture *per se* does not explain why countries such as the Philippines enter a democratic transition earlier than others. The Philippine's Western political culture, though long established and deeply institutionalised did not prevent the declaration of martial law and fourteen years of authoritarian rule. In other words, a constant variable cannot explain variation. For this argument, see Thompson (1996: 185) and Widner (1994). Similarly, Argentina, a nation-state with only little democratic experience was the first Latin American country to experience a democratic regime change, initiating a wave of transitions from authoritarian regimes in the region.

International mobilisation, governmental denial,
and tactical concessions (Phase 1-3)

As was the case with the Philippines, Indonesia, too, came on the international human rights network's agenda early in the 1970s due to its huge number of political prisoners detained without charges and/or trial in several prisons scattered over the Indonesian archipelago. Human rights organisations estimated that within the two years after the Communist coup attempt against Sukarno in September 1965, about a quarter of a million people had been taken into custody by the Operational Command for the Restoration of Security and Order (Kopkamtib)⁴. Kopkamtib was the army intelligence and security command which had been established in October 1965 and which had virtually martial law powers. Yet, accurate figures on the scale of imprisonment were not available in the early 1970s, and the Indonesian government made conflicting statements as to how many individuals were imprisoned. The government claimed that the prisoners were members of the Communist Party of Indonesia⁵ and had been detained on the grounds that they were involved in the attempted coup. Ten years after this coup, tens of thousands of them were still awaiting charges to be levelled against them, while others were awaiting their trial.

While Western governments were initially reluctant to criticise the Suharto government's political prisoners (*tahanan politik*: tapol) policy, non-governmental organisations quite early on started campaigning for a release policy. In 1968, human rights and church groups, such as Amnesty International, the International Commission of Jurists and the World Council of Churches, journalists and scholars started to assemble and distribute information on the political prisoners problem.⁶ Amnesty International and Tapol both had links to the Legal Aid Bureau in Jakarta and regularly exchanged information with it. The criticism intensified until 1973. In February 1973, Amnesty International submitted a petition to the General-Secretary of the United Nations asking for an intervention of the Human Rights Commission on behalf of the prisoners who had not yet been tried. In the same year, the Dutch section of Amnesty International issued a comprehensive report on the political prisoner problem, which was based on two Amnesty International missions to Indonesia in 1969 and 1970.⁷ In the UK, Carmel Budiardjo founded the non-governmental organisation *British Campaign for the*

⁴ Komando Permulihan Keamanan dan Ketertiban: Kopkamtib

⁵ Partai Komunis Indonesia: PKI

⁶ See, e.g. Amnesty International (1968)

⁷ Indonesian officials did not grant entry visas to a third Amnesty International mission scheduled for July 1972 and the mission had to be cancelled. Since then, Indonesian ministers and government officials have declined to discuss human rights problems with Amnesty International on a personal level.

release of Indonesia's Political Prisoners in 1973 and published the bulletin *Tapol*, which focused on the Indonesian government's politics with regard to political prisoners. In sum, there was mounting activity from different organisations outside Indonesia.

International mobilisation against the Indonesian government's political prisoner policy emerged against the backdrop of a domestic mobilisation against the Suharto regime in the early 1970s. The drive towards an increasingly authoritarian style of rule had aroused the open opposition of several political groups in Indonesia.⁸ Muslim organisations, students and part of the ruling elite had become increasingly outspoken against Suharto. Muslim organisations in particular, a majority of which had tolerated or even actively participated in the purges against Indonesian Communists, were disappointed over their continued exclusion from political participation. They had hoped that regime change, and the role they had played in accomplishing it, justified providing them with greater political influence in the political process.⁹

Thus, Suharto's decision to "simplify" the political party system by forcing all parties to merge into two political parties, the Partai Demokrasi Indonesia (PDI), and the United Development Party (PPP) provoked their opposition. Rising corruption among the military which was officially promoted by Suharto, the Suharto government's leaning toward Western development models and its reliance on Western funds raised the level of political discontent. By 1973, issues of corruption, patronage, and the benefits perceived to be accruing to Indonesia's Chinese minority led to anti-Chinese riots in Bandung.¹⁰ A major spokesperson who aired public grievances was Lt. General Sumitro, head of Kopkamptib. He demanded that Suharto stepped down from the presidency, a demand which set him on a direct collision course with Ali Murtopo, the head of Kopkamtib's civilian rival Special Operations' organisation, OPSUS¹¹. Murtopo was an important advisor to Suharto in politico-military affairs. In January, public protests by students exploded in the so-called Malari riots during Japanese Kakuei Tanaka's visit to Jakarta.

Public disaffection spilled over to the military, which had hitherto provided crucial backing for Suharto in the ruling coalition, and split it into three distinct factions. The 'soft liners', represented by Lt. General Sumitro, genuinely seemed to oppose the drive toward authoritarianism and the increasing political power of ABRI on the grounds that it diminished ABRI's professionalism. Those members of ABRI who had become part of Suharto's

⁸ King (1999: 101-106); Bresnan (1993: 135-163); Mackie and MacIntyre (1994: 13-16)

⁹ Anderson (1978)

¹⁰ Crouch (1978) King (1999: 103)

¹¹ Operasi Khusus: OPSUS

patrimonial network and had benefited financially represented the second faction. Ali Murtopo represented the third faction to Suharto. This faction viewed the military as the most efficient instrument to promote the political and economic development of Indonesia, and was probably most interested in maintaining the military's power per se.

The official government appraisal of the Malari riot portrayed the riot as a plot of Communist and Muslim forces against Suharto. It blamed students, the press, which had allegedly given encouragement to the students' action and government critics, a number of intellectuals and former members of the banned Socialist Party of Indonesia (PSI),¹² as well as the Masyumi party (integrated into the PPP) for the riots and the ensuing political instability.¹³ The government shut down critical newspapers, such as the student newspaper *KAMI*, the *Pedoman* and *Indonesian Raya*.

Despite the severity of the riots, Sumitro refrained from taking action against protesters and seemed to signal to civil society that there was some space to organise.¹⁴ He visited university campuses throughout Java to listen to the students' demands. Previously, he had approached Muslim leaders who, at that time, were particularly upset about the introduction of a proposed marriage and divorce law by Ali Murtopo, which would have limited the rights of Islamic courts in family affairs. The Malari riots gave the Suharto government and Murtopo an ideal justification for outmanoeuvring Sumitro. He was declared responsible for having instigated the riots, sacked as Kopkamtib head and forced to resign as deputy head of the army.¹⁵ Many of the student leaders and their alleged mentors were arrested, including some of the country's most independent figures and human rights advocates such as Adnan Buyung Nasution and Mochtar Lubis.¹⁶ The student opposition was eventually silenced. Despite the harsh suppression of this domestic opposition after the Malari riots, there was continuing, though muted, opposition to the Suharto regime.

On an international level, however, mobilisation continued. In 1975, a co-ordinated network of Amnesty International sections in West Germany, Austria, the USA, Australia, the Netherlands and Canada conducted an international campaign on behalf of the female political prisoners in Indonesia. During this campaign, Indonesia became known as the country with the greatest number of female prisoners in the world.¹⁷ The publication of

¹² Partai Sosialis Indonesia: PSI

¹³ Bresnan (1993: 141)

¹⁴ John Bresnan (1993) provides one of the most detailed accounts on the political developments surrounding the Malari riots.

¹⁵ Crouch (1978: 304-317); King (1999: 105)

¹⁶ For a full treatment of the affair see Jenkins (1984).

¹⁷ Amnesty International (1977b: 183)

Amnesty International's second report, exclusively dedicated to the Communist political prisoners in Indonesia, proved to be a major foreign policy challenge to the military-backed Suharto regime. The report developed two distinct lines of argument which were identical with the ones it applied to the Philippine government's human rights policy at about the same time: It was alleged that the Indonesian government systematically violated human rights standards and did not adhere to basic standards of the rule of law. Given these claims, the Suharto government was authoritarian.

Amnesty International estimated that there were "[...] certainly more than 55.000 prisoners held without trial in Indonesia, and the actual number of prisoners held without trial is probably about 100.000."¹⁸ It was argued that the military, especially the security organisation Kopkamtib, had systematically tortured and mistreated prisoners during interrogation and had not even spared children. With regard to the lack of respect for the rule of law, Amnesty International alleged that the Indonesian government's actions lacked any legal basis and violated the most basic standards of justice and the rule of law. Imprisonment had been conducted in an arbitrary, extrajudicial, extra-legal manner. The whole system of imprisonment relied on a security agency which itself had no constitutional basis in the state. Independent checks on the almost unlimited powers of individual military officers were absent. Civilian officials, law officers, lawyers and the judiciary were entirely excluded from the process. In sum, in Amnesty International's view, the Indonesian human rights policy was not pursued according to the rule of law and it lacked features to characterise it as a legitimate polity.¹⁹

The report's core constituted a detailed description of the classification system with regard to political prisoners. The Indonesian army leadership had created a classification system which distinguished between different categories of political prisoners. Those considered to have been directly involved in the coup attempt (category A prisoners), those who were considered "indirectly involved" (category B prisoners) and those who were merely "involved" on the basis that "indications existed" or "may be reasonably assumed," category C. Only category A prisoners were supposed to be brought before a trial for their involvement. Category B and C prisoners could not be brought to trial because there was not sufficient evidence against them, according to the Indonesian authorities.²⁰ The categorisation system, as well as the

¹⁸ Amnesty International (1977a: 44)

¹⁹ Amnesty International (1977a: 45-70)

²⁰ Category B included those suspects who had "assumed an attitude," which implied support for the attempted coup and leaders and members of the PKI or related mass organisations; as reported by Amnesty International (1977a: 32).

contradictory statements about the exact number of political prisoners in each category suggested, according to Amnesty International, that the imprisonment was either completely arbitrary or uncontrolled by the civilian government or both. In any case, it violated principles of the rule of law. The report also described the living conditions in detention camps such as Atauro and Buru, which were life-threatening.

