

11th Colloquium on the Legal Profession (October 24, 2008)
Faculty of Law, University of Windsor
Panel on “What can we do? Victims of Human Rights Violations Abroad”
Dr Christopher Waters’ Speaking Notes

Oversight of Our Troops ‘Over There’

- Various ways of tackling the question of ‘what can we do in response to human rights violations abroad?’ A key part of the response to this question is engaging in the transnational activities of civil society groups dedicated to the promotion and protection of human rights
- Civil society groups with an interest in human rights may engage in research, standard setting, education, lobbying, advocacy and litigation. Well known transnational civil society groups include Human Rights Watch and Amnesty, but there are a variety of non-governmental entities, including recently the Law Society of Upper Canada (note the Law Society’s advocacy on behalf of lawyers and judges in Pakistan), who engage in promotion and protection activities. Tangible results of civil society ‘norm entrepreneurship’ include, for example, the successful negotiation of the landmines and cluster munitions bans. Without civil society engagement, states would most certainly not have agreed to the standards set forth in the treaties which bans those two weapons
- Focus of this talk will be on one particular aspect of civil society work: litigation. And in particular, I will focus on litigation in Canada and two of its NATO allies, to ensure the human rights accountability of our militaries when engaged in expeditionary activities
- In Canada, the Afghan detainees case. Two Canadian rights groups challenged the legality of the Canadian Forces’ detainee policy in Afghanistan.¹ They argued that turning over Afghans following Canadian capture to Afghan forces, where they faced a real prospect of torture and ill-treatment, contravened the freedom from torture as enshrined in the Charter. The Federal Court however held that the Charter did not apply to Canadian Forces’ actions overseas, at least when they were deployed with the consent of the Afghan government and were not occupying forces. In this light the courts would not force the Charter to “follow the troops” without host-state authorization. This finding is under appeal.
- In the US, the Guantanamo cases² and in the UK, the Iraq torture case³
- The direct results of this litigation have been incremental and halting due in large measures to courts’ extreme deference to military prerogatives, as defined by the military itself. However the main outcome of the litigation may be to highlight human rights shortcomings for the public, the military’s ‘top brass’ and politicians
- Discussion of how law students and lawyers can get involved with this kind of activity.

¹ *Amnesty International v. Canadian Forces* (2008) FC 336.

² Including *Boumediene v. Bush*, Nos. 06-1195 & 06-1196, 553 U.S. ___ (2008).

³ *R (on the application of Al-Skeini and others) v Secretary of State for Defence*, 13 June 2007 (HL).