

*Relationship*

TOWARD  
AN INTEGRATED  
HUMAN RIGHTS  
POLICY

A COMMENTARY ON  
THE INTERRELATIONSHIP  
OF ECONOMIC, SOCIAL,  
CULTURAL, CIVIL AND  
POLITICAL RIGHTS



AMERICAN ASSOCIATION  
FOR THE INTERNATIONAL  
COMMISSION OF JURISTS

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AGAINST TYRANNY AND OPPRESSION,  
THAT HUMAN RIGHTS SHOULD  
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RULE OF LAW.

—UNITED NATIONS  
UNIVERSAL DECLARATION OF  
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## FOREWORD

The American Association for the International Commission of Jurists has traditionally been devoted to the doctrine that the Supremacy of the International Rule of Law, coupled with an Independent Judiciary, is the best guarantee of Human Freedom.

In the pursuit of this goal, we have come to recognize that realization of this goal is impeded by a variety of global problems including such factors as overpopulation, proliferation of arms, and massive economic and social deprivation in many countries throughout the world.

The last issue has given rise to extensive claims in both the developed and developing worlds that social and economic progress is an overriding priority that must precede the realization of fundamental civil and political rights. This argument is often expressed in the cliché that "there is no liberty on an empty stomach."

The American Association for the ICJ, in order to clarify its own understanding of this problem, initiated a series of meetings with highly knowledgeable advisers and, as a result of their contributions, has arrived at the position set forth in this publication.

We are grateful to those who gave freely of their time and experience in this effort to clarify an extremely difficult and complex set of problems. They all participated in a private capacity, speaking for themselves and not for the institutions with which they are associated. The consensual conclusions presented in this document do not engage any of them. Each will however recognize the inclusion of some of his comments, and some may even question interpretations of issues on which lively debate and differences had been expressed.

Participants included William J. Butler, Chairman of the Executive Committee of the ICJ; Professor Tom Farer of the Rutgers Law School; Professor P. T. Georges, Dean of the University of West Indies Law Faculty; David Heaps, consultant; Dr. Stanley Heginbotham of the Congressional Research Service, Library of Congress; Dr. Suk Jo Kim of the Harvard Law School; Professor Leon S. Lipson of the Yale Law School; Abraham M. Sirkin, former member of the Policy Planning Staff, Department of State; Douglas Williams, former Deputy Secretary of the United Kingdom Ministry of Overseas Development and Ambassador Albert W. Scherer, Jr. Messrs. Farer, Kim, Sirkin and

Williams contributed provocative discussion papers which materially facilitated the discussions.

We are particularly grateful to David Heaps for his invaluable assistance in preparing background discussion materials, and for his help in drafting a final paper which sought to extract and synthesize major conclusions of the informed but inevitably varying opinions expressed by the participants.

We are pleased to recognize the assistance of the Max and Anna Levinson Foundation, which generously provided a grant to make all this possible, and of Joseph N. Greene, Jr., President of the Seven Springs Center, whose hospitality allowed the discussions to be undertaken under the most favorable and congenial conditions.

William J. Butler,  
President  
American Association  
for the ICJ

December 1979

Dear Mr. Secretary:

For many years, we, in the American Association for the International Commission of Jurists, have been concerned by issues which have arisen regarding the implementation of all the Human Rights set forth in the International Bill of Rights.

More specifically, we have been concerned with the primary emphasis given by governments either to (the) Civil and Political Rights or to (the) Economic, Social and Cultural Rights, depending on the underlying political philosophy of the particular government.

We have completed an inquiry into this question and would like to submit to you our findings and conclusions in the hope that they will be helpful to the government of the United States in its continued dedication to the advancement of Human Rights in United States Foreign Policy.

This report is submitted to you at a particularly trying and troublesome period in our national history. We believe that recent events underscore graphically the importance of international respect for Human Rights within the framework of United States Foreign Policy.

Respectfully submitted,  
William J. Butler,  
President,  
American Association for the ICJ

Honorable Cyrus R. Vance

# I

## INTRODUCTION

No modern government has committed itself so fully to the advancement of international human rights as the United States has done over the past three years. President Carter has declared that "Human rights is the soul of our foreign policy, because human rights is the very soul of our sense of nationhood." Secretary of State Vance has reiterated that the essence of U.S. foreign policy is "the right to be free from government violation of the integrity of the person . . . The right to fulfillment of such vital needs as food, shelter, health care and education . . . The right to enjoy political and civil liberties . . . Our policy is to promote all these rights."

The adoption of this policy has been acclaimed as the international extension of the finest tradition of American values; it has been criticized as an unrealistic intrusion into the internal affairs of other countries. Its pursuit has entailed difficult choices and trade-offs for U.S. policy-makers; its application has been characterized by both successes and failures. In particular, the relationship of political and civil rights to the economic and social needs of the world's poor has posed complex and still unresolved problems.