As becomes evident from the structure of the report, Amnesty International's strategy pursued several aims: First, to establish the accurate number of political prisoners, whose existence the Indonesian government had continuously denied. Second, to demonstrate the arbitrariness of the imprisonment and hence undermine the rationality of the imprisonment practice. And finally, to categorise the political prisoner policy as a general pattern in the human rights policy of the government and hence undermine the latter's political legitimacy.

Surprisingly, official authorities reacted promptly to the public report. Although statements made clear that the government did not want to deal with Amnesty International, it nevertheless took several steps which specifically addressed the arguments in the report. First, it tried to clarify the number of prisoners. Second, it invited journalists from international magazines and newspapers to visit detention centres on Indonesian islands such as Buru and Atauro. As a result, the charges made by Amnesty International received some independent backing because journalistic accounts appearing in the international weekly magazine *Far Eastern Economic Review* (FEER) and the *New York Times* (NYT) confirmed that prison conditions in the detention camps were indeed life-threatening.²¹

Official governmental statements immediately denied the report's allegations and called Amnesty International's report an illegal intervention into the domestic affairs of a sovereign state. Despite this immediate denial of the legitimacy of the external intervention, the Indonesian government entered into a detailed discussion explaining the shifting numbers of political prisoners.²² It is important to note here that Indonesia, as with the Philippines, was under no international obligation to justify its policy, because it had not signed any of the international human rights conventions which had entered into force in 1976.

In order to justify the general curtailment of human rights guarantees, governmental authorities argued that the coup attempt of 1965 constituted a state of emergency rendering limits on civil and political human rights appropriate. But this did not mean that the

²¹ Jenkins (1977)

²² The most systematic defence of Indonesia's human rights practices occurred in a public exchange of letters between the director of the Indonesian think tank, the Center of Strategic and International Studies (CSIS), Jusuf Wanandi, and representatives of Amnesty International and TAPOL. The CSIS was a think tank with close connections to the military and Suharto. The debate was orchestrated via the influential Asian weekly magazine *Far Eastern Economic Review* (FEER).

Indonesian government was authoritarian. Similar to the martial law argument the Philippine government used at about the same time, Indonesian authorities argued that the repression of political dissent was the precondition for stability. The second argument made the full implementation of human rights dependent on economic development, thus projecting the reestablishment of human rights guarantees in the distant future.

Obviously, these justifications were no explanation for the shifts in prisoner figures. Nurturing, in turn, doubts about the legitimacy of the arrests and the credibility of the government. Consequently, governmental spokesperson Jusuf Wanandi engaged in a detailed discussion of the figures. Shifting figures were not an indication of the authoritarian nature of the Indonesian government, the political prisoner problem and the question of the legitimacy of the government had to be separated: "The report confuses problems connected with PKI detainees with political questions."²³

In the course of the debate, Wanandi and Martin Ennals, the General Secretary of Amnesty International at that time, questioned each other's motivation and repeated their claims. Wanandi alleged that Amnesty International had links to groups the government considered "Communist" and thus enemies of the nation-state. If Amnesty had not had links to the British organisation Tapol (which was claimed to have been subverted by Communists), "[u]ndoubtedly, Jakarta would cooperate with it if Amnesty is prepared to reciprocate with trust, openness and understanding - and if it truly wanted to help the PKI."²⁴ Conversely, Ennals repeated that Amnesty International's figures were not exaggerated, and if the organisation had distributed false information it was because its information was based on governmental statements, not on Tapol's figures. He reiterated that the Indonesian government owed the public a clarification, which would ultimately show that – contrary to Indonesian statements – there were still prisoners and that there was no evidence that tens of thousands of people were involved in the plot. Ennals stressed that if international standards of justice were applied, the Indonesian action was to be considered arbitrary and illegitimate.

In the end, the government indeed clarified the number of political prisoners in February 1978 and issued a figure, which only slightly diverged from a previous official figure, but covered prisoners of the categories A, B and C. With this information, Jusuf Wanandi considered the debate closed.²⁵ Far from ending Indonesia's international political prisoner problem, however, the public debate drew further attention to it. Amnesty International had managed to

²³ Wanandi (1977: 23)

²⁴ Letters to the editor (1978b: 6f.)

engage the Indonesian government in a substantive dialogue about the prisoners. Jusuf Wanandi had discussed the figures on political prisoners mainly in order to rebuff the claim that the shifting figures exemplified the arbitrariness of the imprisonment and undermined the legitimacy of the government. Its presentation of the "final figure" made evident that there existed category B prisoners, who were imprisoned although there was insufficient evidence for their implication in the coup. This, in turn, confirmed Amnesty International's allegation that principles of the rule of law, such as the presumption of innocence, had been violated. In sum, the Indonesian government had unintentionally affirmed parts of Amnesty International's definition of the situation.

Due to the intervention of the transnational network, the interaction between the Indonesian government and other actors in the area of human rights substantially changed. In the early 1970s, the Indonesian Attorney General, Sugih Arto, could openly state that the number of political prisoners was a floating rate, "like the Japanese yen vis-à-vis the dollar."²⁶ After the Amnesty International report the Indonesian government at least had to pretend that it knew the correct figures. Precise figures had become an issue of credibility, they had to be consistent over time and correspond with official statements about releases, shifts in categories and re-categorisations undertaken by the government. The legitimacy and credibility of the Indonesian government was at stake. It could not act purely instrumentally in the sense that it could give *any* figures to serve its given interests in concealing its human rights record. The dominant atmosphere toward the Indonesian government was then summarised by David Jenkins: "Today Indonesian officials seem to take the issue more seriously, if only because it has attracted so much outside criticism. But they seem no more able than the former attorney general to say just how many detainees the government is holding. And obfuscation on the question of numbers is causing increasing concern to Western diplomats who monitor prisoner releases."²⁷ Through the unintended confirmation of the report's allegations with regard to political prisoners, Amnesty International was able to mobilise its own constituency and Western governments. The Indonesian government came under intense moral pressure, partly backed by threats to discontinue development aid, to release the political prisoners. Slowly, a dynamic developed which the spiral model describes. The political prisoner problem shaped debates in the annual deliberations between the International Governmental Group on Indonesia (IGGI), established in 1967 to coordinate development assistance to Indonesia, and the Indonesian government. The latter faced sharp

²⁵ Letters to the editor (1978a: 7)

²⁶ Quoted in Jenkins (1979b: 24)

questions on the *tapol* issue. The Dutch government and its Minister for Development and Cooperation Jan Pronk were most outspoken on the issue, but European governments and the US government sent similar signals. Pronk publicly stated that "if there is no improvement in the situation of the political prisoners in Indonesia, it is not unlikely that there will be a reappraisal of Dutch aid to Indonesia."²⁸

Western governments faced mounting domestic pressure to withhold further aid to Indonesia because of the continued mass detention of coup-related political prisoners. They "[...] had to reckon with the domestic political cost of supporting a regime popularly perceived to be one of the world's worst human rights violators. As domestic concern increased, so did the political risk of maintaining or raising existing levels of aid to Indonesia."²⁹ This pressure not only came from individual human rights organisations, but also from a network of organisations consisting of religious bodies, the press, politicians and national legislatures. In the US, the prisoner problem became a main issue in the hearing of the US Sub-Committee on International Relations to which Carmel Budiardjo, the founder of the organisation *Tapol*, was invited and presented further evidence. The hearing turned into a farce for Budiardjo whose connection to the PKI was enough to discredit her whole cause.³⁰ Yet, among the US public, the political prisoner issue generally received more favourable treatment.³¹

To sum up, in the 1970s, the Suharto regime's interactions with transnational human rights networks on the one hand, and Western states on the other, had developed the characteristic pattern of repression, development of the transnational network, denial and mobilisation which the spiral model describes. The interference of other governments placed the Suharto government in a dilemma of choosing to continue the incarceration of *tapols*, and thus pursue its internal security and political interests, or to accede to the demands of international creditors and aid-donors and start large-scale releases. The transnational network had changed the interaction and as a result of this change, the government decided to release the political prisoners in order to get rid of the international pressure.

This is empathetically not to argue that the transnational human rights network managed to genuinely convince the Indonesian government to release the political prisoners on human

²⁷ Jenkins (1979b: 24)

²⁸ Fealy refers here to information he gathered through interviews with journalists and confidential correspondence from human rights activists. Fealy (1995: 19)

²⁹ Fealy (1995: 18)

³⁰ The Republican Sub-Committee member not only questioned Carmel Budiardjo's motivations on the ground that her husband had been detained as PKI suspect by the Indonesian military, he also questioned her reliability given that she was a British national testifying before a US Committee. See US House of Representatives and Committee on International Relations (1976)

³¹ Fealy (1995: 24-27)

rights grounds. It is entirely clear from the setting that the Indonesian government released the prisoners as a token tactical concession to international moral pressure, reinforced by threats to condition the disbursement of development aid. The extent of the tactical concession, release of about 10,000 political prisoners might provide a yardstick by which to measure the degree to which transnational human rights networks had provided an international legitimacy challenge to the Indonesian government. Thus, it is undisputed that the human rights campaign of the transnational network had been extraordinary successful. The crucial question emerges why the Indonesian government was able to get away with this concession and did not face more pressure to change its authoritarian system. In this regard, it is important to remember that the Amnesty International report was not only about establishing the accurate number of political prisoners and thereby persuading audiences and the Indonesian government that the detention of the political prisoners was not in line with established principles of human rights. The political prisoner campaign was supposed to demonstrate that the action symbolised the authoritarian nature of the Indonesian government in general. At this stage of the spiral model, the Philippine government, for example, remained under constant pressure to remain responsive to international demands. In the Indonesian case, international pressure suddenly decreased after the releases and the Indonesian government returned to a phase of denial and repression.

