

HUMAN RIGHTS IN A DEMOCRATIC ERA

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Having celebrated the triumph of democracy in the hemisphere, we have yet to realize all of its profound implications--either national or international. More than a decade into the process, we are only beginning to realize the potential for deepening and broadening a partnership that rests on a democratic foundation.

Already, however, one thing is clear: Democracy and human rights go hand in hand. It is an unshakeable premise of our common democratic culture that democracy is the best guarantee of respect for human rights. We in the OAS have affirmed and reaffirmed this basic point.

But we are dealing here with more than resolutions, philosophy or untested hypotheses. It is an empirical fact that the spread of democracy has led to substantially fewer cases of abuse and instances of political violence. This progress is, in part, reflected in the Commission's report.

In the last reporting year, in Panama, Radio Mundial returned to the air. Papers, which oppose the current government -- El Periodico and El Istmo -- are in circulation. In Nicaragua, the new government lifted long-standing restrictions on expression. In Haiti, military professionals helped make it possible for free, fair, and peaceful elections to take place. And then when an eleventh hour attempt was made by reactionary elements to deny the Haitian people their choice, the military stood on the side of the democratic and constitutional process.

The full measure of progress in defense of human rights in the Americas is not reflected in the report because of the 34 member states only 7 are treated in country reports. This incidentally, is one reason that my country advocated, and the Strengthening Committee recommended, a thematic report on a human rights problem chosen each year by the General Assembly -- a report which would analyze one human rights issue across the entire hemisphere.

Legacies of the Past

It is, of course, critical to realize that human rights problems do not disappear with the advent of democracy. "Holdovers" from pre-democratic times can be individual and institutional; they can be conceptual and often simply consuetudinal; but, whatever the cause, violations of norms that are basic to modern democratic societies still take place. Without official sanction or encouragement, some officers of the law will abuse their authority, some men in uniform will discredit their profession. Civil strife, now affecting countries from Central America to the Andes, creates fertile ground for violations. The forced disappearances of persons is a particularly appalling crime, but it continues to rend families and societies.

The 1990-1991 Annual Report is the longest ever produced by the Commission. It contains 7 country reports, resolves 86 individual petitions, and provides three studies or interpretive essays -- on human rights and democracy; on human rights and violence by irregular forces; and on the elaboration and implementation of human rights instruments -- studies responsive to mandates of previous General Assemblies. Let me briefly review what the Commission reported in chapters on individual countries, taking the same alphabetical order used by the Commission.

Cuba. The report on Cuba documents once again the intractability of human rights problems outside a democratic context. The Commission warns of a disturbing increase in negative trends and a still harder government attitude towards human rights workers.

El Salvador. The report on El Salvador expresses the Commission's view - with which my government agrees - that the holding of talks between the government of El Salvador and the FMLN is "very encouraging." So much of the human rights problem in El Salvador can be traced to the long fratricidal conflict there. I cannot mention human rights in El Salvador without underscoring that it is a matter of the greatest importance to peace as well as justice that the government of El Salvador maximize its efforts to resolve the Jesuit case as soon as possible.

Guatemala. The Commission is unfortunately correct in concluding that the human rights situation in Guatemala has deteriorated since the last report. Regrettably, however, the Commission's report reflects more of the horror than of the complexity. I note that the action of the government to reduce civilian military tensions by relocating an army base is unprecedented. The willingness of the Guatemalan government's human rights ombudsman to criticize government institutions in the Santiago Atitlan case attests to a commendable openness on the government's part and to the independence of its ombudsman.

Haiti. In Haiti we see the parallel progress of democracy and human rights. We note, along with the Commission, the "decisive" efforts of the provisional government and the armed forces to provide election security. And we urge the OAS and the inter-American system as a whole to continue to give special attention to Haiti's needs.

Nicaragua. The report on Nicaragua notes many positive developments - some of which we have already mentioned. Unfortunately, these were overshadowed by debate caused by the Commission's use of the image of a "state within a state" to characterize the role of the Ejercito Popular Sandinista.

Panama. The Panama report shows how quickly political repression can vanish given the political will of a democratic government. It also documents how persistent are those problems of institutional development requiring resources and time -- for example, prison and judicial reform.

Suriname. In its section on Suriname, written before the May 25 elections, the Commission condemned the Christmas Eve military overthrow of Suriname's elected government, and urged in the "strongest terms it can invoke" that the government promptly restore respect for all human rights, particularly political rights, in Suriname. The free elections held with OAS observation on May 25 were an important step toward restoring the democratic order in Suriname.