In order to account for this outcome, i.e. no sustained change of human rights practices, one has to take a closer look at how domestic opposition groups took advantage of the emerging transnational public sphere, which was generated by the international pressure and how the international campaign shaped discourses at the domestic level. As I will argue, the collective understanding that the Indonesian government faced an Islamist threat provides the crucial variable, which accounts for the lack of reinforcement of international and domestic pressure which characterises the spiral model. International mobilisation did create domestic space for domestic protest. Yet, domestic opposition groups articulated their protest in terms of Islamic democracy, rather than a rule of law state. This seemed to raise the concern of secular-oriented groups in Indonesia that their rights might be jeopardised, but most importantly provided a convincing justification for the Indonesian military and the government to justify authoritarian rule in terms of opposition to Islamic radicalism.

Domestic mobilisation, international demobilisation,
denial and repression (Phase 3-1)

The international pressure which was put on the Suharto regime added leverage and legitimacy to the demands of the domestic opposition, for the student protests of the 1974-75

period briefly revitalised in 1977-78, and coincided with the election campaign scheduled for 1977. Demands for the resignation of Suharto re-surfaced. Public dissent eventually began to rally around the Muslim party PPP, which had become a major critic of the Suharto regime. The alienation of the Muslim community led to a risk that the PPP might be able to threaten the absolute majority of Golkar in the parliamentary elections of 1977, which would also have threatened Suharto's nomination as president in 1978. Regional military authorities as well as the bureaucracy applied heavy pressure on voters before and during the campaign through intimidation, coercion and vote rigging, in order to ensure a big vote for Golkar.

Despite the manipulation, the PPP gained in political strength relative to the results of the 1971 elections. Golkar suffered humiliating defeats in Jakarta and in the strongly Muslim province of Aceh, where opponents of the regime supported the PPP. The political demands of the students and the 'soft liners' in ABRI diffused into the Indonesian parliament, where calls for a greater respect for human rights were regularly aired.³² The PPP became one of the most consistent critics of the Suharto regime on human rights issues. Benedict Anderson noted that there "was strong evidence that for the first time in modern Indonesian history, sizeable numbers of 'statistical Muslims', and even Protestants and Catholics, had cast their ballots in favour of a Muslim party, evidently holding the view that it was the only credible focus of opposition to the regime."³³

Yet, on a transnational level, the international campaign and domestic mobilisation remained strangely disconnected. The most vocal critics of Suharto's regime, the student opposition, unlike the case in the Philippines or in Indonesia in the second half of the 1980s, did not take up the treatment of the alleged Communist political prisoners as a human rights problem. There was an explicit agreement among the student organisations not to support the issue. As Lukman Hakim, the chairman of the student union of the Universitas Indonesia between 1976 and 1979, admitted the PKI was regarded as the "public enemy."³⁴ International human rights organisations noted with puzzlement this disconnect. A reporter, who interviewed Adnan Buyung Nasution in 1977, remarked that there seemed to be very little attention or concern on the part of the Indonesians she had met for the political prisoners who had been stuck in jail for more than ten years. Nasution's answer is equally telling, for he stated: "Yes, I know many people who want to make an exception for the Communists, to exclude them from our

³² Suryadinata (1980: 125)

³³ Anderson (1978: 14)

³⁴ Interview with Dr. Lukman Hakim, Jakarta, February 26, 1999.

concern. I tell these people that by making an exception of any group, they are opening the door to their own loss of rights."³⁵

Nasution's verdict proved to be accurate, for the Suharto government cracked down violently on the domestic student opposition. In January 1978, the government enhanced limits on freedom of opinion and temporarily closed down the most outspoken newspapers *Kompas*, and *Sinar Harapan*.³⁶ In February 1978, troops broke up a student boycott at the prestigious Bandung Institute of Technology (ITB) and started their nation-wide crack down on student protest. The clamp down was formally institutionalised through a policy of "campus normalisation" which forbade students from any political activity at universities.³⁷ The government introduced a compulsory educational program, which spelt out ways of "properly" understanding and implementing the state ideology Pancasila (the P4 program) and definitely stamped out any other "confessional", i.e. Islamic interpretation. On a domestic level, the military and Suharto justified their harsh reaction by arguing that radical Muslims were masterminding the student unrest. They alleged that fundamental Parmusi activists had started to dominate the PPP. These "fundamentalists" were, in the government's view, also manipulating the student organisation HMI,³⁸ which was dominating the student bodies at many universities.³⁹ Several leading Muslim politicians were arrested in April 1978 on the ground that they had instigated the student demonstrations.⁴⁰ The military establishment let the public know that it would not retreat out of politics, if "fanatical Muslims" filled the political vacuum.⁴¹

Internationally, the Indonesian government managed to soften pressure on the Communist political prisoner issue by releasing the prisoners, while it succeed in closing the ranks on its politics against (alleged) Muslim radicals between 1978-79. In 1978, the Far Eastern Economic Review carried an article which warned against political liberalisation in Indonesia, as this would ultimately bring Islamic forces to power whose only aim was to pursue an Islamic state.⁴² In the Indonesian province of Aceh, the radical Darul Islam movement revived

³⁵ Payer (1977)

³⁶ Anderson (1978: 10)

³⁷ Jenkins (1978a)

³⁸ Himpunan Mahasiswa Indonesia: Indonesian Student's Organisation

³⁹ Jenkins (1978b)

⁴⁰ Indonesian authorities detained Mahbub Djunaide, the deputy secretary of the PPP, Ismail Suny, a professor of constitutional law, and Sutomo and held them for one year without trial. See, Jenkins (1979a)

⁴¹ Jenkins (1978c)

⁴² Interestingly, and contrary to the common usage of the Far Eastern Economic Review, the article concealed the author's name. This leaves a lot of room for speculation over who wrote the particular article and with what intention.

briefly in 1978, and renewed its call for an Indonesian Islamic state. Only one year after an alleged attempt by a fanatical group striving for an Islamic state, the Commando Jihad, to overthrow the government, the revival of Darul Islam in Aceh added credibility and leverage to the military's concerns. Even the New York Times reported that the Suharto government was concerned about a replication of the Iranian Revolution in Indonesia, given the heightened activities of Muslim political organisations. Press reports in the New York Times drew an explicit comparison between Iran and Indonesia and noted the politicisation of the Indonesian students, and the Indonesian Foreign Minister Adam Malik explained on a visit to the US that the Indonesian government's principal task was to strengthen national unity against Islamic extremists.⁴³ This double strategy seemed to pay off. In May 1978, US Vice President Walter Mondale visited Indonesia. Mondale's visit "left the Indonesians in a jubilant mood", as they had expected sharp criticism for their illiberal policies. This expectation was well founded, given the emphasis the Carter Administration put on human rights in its foreign policy and the fact that Mondale had toured several Southeast Asian countries and denounced human rights violations in the Philippines and Thailand.⁴⁴ Yet, the Suharto government virtually got away with its human rights record. Instead, Mondale gave Suharto the American government's "stamp of approval on human rights,"⁴⁵ according to press reports.

Changes in press reporting indicate that by 1979, the Indonesian government's version that shifting figures on political prisoners were due to bureaucratic problems had been accepted by an international audience, especially state governments, but also the Western media. The *Far Eastern Economic Review* reporting on the issue toned down considerably and essentially concluded that the Indonesian government had managed to acquire control over prisoner figures. As one article title ("human errors") suggests, the article also rejected the transnational network's claims that the political prisoner problem was an instance of the authoritarian nature of the Suharto regime.⁴⁶ The US Department of State reportedly expressed its satisfaction with the government's decision to release the prisoners and praised the vast improvements in human rights practices.⁴⁷ In sum, the release of the prisoners had merely eliminated the very basis upon the transnational network had built its campaign and arguments, and resulted in a rapid international demobilisation, which was based on a

⁴³ New York Times, 18 April 1978: 9, New York Times, 3 June 1979: 3, New York Times 17 June 1979: IV, 3

⁴⁴ See chapter 6 of this study.

⁴⁵ Jenkins (1978d)

⁴⁶ Jenkins (1979a); Jenkins (1979b)

⁴⁷ New York Times, 10 February 1978: 14

consensus that an Indonesian "Iran" had to be avoided. Because the campaign and domestic protests were not linked, the transnational window of opportunity which the international publicity on Indonesia had offered shortly between 1977-79 and which had enabled public protest in Indonesia narrowed.

Economic development and human rights norms

Why, then, did the economic development hypothesis gain such a wide acceptance among Indonesian scholars, if it was political Islam, which actually explains resilience against the human rights discourse in the Indonesian case? I do not argue that the economic development hypothesis is false, rather that it is grossly incomplete for it neglects the intricate relationship which existed between the economic development discourse and the one on political Islam.

Similar to the human rights discourse, the economic development discourse pitted the Islamic opposition against the military-backed Suharto regime and its technocrats. They internally justified the authoritarian drive of the Suharto regime in terms of the economic backwardness and anti-Western orientation of Muslims, which would obstruct any efforts to promote economic development. Given the statistical majority of Muslims, a democratic system might bring Muslim parties to power, in the long-term lead to the establishment of an Islamic state and, given the economic backwardness of Muslims, block the road to economic modernisation. The technocrats among the ruling coalition, the so-called Gadjah Mada group,⁴⁸ most passionately articulated this position. Their distinct secular orientation and antipathetic approach to Muslim and secular parties originated from a view that the multi-party system of Sukarno's "Old Order" had only engendered political instability, led to ideological conflicts between Islam and secular oriented groups and threatened the unitary state of Indonesia.⁴⁹ Their political program envisioned a "program-oriented" modernisation, free of the ideological divides between secular and Islamic parties. In fact, program-oriented development meant nothing less than the expansion of the authoritarian political system, a strengthening of the military's role, constraints on civil and political rights and further limitations on political parties. The "simplification" of the party system through the unification of the many political parties into two large ones in 1972-73 had been a constitutive part of this program.

In implementing program-oriented development, the ruling coalition had the explicit support of accommodationist factions within the Muslim community. They genuinely believed that Muslim organisations should give social and economic development priority over political

⁴⁸ Gajah Mada University is one of the most famous universities in Indonesia.

demands for a Shari'a state. Their preference was based on an understanding that Islam had to be interpreted in a religio-cultural, rather than political sense and that de-emphasising the struggle for an Islamic state was worth exchanging for long-term administrative and political security.⁵⁰ In the late 1960s, however, when the idea of program-oriented development arose, the ruling coalition had only managed to win over the support of Muslim organisations by manipulating the party's leaderships. It deliberately exploited internal rivalries in Parmusi, in order to bring accommodationist party leaders to the fore, who openly supported program-oriented development. For example, in 1970, Djaelani Naro had taken over the chairmanship of Parmusi, and outmanoeuvred the existing Parmusi board – obviously with the help of Ali Murtopo. A similar manipulation happened in the NU, whose leadership also changed after governmental intervention. This interference in party politics provoked a predictable reaction from the reformist wing, which stepped up its opposition against the government.

“Program-oriented” development was bitterly contested by other political parties, however, and most importantly by other parties within the PPP⁵¹. The PPP had emerged out of the unification of the Muslim political parties, the Resurgence of the Islamic Scholars (NU)⁵² and the Muslim Party (Parmusi)⁵³. Support and open demands for a democratisation of the political system originated from two distinct political factions within the Islamic community. The fundamentalist faction, which basically sought to establish an Islamic state, based on Shari'a Law, and the reformist faction among the Muslim community, which basically viewed a multi-party system as a means to legitimately contest the secular character of the state and envisaged a politically influential role for Islamic parties. Its preference was based on an understanding that the numerical majority of Muslims among the Indonesian population would ultimately translate into a formal political victory, if free and fair parliamentary

⁴⁹ Hassan (1980)

⁵⁰ This belief had traditionally engendered a policy of accommodation with the civil state. According to Samson (1979: 199), fundamentalists affirm a strict, purist interpretation of Islam, oppose secular thought and Western influence as well as the syncretism of traditionalist belief, and insist on the primacy of religion over politics. Islamic scriptures not only provided prescriptions regulating family and religious matters, but also those relating to politics. The realisation of an Islamic society was, according to this view, predicated on the establishment of an Islamic state guided formally by Shari'a Law. In this perspective, political struggle means an unceasing struggle against non-Islamic forces for control of the state. Political struggle is interpreted in a militantly political manner. Reformists also theoretically stress the primacy of religion over politics, but they are far more willing than fundamentalists to cooperate with secular groups on a sustained basis. They are concerned with making the faith relevant for the modern age. Accommodationists value the framework of unity provided by Islam, but maintain that social and economic interests should be given priority by Islamic organisations. They further stress the necessity of acknowledging the legitimate interests of secular groups and cooperating with them on a sustained basis.

⁵¹ Partai Persatuan Pembangunan: PPP

⁵² Nahdlatul Ulama: NU

⁵³ Partai Muslimin: Parmusi

elections were held. Their victory would have ultimately legitimised their demands. Although their party program officially proclaimed the establishment of an Islamic state as a distant goal, in practice this faction was mainly concerned with making Islamic teachings relevant for the modern age through creating an Islamic society, and aspired for a politically influential role for Islamic parties. Reformists basically accepted the secular Pancasila state as legitimate. As this setting makes evident, it was fundamentalists and modernist Muslims who preferred a democratic multi-party system, rather than secular oriented groups.

For the international human rights campaign, this alignment of interests and preferences proved to be particularly unfortunate, for it effectively meant that there were only few supporters of a release of the alleged Communist political prisoners. The Islamic leadership was almost entirely opposed to the release of the prisoners. The NU, which had been part of Sukarno's alliance, had been actively involved in wiping out the PKI. The accommodationist leadership of Parmusi under Naro, a supporter of the Suharto regime, opposed the release, too. Those political organisations, which might have profited politically from taking up the political prisoner campaign as a means to criticize the authoritarian nature of the Suharto regime and pry open space in the domestic debate, were opposed to it mainly because it dealt with Communist political prisoners.

The government merely needed to emphasise that support for democratisation only benefited fundamentalists in order to cast doubts on the intention of the reformist Parmusi faction. Significantly, it remains unclear what the real intention of the reformist faction within Parmusi had been at that time, as its preference was never submitted to a rational discourse. Their party program foresaw the establishment of an Islamic state, yet, as mentioned above, their political approach did not exhibit a clear preference for an Islamic state. The very inconsistency between its demands for democracy on the one hand, and its silence on the international political prisoner campaign on the other, must have provided proof for international observers of the government's claim. The same holds true for the student opposition. Their political demands included human rights and democracy, yet, they were unwilling to speak up for the Communist political prisoners who had, through the campaign of the network, acquired a symbolic function for the human rights policy of the Suharto regime.

In sum, if the economic development argument which the Indonesian government advanced seemed to be more persuasive than the same argument in the Philippine case, it was because the Suharto government's vision of modernisation under authoritarian rule not only promised economic development, but was a means to hold political Islam in check. Continuation of the

military-backed authoritarian system was not only seen as an instrument to promote economic development, it was as a bulwark against an Islamic state. That there was a connection between human rights issues and the modernisation topic is obvious from Allan A. Ward's observation:

"In the opinion of the Catholics in particular, there was no point in searching ABRI for possible archaizing tendencies, in spotlighting military corruption and luxurious lifestyles or in drawing attention to military abuse of power. To do so, and in consequence, reject cooperation with ABRI would only divert civilian modernizers from the highway to modernization into a cul-de-sac of moralizing. The chances of modernizing Indonesia under army rule may be slim in this realist view, but the opportunity for non-communist modernization without ABRI does not exist."⁵⁴

This crossover in debates and political interests effectively prevented the emergence of a human rights discourse in Indonesia at the end of the 1970s and inhibited a further mobilisation against the authoritarian regime. The international campaign on Communist political prisoners in Indonesia moulded domestic preferences in a way which ultimately legitimated the authoritarian system. It legitimised the political factions which preferred an authoritarian system, because these were the ones which favoured a release of the political prisoners. Conversely, those groups, which supported democratisation, were opposed to the international campaign and to the release. The remaining political forces, who might have ultimately been persuaded to support the campaign, became victims of the Suharto regime's scenario of the rise of an Islamic state.

It is interesting to note here that the claims in the Amnesty International report would have supported the position of the proponents of democracy, and hence Muslim parties. Demands to increase the accountability of the authoritarian system legitimised demands for a restructuring of the political system and would have provided support for a fundamental criticism of the Suharto regime. By the same token, the claims of the transnational network would have supported the demands of Indonesian minorities for the protection of their rights, which were equally opposed to a change in regime. Thus, the question arises why both groups did not take up the demands, even for strategic instrumental reasons. This would have been a rational response, given that the Muslim opposition might have been interested in gaining power and the secular minority in guarantees for their survival.

By the same token, the case does not provide evidence for the claim that processes of deliberation might provide a mechanism to overcome conflicting values between Islam and

⁵⁴ Ward 1971: 38, as quoted in Hassan (1980: 4-5)

human rights. Rather, this Indonesian case seems to confirm the widespread view that Islam is incompatible with a Western concept of human rights. Does the crucial test case for deliberative processes ultimately demonstrate that deliberative processes are a very distant ideal? Not really. First, political Islam did not pose a serious threat to the emergence of a human rights discourse in the mid-1980s in Indonesia (see chapter 6). Thus, there is not a principal incompatibility between Islam and human rights. Second, there are other important variables which account for the transnational network's inability to convince domestic opposition groups of its claims. The most important element seems to have been that Muslim organisations did not trust international human rights organisations. Although Amnesty International and Tapol had publicly condemned the human rights violations of Communist political prisoners, both organisations had hardly ever condemned the violations against Muslim activists. This at least, was the conclusion the network drew in an internal assessment in the early 1980s.