Last year, I made a special request that abuses against human rights workers be given special attention in the Commission's reporting and its work. Regrettably, the abuse of human rights advocates has not ended. The reports of Cuba and Guatemala document the problems human rights organizations and workers face under very different circumstances. Nevertheless, the Commission has endeavored to tell us more and the draft Permanent Council resolution before this General Assembly makes specific mention of the problem.

The U.S. and the Convention

The Secretary General noted in opening this Assembly that no less than 12 countries have yet to ratify the American Convention on Human Rights. Many have asked why the United States is among them. We did, of course, sign that Convention on June 1, 1977. We then submitted it to our Senate for ratification, but without result. Consideration is regularly given to moving again for ratification. The most recent occasion was earlier this year. As most of you are aware, however, my country has problems with certain provisions of the Convention that relate to the right to life, the death penalty and to our system of federalism.

None of this prevents the United States from holding itself accountable to the Inter-American Commission on Human Rights.

- The United States recognizes the competence of the Commission on human rights matters and has cooperated with the Commission in individual cases; on-site investigations, and in receiving appeals by the Commission to U.S. authorities.
- Last year the United States was the "defendant" in a petition filed with the Commission in a case that raised the issue of capital punishment. (The United States did not challenge the authority of the Commission to consider and decide the case. On the contrary, the United States made its case to the Commission, and, as it happens, the Commission ruled in favor of the U.S. Government.)
- Early in the 1980s the Commission at the behest of groups representing Haitian immigrants investigated conditions in U.S. detention facilities used to hold undocumented aliens. The visit served to clarify actual conditions in the facilities and lay to rest false and exaggerated accounts of conditions that were circulating.
- This year the United States was again the object of a petition -- this time with reference to the subject of Haitian immigrants/refugees.
- The Commission has addressed appeals to state authorities -- e.g., the Governor of Virginia -- to stay executions of convicted individuals. Neither state or federal officials have challenged the transmission of such appeals by the Commission.
- Finally, conditions connected with the U.S. military action in Panama of December 1989 are treated in the Panama report and are the subject of a pending petition before the Commission.

New Challenges

We have repeated it often: The day of the dictator is over. The passing from the scene of the dictator has major implications for the promotion of human rights. Politically, of course, the absence of dictatorships deprives human rights militants of ready targets or symbols against which to rally political action.

But there is also a deeper change: the generalized existence of governments which can no longer be assumed to be hostile to human rights requires a different style than that used to deal with situations in countries under authoritarian rule.

Finally, the absence of dictatorships makes more apparent human rights abuses from other quarters -- for example, the heinous violations perpetrated by terrorists like Sendero Luminoso and by irregular groups like the FMLN. I fully understand that there is an ongoing debate among our member states about whether a special legal regime should be developed to deal with the abuses of terrorists and irregular forces. I do not wish to address at this time the issue of legal philosophy. I do wish to emphasize that we believe human rights abuses from whatever source need to be part of human rights reporting. A full accounting of the human rights situation of the hemisphere cannot leave out the serious abuses committed by non-governmental groups.

An irony of the democratic era is that while the actual level of abuses -- the number of persons whose rights are infringed -- declines, the human rights case load -- the number of grievants seeking redress -- can increase. With democracy comes the promise of justice, commitment to the rule of law. Our national constitutions and laws -- as well as our inter-American human rights instruments -- provide for fair and speedy trials, the right of petition, to "due process" and judicial protection, to freedom of opinion. In such a legal environment it is natural to expect that those who believe themselves to have been wronged will come forth and seek redress.

Moreover, those who were without legal recourse in previous authoritarian or totalitarian societies will want to press claims that arise from abuses committed under nondemocratic regimes. In Panama, for example, we have seen a veritable rush to the courts by plaintiffs alleging abuses by Noriega or his minions. Judicial institutions grown inefficient through previous disuse or misuse find the heightened volume of cases more than can be handled. Backups in the courts create increased burdens in the prisons as those held on charges await trial. These are among the reasons why the U.S. Government sponsors programs bilaterally to enhance the administration of justice.

The Inter-American Commission of Human Rights is experiencing the impact of these trends. There were 86 cases resolved this year, but that leaves some 800 to be completed. The Commission's case load is the product of its obligation to consider petitions that are brought to it. The workload is a function of its mandate. Absent the human resources to address the volume of petitions before it, justice will either be delayed or careful and thoughtful treatment of cases will suffer.

For these reasons, we fully support the recommendation of the Working Group on Strengthening the OAS that the Commission be given increased material support.

Dealing with New Challenges

If human rights work continues and even increases in a democratic era, it also becomes more complicated.