In an interview with Carmel Budiardjo, Adnan Buyung Nasution complained that neither Tapol nor Amnesty International had ever taken up the fate of Muslim political prisoners. Nasution challenged Amnesty International's and Tapol's claims that they argued for universal rules and principles on the ground that both had failed to take up the issue of human rights violations affecting Muslims and had focused almost exclusively on Communist political prisoners. The international organisations had not been impartial. Amnesty International might not discriminate among countries in its struggle for universal human rights principles, but it seemed to be biased as soon as it came to different domestic religious or political groups. As Adnan Buyung Nasution remarked, in an interview with TAPOL, which explicitly dealt with the rise in the number of human rights violations against Muslims:

“What I have noticed in the past is that you only cared for communist political prisoners. That gave a bad impression of TAPOL as well as of Amnesty. But this question of yours is a good sign because it really means that you care for other political prisoners in Indonesia, because it means that you will stick to the struggle for human rights as a fundamental and basic thing.”⁵⁵

In sum, for the late 1970s, there is evidence that the campaign issue, Communist political prisoners, and the neglect of the human rights violations against Muslims, had discredited the transnational network and its claims in the eyes of the Muslim opposition. Because the report's claims were not taken up by organisations in the domestic opposition, the two issues, the international campaign on political imprisonment and the domestic opposition against the

⁵⁵ Buyung Nasution Interviewed by Tapol (1982)

New Order, remained disconnected. This also becomes evident if one looks at contemporary news reporting. The focus of attention was on the political prisoner problem and the activities of the opposition against Suharto, hence international activities and national politics remained strictly separated.⁵⁶

To conclude, the previous sections have shown that in the case of Indonesia, the spiral model explains why the Suharto regime released the Communist political prisoners. International human rights reports created publicity on the Indonesian government's conduct, and offered a systematic critique of the authoritarian system. Through the exchange between Amnesty International and the Indonesian government the transnational network had convinced other actors that the Indonesian government pursued a large-scale imprisonment policy which was against established human rights standards. Beyond that point, however, no changes occurred. At the point where domestic support for the key network demands was required, the spiral dynamic broke off. As I have argued, domestic deliberation about the collectively best preference, democratisation or Islamic democracy, was essentially stalled because the international public sphere, which Amnesty International was able to generate, became narrower as the Indonesian government released the political prisoners, and could not be expanded again because there did not exist discursive connections between the two. There were two public spheres, an international one and a domestic one, which remained unconnected as civil society did not take up the Communist political prisoner issue.

The change of Indonesian Islamic discourse

My explanation, finally, begets the question, what changed this interaction pattern among the transnational network, the Suharto government, and the domestic opposition, given the ability of the transnational network to spur a transnational mobilisation in the second half of the 1980s? After all, Indonesia was still a predominantly Islamic country! Historical evidence shows that by the mid- and late 1980s, the Indonesian community had overwhelmingly changed its preference for an Islamic state and supported the rule of law. The leaderships of influential Islamic organisations, such as the NU, had overwhelmingly rescinded their aspirations for an Islamic state and consistently articulated their support for human rights and the rule of law. The majority of Muslim organisations had revoked their aspirations for an Islamic state, and the strength of the fundamentalist wing within the Islamic community had considerably declined.

⁵⁶ See, for example the reporting in the FEER in its January 13, 1978 issue.

Effendy (1994) argues that the continuous political exclusion of Muslims from the decision-making process and their impotence in changing this political power equation prompted Islamic intellectuals to reconsider their discourse on the state in Indonesia. In reaction to this experience, the "new generation" of Indonesian Muslim intellectuals questioned this reading of political Islam, and concluded that Islam does not oblige its adherents to form a state. They found, however, that both the Qur'an and Sunnah do provide a set of ethical principles relevant to administering the state and its governing mechanism, such as consultation, justice, egalitarianism and brotherhood. This shift from a formal interpretation of Islamic doctrines, insinuating the implementation of Shari'a Law, to a substantive one led to the re-examination of the Indonesian national ideology Pancasila, which proscribes the secular state and to its eventual acceptance. More importantly is the fact that the shift in Islamic discourse effectively established a consensus on the rule of law.⁵⁷

Some of the most influential Islamic scholars, such as Nurcholish Masjid and Abdurrahman Wahid headed this Islamic reform movement and were able to gather enough mass support for this reinterpretation even in traditional Islamic organisations such as the NU.⁵⁸ The Islamic community's unequivocal rejection of demands for an Islamic state, symbolised by the formal acknowledgement of Pancasila as ideological base, removed one important impediment to domestic mobilisation. More precisely, it withdrew one legitimate justification of the Suharto regime, that it still presented a bulwark against the establishment of an Islamic state. Hence, the variable, which accounts for the Indonesian government's ability to escape transnational pressures for more comprehensive political reforms varies for the 1970s and 1990s and accounts for changes in outcomes.

Moreover, two international reports on human rights violations against Muslim activists published by Amnesty International and Tapol in 1986 and 1987 managed to win the trust of the Islamic community in Indonesia. The reports essentially constituted a credibility campaign on behalf of the transnational network in order to convince the international community, on the one hand, and members of the Indonesian military on the other, of the legitimacy of

⁵⁷ Starting in the 1980s, the new thinkers also started to penetrate the national and regional leadership of the major Islamic organisations Muhammadiyah, NU and the Council of Indonesian Ulama (Majelis Ulama Indonesia: MUI). Their primary goal has been to redirect the programs and actions of these organisations and these developed, in turn, into important interest and pressure groups. Abdurrahman Wahid became NU's national chairman in 1984 and managed to bring this organisation in line with the core ideas of the new Islamic intellectualism. Amien Rais and other influential individuals have tried to influence Muhammadiyah, apparently with less success. Apart from these non-political organisations they have also worked to change the political discourse of the major Muslim political party, PPP.

⁵⁸ For a detailed description on the change in Islamic discourse, see Effendy (1994). That Islamic organisations today act within a rule of law framework is also supported by the studies of Barton (1997) and Aditjondro (1997a).

Muslim opposition in Indonesia. While the campaign was a failure from the perspective of international mobilisation, the reports had important domestic repercussions. Organisations such as Tapol, which had been strongly identified with Communist political prisoners, decisively enhanced their credibility toward an Indonesian domestic audience.⁵⁹

Alternative explanations

There are several alternative explanations which might account for the lack of efficacy of human rights norms in Indonesia and hence ultimately the variation between Indonesia and the Philippines. First, differences in political regime type might account for the success in the Philippines and failure in Indonesia.⁶⁰ According to this approach, in Indonesia transnational human rights networks had a harder time because they faced a stronger military regime, while in the Philippines they faced a civilian regime backed by the military.⁶¹ While I do not dispute that the Indonesian government appeared to be stronger because it was ultimately comprised of military figures, I do not regard the difference in regime type at that time as the determining factor accounting for the failure of the Indonesian campaign. The riots in Bandung in 1973, and the Malari riots in 1974 demonstrated, according to observers, that the military was incapable of containing domestic dissent. The prisoner releases, in the course of 1979, provide further evidence that given international pressure and domestic mobilisation against authoritarian rule, the military could not pursue its power interests. Moreover, the military was by no means a homogenous institution at that time. Similar to the late 1980s, significant splits had developed among the military, too, and there were 'soft liners' in the military who were willing to support democratisation, such as Lt. General Sumitro.

With regard to the first part of the explanation, that the spiral model explains transnational mobilisation and the release of the political prisoners as part of a tactical concession, Kivimäki (1994) has essentially advocated a neorealist explanation. He argued that the releases were mainly due to the asymmetric bargaining capabilities between the US and Indonesia, and that the Indonesian government's decision to release the prisoners can be explained by Indonesia's dependence on development aid and military equipment. While not wrong, this explanation fails to take account of the fact that it was the intervention of transnational networks, which brought political prisoners onto the bilateral agenda for the

⁵⁹ For example, in an editorial of the Tapol Bulletin, Carmel Budiardjo stated: "The appearance of a TAPOL book, *Indonesia: Muslims on Trial in April 1987* (which has been translated into Indonesian) was seen by many groups in Indonesia as the final proof - if such was needed - that TAPOL does not restrict itself to defending only communist prisoners." In TAPOL's twentieth anniversary (1993: 2).

⁶⁰ Putzel (1997)

negotiations. Moreover, as Fealy has pointed out, there is only a little evidence to support the claim that the secret negotiations between the US and Indonesia ultimately *caused* the release of the prisoners. With regard to multilateral pressures to change the tapol policy, the rather fascinating characteristic of the public debate is the fact that the Indonesian government's inadequate justification for the prisoner policy ultimately legitimated Western pressure. The Indonesian government had not rejected the universal claim to validity of human rights norms, and undermined its own credibility on those issues it had advanced to excuse its human rights policy. This self-entrapment legitimated the actions of Western countries against Indonesia.

Most students of Indonesian would further claim that the drastic increases in oil revenues which the Indonesian state budget experienced at the end of the 1970s greatly increased the government's independence from foreign borrowing. The international donor community's influence on political decisions consequently diminished, and hence its leverage to influence the human rights policy. An example is John Bresnan who calls pressures to reform the Indonesian political system, which resonated even in army circles, "real" but holds that the oil boom strengthened authoritarian rule and ultimately accounts for its continuation despite splits in the ruling coalition. He concludes that had Suharto "faced his critics of 1970 and 1980 in conditions of falling oil prices, the outcome might have been different".⁶² There is no doubt that the oil boom greatly enhanced the standing of the Suharto regime. In the short term, it created adjustment shocks, however, which could have been conveniently exploited by critics had they be *willing* to challenge the Suharto regime.⁶³

Second, the oil boom had its greatest effects on the Indonesian economy between 1979 and 1982, but the oil boom was essentially over by 1983. There is no reason why – if the political protest mood could have been sustained over a couple of years – the world-wide economic recession coupled with drastic decreases in oil revenues could not have provoked a mutual reinforcement of political and economic problems as in the Philippines. The mysterious killings of 1983-85, in which the Indonesian military killed several thousand petty criminals, but in particular the Tanjung Priok massacre of September 1984, in which several dozen Muslim activists were shot by the Indonesian military, might have then provided the last push to topple the Suharto regime. This might have shortened the regime's survival by about 10

⁶¹ Schmitter (1992); Snyder (1992)

⁶² Bresnan (1993: 210). For general argument about the impact of oil booms on democratisation efforts see Karl (1997).