In this new democratic era, the Commission, the Inter-American Court, and national courts will more and more need to go beyond simple fact-finding and become increasingly involved in questions of law and its application to specific cases. In the United States, many of the great "bill of rights" issues are not about what happened or who is responsible, but about what the law says and how it applies to individual cases. As cases become more sophisticated, the demands on legal professionalism become greater.

Human rights activity -- from reporting to case work -- becomes more sensitive as well as more complicated. With democracy comes a resurgence of politics: the open and peaceful competition for office, the give-and-take of parties, the clash of diverging interests, the often raucous political debates that, in their own way, attest to a vigorous political life.

To deal with abuses in a democratic political order requires special care. The force and credibility of findings that address basic rights can be undermined if commentary strays from the issue at hand or if language seems to reflect a political position rather than a determination made on the basis of fact and law.

Do not mistake my meaning. The Commission clearly has the right to consider alleged violations of political rights, including the right of a citizen to vote, to participate in what the American Convention refers to as "genuine" elections. There cannot be prior -- or any other kind of -- censorship of the Commission. The Commission's independence is the guarantee of its effectiveness.

At the same time, the Commission must be as scrupulous in protecting its own credibility as we are in defending its independence. For example, although there is value in setting the broader context while describing human rights cases, in doing so one always runs the risk of falling into sweeping generalizations and straying into purely political judgements. Similarly, historical antecedents are helpful, but lengthy historical analysis of a problem can leave a negative and misleading impression of current practice and trends. And although a metaphor or striking language will often capture the very essence of a problem, it will just as often overstate a point or fail to define precisely what is at issue.

It is not possible to lay down rules on what are essentially matters of judgement. In dealing with political rights the risk is always there that one will deal more with politics than rights. The solution is not silence, but a scrupulous sobriety of formulation and a willingness to entertain differing points of view.

New Opportunities

As virtually an entire hemisphere enters upon a new democratic era we must also identify fresh opportunities for advancing the cause of human rights.

The opportunities are founded on the fact that democratic countries are committed to resolving human rights problems.

As they consolidate their transition to democracy, Nicaragua and Guatemala have signed and ratified international and regional human rights instruments and accepted the jurisdiction of human rights bodies like the Inter-American Court.

Guatemala has created a special ombudsman to coordinate the reporting and handling of abuse claims. Great efforts -- as in Panama -- are given to strengthening national judicial systems, training law enforcement officers, equipping investigators with modern forensic techniques.

Freely elected governments are more likely to invite impartial, third-party on-site investigations by the Inter-American Human Rights Commission, as have Peru and Nicaragua. They are more likely to cooperate with Special Rapporteurs of the UN Human Rights Commission as El Salvador has done for many years.

Democratic states do not fight to protect themselves from scrutiny and review. On the contrary, they welcome constructive advice and support in their own efforts to achieve full respect for human rights. In the OAS, we are witnessing renewed efforts to protect human rights, as in the draft convention on forced disappearances which OAS member states have now begun to negotiate with genuine care and effort.

The partnership that democracy makes possible among nations should help define the relationship of OAS member states and the Human Rights Commission as well. Now as never before all active members of the OAS can work with the Human Rights Commission to advance the cause of human rights.

A commonly accepted democratic standard encourages dialogue to replace confrontation. If dialogue is a hallmark of democratic culture should it not describe the way that the Commission and member states should approach their differences?

To ensure that we have the better dialogue our era requires, we must have the best possible Commission, made up of the best possible members working with the best possible staff. The United States has put forward the candidacy of Michael Reisman. Because of his intelligence, professionalism and dedication, we believe that he will contribute to the high

purposes of the Commission's work with objectivity, integrity and commitment. We wish also to formally record our admiration, respect, and support for the Executive Secretary, Edith Marquez, whose prodigious efforts with the Commission and dedication to human rights are unquestioned, and whose leadership we hope to have as we strengthen the Commission's professionalism.

Our support for the Commission is firm. It does not imply that we agree with all of its findings and judgements. It would be surprising if all 34 member states of this organization found themselves in agreement with each other and with the Commission on such complex issues as have come before this Commission. A frank, open debate of the report -- first at the Permanent Council and then at the General Assembly -- is vital to a search for truth that does not end with the publication of the report.

Finally, with all active members of this Organization committed to democracy, human rights work must now extend beyond critique to include, as Deputy Secretary Eagleburger proposed last year in Asuncion, joint endeavors with member states in the areas of training and technical assistance.

The Inter-American Commission on Human Rights is the "conscience of the Americas." It upholds the standards we espouse. It prods and pushes. We may wrestle with it in a common search for truth; but let us always ensure that its voice is heard.