⁶³ See, for example, Arndt (1982).

years, bringing Indonesia in line with other democratic transitions in Asia, such as the Philippines, South Korea, and Taiwan.

More importantly, however, I argue that even if the oil boom had not taken place, the outcome, a return to repression would not have changed. There was simply no collective action frame providing a unifying element for the transnational network and the domestic opposition. Conversely, had the Islamic community not changed its discourse on the state and revoked its demands for an establishment of Shari'a state, the political transformation of Indonesia would not have taken place, or might have taken a different direction.

Modernisation theorists, finally, would dispute my argument on the ground that in the 1970s, the social-economic preconditions were not in place for Indonesia to democratise.⁶⁴ In fact, in the 1970s, Indonesia belonged to one of the least developed countries in the world. Its average per-capita gross national product was only 370 US\$ in 1978. The one for the Philippines was 490 US\$ in 1977. This argument can be rejected on the ground that Indonesia wasn't prepared to democratise in the 1990s either.⁶⁵ Moreover, Indonesia had experienced a democratic regime between 1950 and 1957, when its average per-capita GDP was lower than in the 1970s. Significantly, however, the perceived Islamic threat was one major factor accounting for the breakdown of parliamentary democracy in Indonesia in 1957.

What could have happened if transnational networks had convinced the domestic opposition of its claims and if they had acted *within* a collective action frame? Human rights organisations might have exposed the Indonesian government's justification as hollow and just serving its power interests by exposing the "Islamic threat" as basically a staged event promoted by Indonesian intelligence services. In particular, the timely revival of the fundamentalist Darul Islam Movement in Aceh might have been seen in different light, if connections between the movement and the Indonesian military had been known.⁶⁶ That this might have made a difference becomes evident from network strategies in the 1990s. Here, human rights organisations successfully framed the reviving Islamic independence movement in Aceh, Aceh Merdeka, as struggle for human rights and democracy and exposed the military's involvement in equipping and training pro-integration militias in East Timor. They

⁶⁴ Jackson (1979: 19)

⁶⁵ Liddle (1999)

⁶⁶ Human rights organisations claimed later, that the evidence presented during the trial of one of the leaders of the Darul Islam in West Java, Ismael Pranoto, suggested that the revival of Darul Islam was a "frame up." According to this account, intelligence agents had approached the Darul Islam and encouraged its leaders to take up their militant struggle. According to these agents, the Communist victories in Indochina threatened the Indonesian nation and if they were really loyal to the country, they should fight to protect the country. Being confident that they had the support from top intelligence people, the movement indeed organised and led some attacks. In Buyung Nasution Interviewed by Tapol (1982: 3).

thereby essentially helped to diffuse attempts by the Indonesian military, which were still virulent in the 1970s, to interpret democratisation as danger to political stability and a threat to the territorial integrity of Indonesia.

CHAPTER 8

International human rights norms and domestic political change: Conclusion

Which role have international norms and transnational networks, processes of deliberation or argumentation played in the process of human rights change? In what way do they help to illuminate the process of change as well as the variation in time this process has taken in the cases of Indonesia and the Philippines? International human rights norms and transnational advocacy networks have made a significant difference in bringing about changes in human rights practices in Indonesia and the Philippines. They have thus helped to narrow the "compliance gap" between international human rights norms and actual human rights practice in Indonesia and the Philippines. Human rights change would not have come about without the existence of an international human rights regime on the one hand, and committed activists promoting the prescriptions of these norms on the other. Domestic human rights organisations linked up with international human rights organisations and established a transnational network with an explicit strategy of pressuring their government from an international level in order to influence its human rights policies. They have been surprisingly effective in generating this pressure, even if the political dynamic of changing the human rights practice has taken quite some time. We are now in a position to evaluate the explanatory force of transnational networks creating a transnational public sphere in more detail. I will then explore the explanatory force for other countries.

International norms and transnational networks

The Philippine and Indonesian case studies confirm the initial assumption of this study, and of transnational network analysis more generally, that the blocking of domestic mechanisms provides incentives for internationalising political issues.¹ The transnationalisation of human rights issues occurred because the establishment of authoritarian regime structures and the ensuing repression of political dissent rendered domestic mechanisms of interest articulation ineffectual. Once martial law was declared in the Philippines in September 1972, or the

¹ Keck and Sikkink (1998)

government imposed other limitations on freedom of assembly, freedom of speech and press freedom, as in Indonesia after 1959, and more pronounced after 1968, the ability of civil society to collectively organise alternatives to authoritarian rule became severely limited.²

Domestic human rights organisations channelled information outside their country once the degree of repression allowed them to operate and to gather information within their countries. If prior to the establishment of transnational human rights networks the Philippine and Indonesian governments had acquired an information monopoly over outside communications by exerting internal repression, the establishment of a transnational network, allowed these organisations to break this information monopoly and challenge in a systematic way their government's assessment of the human rights situation from a higher *international level*. By establishing transnational networks, human rights organisations not only overcame the domestic constraints which authoritarian rule had established. International publicity provided disadvantaged domestic actors with a public sphere in which they could articulate their demands, challenge the justifications of their political contenders for authoritarian rule and submit domestic power structures to a systematic critique. Finally, international publicity brought in an international community of liberal states as judges, which evaluated the claims of the two contenders, transnational networks and target government on the backdrop of conditions of argumentative rationality.

If there is one central feature which distinguishes the success cases (Philippines 1973-1998; Indonesia 1986-1998) from the one of failure (Indonesia 1973-1979) it is the ability of transnational networks to convince an international audience consisting of Western liberal states, domestic constituencies, international organisations and the media, of their claims that the Suharto and Marcos governments were human rights violators. The process of human rights change has taken much longer in the Indonesia case than in the case of the Philippines, because the Suharto government was longer able to discursively justify its authoritarian regime structures. During the 1960s, it successfully justified its human rights violations by pointing to a Communist subversion upon coming to power. When transnational networks had challenged this justification and tried to show that the Suharto regime applied similar repressive methods to a new generation of student opposition in the mid-1970s, the Suharto government justified its authoritarian practices in terms of an Islamist threat to the secular state on the one hand, and in terms of a threat to its national unity posed by the self-determination movement in East Timor on the other.

² Przeworski (1992)

By the late 1970s, an international consensus among the international state community had emerged. This consensus relied on a shared understanding that the Suharto regime had assumed a crucial role as a bulwark against fundamental Islamic forces and as a guardian of territorial integrity. The reports of Amnesty International and Tapol on Muslim prisoners of conscience in 1986 and 1987, which found absolutely no international resonance, symbolise the Anti-Islamic consensus most visibly. This international consensus caused an international demobilisation, closed an emerging transnational public sphere, and enabled the Suharto regime to return to repression. This consensus effectively frustrated activity of transnational networks to further mobilise an international community and to initiate a political dynamic expected by the spiral model of human rights change. Similarly, the Marcos government could initially rely on a consensus among the international community that its actions to strengthen state authority and its combat against a Communist subversion were justified even if these actions seemed to be in violation of established human rights standards. In sum, discourses in this transnational public sphere shaped whether a progress within the spiral model from the phase of denial to tactical concessions occurred. Whether an initial international mobilisation was bound to continue depended on the kind of justifications the target states advanced.

By framing their justification in terms of extraordinary circumstances, both governments essentially made their justification subject to a rational evaluation (plausibility probe) by other actors, and enabled human rights groups to attack the continued practice of human rights violations once these "extraordinary circumstances" ceased to exist or were not plausible. Transnational human rights networks could break up the international consensus by advancing new arguments. Amnesty International's report on East Timor in 1985 essentially revoked the transnational network's central claim to self-determination, or made it conditional on improvements in the human rights situation. The International Commission of Jurists report on the Philippines in 1977 demonstrated that the Marcos repressive machinery was upheld even as the extent of the Communist subversion had diminished. In each case, these new arguments changed the international discourse and other state's evaluations of the target states and induced a slow but continual mobilisation and a development, which is described by the spiral model.

Given the rising moral pressure, both from networks and individual state actors, the Marcos and Suharto regimes eventually undertook tactical concessions. Marcos announced a political normalisation in August 1977 right in time for the release of a human rights report by the International Commission of Jurists. "Normalisation" led to elections for the transitional

national assembly in May 1978 and basically re-instituted regular parliamentary and presidential elections. In response to increasing pressure to act on the East Timor question, the Suharto regime opened up the territory to outside observers. It announced a political opening in 1989, which further pried open space for civil society to organise. I do not claim that these decisions were *determined* by international pressure for human rights changes, however. It is important to note here that both governments could have equally resorted to a strategy of increasing repression. Yet, political liberalisation virtually suggested itself given the nature of the claims human rights networks made.

Tactical concessions had at least two important effects with regards to human rights practices. With regard to target governments, tactical concessions essentially 'took the wind out of their critics' sails' and signalled to other international actors that the governments were well-intentioned and committed to improving the human rights situation. On the negative side of the equation, these disciplinary actions in both cases ultimately changed the nature of interaction between the civilian faction of the authoritarian coalition and the military one. Because human rights networks focused on breaking the cycle of impunity for human rights violations, the nature of their criticism suggested disciplinary action against the military and other security services. The latter could no longer count on impunity and faced greater insecurity as to what kind of behaviour was expected from them. Pressure for human rights change imposed behavioural constraints on the military, which explains, for example, the surprisingly "lenient" attitude of the military in dealing with rising protest levels, especially in Indonesia at the end of the 1980s and the early 1990s. Moreover, international "shaming" strategies weakened the military's domestic political role, changed the power balance in the ruling coalition and eventually led military hard liners in Indonesia and the Philippines to engage in a serious power struggle with civilian rulers. Thus, the interaction developed a dynamic in which international pressures reinforced splits among the military and civilian rulers.

So far, I have provided evidence that human rights norms transmitted by transnational networks can contribute to an independent assessment of why liberalisation emerges as a viable option for authoritarian rulers. I have emphasised that an international perspective highlights that measures to improve the human rights violations almost invariably mark the beginning of deviations from previous repressive action repertoires, and this must be seen as a tactical response to international pressure which cannot be exclusively regarded an autonomous decision of authoritarian rulers. What remains to be explained is how and in what way human rights norms shape the preferences of domestic actors, provide a collective action

frame, contribute to domestic mobilisation, and refigure the struggle of the opposition toward a collective goal. In short, the question is which role human rights norms play in shaping the political dynamics of the tactical concession phase?

The interesting feature of this phase is that transnational networks encountered the main impediments, in terms of conveying human rights, primarily at the domestic level. International moral pressures were sufficient to open a transnational public sphere in which the human rights practice of the Indonesian and Philippine governments and the power relations sustaining them were criticised and provided a certain degree of external constraint on governmental behaviour. Yet, collective action against authoritarian rule required that civil society reach a public consensus on the *validity* claims of human rights. This included that they had come to a collective understanding about the definition of the situation, and to a collective understanding about the causes of human rights violations.

Here, the three case studies provided diverging insights, which ultimately demonstrated how difficult it was to reach such a consensus, given the diverging understandings of key organisations in the civil society.

- 1) In the case of Indonesia (1973-79), the transnational network failed to persuade the Islamic community of its claims. As a result, the spiral dynamic broke down and the Indonesian government was able to return to repression. At that time, the transnational network waged a campaign against the long-term imprisonment of Communist political prisoners. Although the network managed to submit the Indonesian government to significant international pressure, the Indonesian opposition was unwilling to capitalise on the Communist political prisoner issue and rejected the option of categorising it as a symbol of the Suharto regime's authoritarian nature.

As I have explained in chapter seven, a combination of mutual distrust between the transnational network and key domestic opposition groups, and the fact that the human rights campaign targeted almost exclusively the political competitors of Muslim groups, account for the spiral model's breakdown. The Islamic opposition supported human rights, but not if human rights benefited its political opponents, the Communists. Moreover, the Islamic opposition did not subscribe to the notion of rule of law, but promoted a vision of Islamic democracy based on Shari'a Law as alternative political project. The student opposition struggled for a democratic *rechtsstaat*, but did not support the international campaign either. Their rejection of the transnational network's interpretative frame had serious consequences. The Suharto regime itself began capitalising on another international event, the Iranian revolution, and used the scenario of

an "Indonesian Iran" as a means to discredit the whole Islamic opposition. This engendered an international consensus on the military backed Suharto regimes role as bulwark against an Islamist threat and the transnational public sphere closed quickly after the Suharto government had released the political prisoners. Because international and national mobilisation had been unconnected, there was no way of preventing this closure and the Suharto regime basically got away with a tactical concession.

- 2) In contrast to this observation, in the second Indonesian observation (1986-98), the transnational network could rely on a public consensus on human rights. The Islamic community had overwhelmingly accepted the rule of law as constitutive principle of the Indonesian state, and the East Timor network and the nationalist opposition in Indonesia had come together on a principled stance on the unity of Indonesia. It was made conditional on the ending of gross and systematic human rights violations. Consensus on the unity of Indonesia was a precondition for democratisation.³ The only means to end human rights violations was regime change. This collective frame translated into a marked unity of the opposition, enabled the full development of the spiral model, and the broad-based opposition did not even disintegrate when the national referendum on East Timor posed a serious threat to Indonesia's democratisation process.
- 3) With regard to a consensus on the validity of human rights, the Philippine case again presents a different picture. Although the Philippines has become a model case for a peaceful regime change and for the strength of the human rights movement, there was actually no consensus on the validity of the liberal human rights frame until three years after regime change from Marcos to Aquino.

The Philippine liberal opposition, the nationalists and the radical Left opposition were divided whilst the Communist opposition quite successfully promoted its account on the nature of state repression in the Philippines. In fact, the Communist appraisal, state repression as means to maintain a relationship of capitalist exploitation of the working class, and the solution to it, a Communist revolution, presented a convincing competitive frame to the one of the liberal opposition and the transnational network. Yet, this competitive frame only gained in persuasiveness due to the lack of international support from the Reagan Administration for human rights, and its explicit support for the authoritarian Marcos regime. The Reagan Administration's approach to human rights in the Philippines politically weakened the moderate opposition, whose opposition strategies were closely tied to the US Administration. Thus, when the Reagan Administration's

³ For a similar argument regarding China and Tibet, see Sørensen (1997).

public support for Marcos foreclosed any prospects for external support, the moderate opposition entered into a coalition with the radical Left. Rather than being based on a rational consensus that the Left had the better political alternative, it was based on strategic necessity. The moderate's coalition-building strategies ultimately enhanced the political position of the radical Left. Until the ouster of Marcos, transnational mobilisation thus could not rely on a collective action frame. There was no consensus on the principles which would guide political struggles after regime change. As a consequence, the anti-Marcos coalition broke up soon after regime change, and given the largely intact repressive machinery, human rights violations soon re-emerged and were, between 1987-89, accepted as an appropriate backdrop to the struggle for a liberal democracy.

From an international relations perspective, the interaction pattern in this tactical concession phase is particularly interesting. For it basically turned out that in a situation of *international pressure* and contestation of the normative validity of human rights on the level of civil society, authoritarian rulers generally had an easy ride in dealing with international demands to improve the human rights situation. Tactical concessions and rhetorical endorsements of human rights became a habitual and largely symbolic practice, but were actually decoupled from the societal level and had no impact on the human rights situation. This seems to confirm one of the hypotheses of sociological institutionalism, that states enact certain "scripts" for symbolic reasons, but these do not yield behavioural consequences. The Marcos regime's reactions to international pressure during the period 1978-82, has been a case in point. Marcos made a series of tactical concessions, which only divided the political opposition. Investigations into human rights abuses, isolated cases of disciplinary action against military perpetrators, judicial review and a host of legislation designed to tackle human rights abuses indicated governmental sensitivity to international pressure but proved to be largely ineffectual to improve the human rights situation.⁴

Once a public consensus among the opposition was achieved, however, a logic of argumentative rationality gradually took over. The very dynamic of the phase of tactical concessions eventually developed out of a "credibility gap" that the governments faced. Human rights organisations constantly argued that if the government was seriously interested in improving the human rights situation, it needed to make serious reforms. As a consequence, it became more difficult and more costly for the Suharto and Marcos governments to pursue their human rights violating policies, and the political regime disintegrated. For example, the Suharto government could not establish a national human

⁴ See also Keck and Sikkink (1998: Chapter 3)

rights commission and then dissolve it even if it had the power to do so. It had to demonstrate that it respected the Djaelani commission's or the national human rights commission's findings, even if that was costly to its image, and ultimately its power.

Due to the dominant human rights discourse, human rights norms immediately gained prescriptive status at a state level in both cases. Yet, at the beginning of phase four, the Philippine and Indonesian cases exhibit considerable variation. In the Philippine case, international mobilisation broke down immediately after Corazon Aquino's assumption of power. In the Indonesian case, in contrast, mobilisation continued, exacerbated as soon as Habibie took over from Suharto. In the preceding sections I tried to link this variation to collective understandings about the authenticity of the two individual actors. In contrast to Habibie, Corazon Aquino enjoyed a high degree of credibility in the area of human rights. Her unquestioned popularity and her repeated promises for human rights reforms, backed by concrete measures in the human rights area led to the deactivation of the transnational network once she seemed to be in power and in control of the situation. As a result, the collective action frame of the human rights network lost in persuasiveness, because the frame ultimately relied on a construction which did not differentiate between government and military, but viewed them as monolithic. More importantly, however, was the fact that the human rights movement had disintegrated quickly after regime change and did not present an alternative to more radical appraisals of the Aquino administration's human rights performance. In the Indonesian case, the human rights network's frame maintained its persuasive power, because Habibie had been part of the Suharto regime.

Generalising from the Indonesian and the Philippine experience

The Philippine and Indonesian cases have demonstrated that even such seemingly consensual norms such as human rights depend on specific circumstances to guide state practice and lead to a sustained improvement in human rights practice. Transnational human rights networks reaching a consensus on human rights were introduced as a *necessary* condition for the translation of abstract prescriptions into domestic practice. The Philippine, East Timor and Indonesian networks seem to be unique in the sense that they managed to generate a consensus on human rights under circumstances which are usually averse to democratic change. Two cases suggest themselves as comparisons, Turkey and China.

Turkey has been notorious for its human rights violations against the Kurdish minority, but also against the Islamic opposition. Although the Turkish government's desire to join the European Union has led to several political decisions to improve the human rights situation,

these steps have not engendered a challenge comparable to the case of Indonesia, where the dual function of the military quickly came under duress. In accordance with the findings above, it could be argued that transnational human rights organisations have so far failed to break an international consensus among state governments that the military backed Turkish government represents both, a guardian against Islamic fundamentalism and national unity. From the perspective of networks, human rights organisations have so far not managed to break this double consensus, as the Kurdish Workers' Party (PKK) sticks to its ultimate goal of self-determination for the Kurdish territory. The PKK has only few links to other Turkish human rights organisations, which hampers efforts to use public sphere, which has been opened due to international pressure, and coordinate activities. Human rights networks have therefore been unable to make human rights violations against the Kurdish minority and Muslim political activists an instance of the repressive nature of the Turkish state.⁵

In the case of China, the international community has equally applied considerable pressure on the government in Peking to change its human rights practice since the early 1990s. While these pressures have led to important changes in the domestic legal system, the basic character of the the Chinese regime seems to have been untouched. The findings of this study seem to highlight several features, which explain the lack of democratic regime change in the Chinese case: The Chinese government has so far effectively justified its authoritarian nature in terms of the threats to territorial unity a change in human rights practices might pose. The struggle for self-determination in Tibet, as well as struggles for greater autonomy in several other Chinese provinces have provided convincing instances for this argument. Transnational networks have not been able to challenge this account because the internationally most salient network, the Tibetan self-determination movement has not softened its position on self-determination as such, and equally has no organisational linkages to democratisation groups in China, which could voice their demands within China.⁶ In the case of China, an additional feature comes into play, the need to reach a consensus among the political opposition on human rights. The unresolved question of Taiwan, which the Chinese government claims still belongs to its territory, splits Chinese nationalists. Taiwan's political democratisation after 1987 could have provided a kind of role model for the Chinese democracy movement. Yet, it occurs that any model character has been seriously diluted by the fact that the question of Taiwan's "return home" or continued independence from China splits supporters of democracy. In sum, Turkey and China represent cases where network influence cannot be

⁵ Franz (1995). For a comprehensive assessment of the Turkish Government's ability to undermine international pressure for human rights change see Liese (forthcoming).

⁶ Sullivan (1999); Amsden (1997).

expected. The domestic opposition is divided and the public space that has been opened by international pressure has not created a shared understanding among key organisations in the political opposition.

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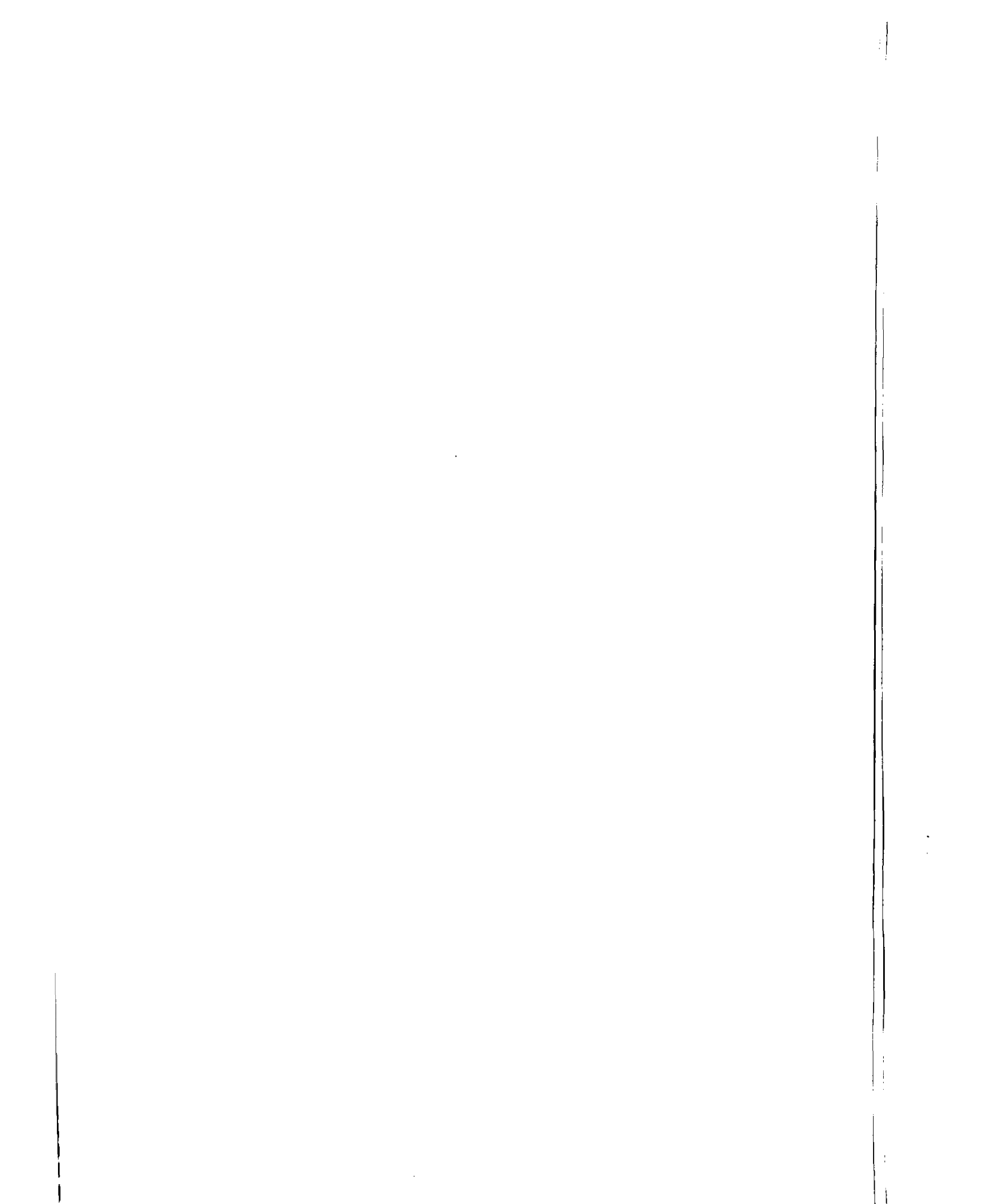
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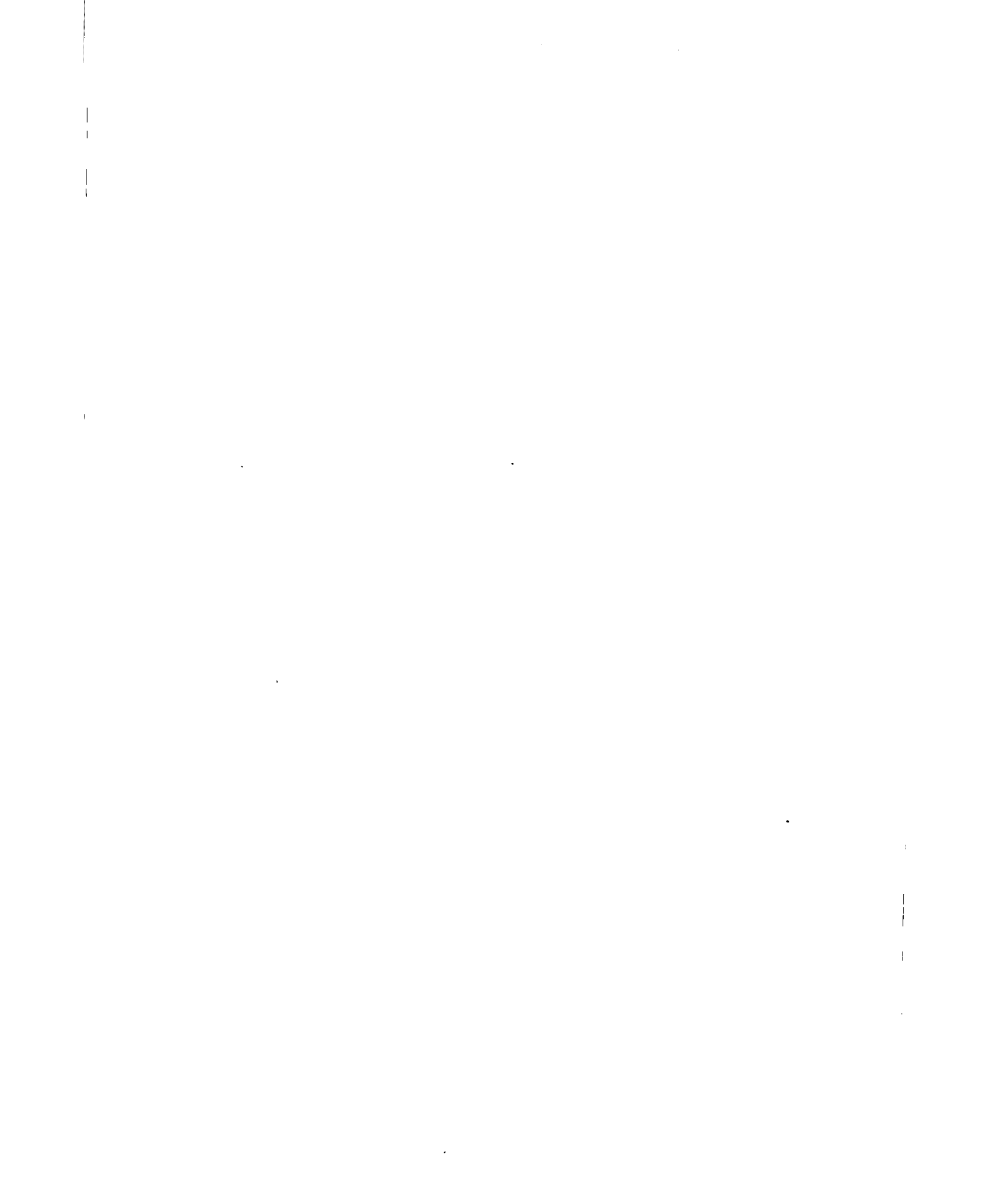
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