The American Association for the International Commission of Jurists (AAICJ) is an independent non-governmental organization devoted to the promotion of the International Rule of Law and the defense of Human Rights. It recognizes that the International Rule of Law and the growth of political and civil rights can be inhibited by the prevalence of economic and social deprivation in many countries. It recognizes further that all governments are committed under the Charter of the United Nations to observe economic, social and cultural rights as well as civil and political rights, but notes that these two sets of rights are considered in some parts of the world to be competitive rather than mutually compatible and supportive.

The AAICJ has therefore sponsored a series of inquiries to clarify its own understanding of the interrelationships between these two sets of Human Rights. The preliminary findings may be pertinent to other responsible bodies and agencies with similar concerns and interests.



## II

# GENERAL THESIS

1. The AAICJ has been concerned by the issue of alleged conflicts or discrepancies between those interpretations of international human rights which place primary emphasis on the more traditional civil and political rights, and those which stress the more recently formulated economic, social and cultural rights. Although situations in which conflicts may arise between the two sets of rights sometimes do occur, the AAICJ nevertheless finds that these differences have been greatly distorted or exaggerated.

2. The AAICJ believes that an analysis of how the two basic sets of rights can be reconciled, and the practical consequences of such a reconciliation for policy makers, would be helpful; but first it considers it useful to state the special dimension which is introduced into traditional arguments about political freedom or economic justice or social equity when the concept of human rights is employed.

3. The essential feature of a "right" is that it involves a claim by one party, and an obligation by another party, to honor that claim. The essence of a "human" right is that it is a right enjoyed by human beings, — indeed, by individual human beings simply by virtue of their being human. The AAICJ maintains that all governments that have joined the United Nations have accepted obligations to promote such rights. In broad terms, these are obligations to ensure to their citizens the enjoyment of certain freedoms, mainly the freedom from abusive action by their governments and the freedom from deprivation of certain basic resources such as food and shelter. These two sets of freedoms are in practice of comparable value to individuals throughout the world no matter what economic or political system they live under. The UN instruments have created an obligation on governments to promote them to the extent that such a capacity lies within their power. The responsibility for discharging the obligation rests mainly on an individual government vis-a-vis its own citizens, but it rests also on all governments collectively. This is in part the reason why the international instruments, in dealing with economic and social rights, specify an obligation on governments to act collectively to promote them.

4. It must be recognized that serious enforcement of either or both sets of rights can entail sacrifices of powers and privileges by those who at present enjoy them. Governments which commit breaches of traditional civil and political rights do so in the belief that this will enable them to retain power or to govern without the uncertainty of the democratic process or the discipline of the Rule of Law. The denial of economic and social rights seldom can be corrected without changing prevailing patterns of the distribution and utilization of resources, goods and services on both an international and national basis. Changes in existing conditions of political and economic authority cannot be achieved without cost, and often will be opposed by those enjoying either disproportionate political power or disproportionate control of economic resources. There is no cost-free way of making the transition to greater equity within nations, or among nations.

5. It is generally agreed that realization of the goals of the UN instruments dealing with human rights would lead to an increase in human welfare throughout the world. How best to promote them in present conditions is the theme of this document. It seeks to examine the relevance of the standards of government conduct laid down in the UN instruments on human rights to the policy decisions and options of the US Government. It is divided into two parts. First is a series of propositions about the present economic and social situation across the world; and second is a series of conclusions and recommendations.

# III

## PROPOSITIONS

1. The economic gap between the rich and poor states continues to widen. The consequences are growing international tensions and domestic violence. The primary victims are the almost one billion members of the global population trapped in the vise of absolute poverty. The prospects of their achieving the standards prescribed in the International Covenant on Economic, Social and Cultural Rights grow more remote. The need for the industrial nations to increase development assistance programs remains therefore an issue of compelling urgency.

2. Development assistance should not only be increased, but formulated so as to stimulate a more equitable distribution of benefits within recipient countries. Bilateral and multilateral assistance programs that favor privileged elites, and thus intensify gross income disparities within the poorer countries, are politically counter-productive and morally untenable. They militate moreover against the standards laid down in the Economic and Social Covenant.

3. No persuasive evidence has been advanced that basic civil and political rights need be derogated or sacrificed to meet essential human needs. The concept that economic growth is the indispensable prerequisite to political and civil rights has not been borne out in practice. Governments that ruthlessly suppress political and civil rights, even on the pretext of achieving some economic purpose, are seldom disposed at a later date to restore these same rights to their citizens. They can, with little or no constraints exploit their economies for the benefit of a family, clique, class, or party, squander national resources through massive corruption, waste or military expenditures, and impose stringent but needless sacrifices on the population. The deprivation and abuses of human rights that result from such arbitrary actions often intensify a popular opposition that, in a vicious circle, produces increased political repression. The fundamental purpose of the ruling regime becomes the retention of power and perpetuation of office. Injustice feeds upon

injustice; regimes that violate accepted norms of political and civil rights are not inclined to remedy the inequities they perpetrate.

4. The thesis that economic progress in developing countries requires dictatorial governance is not only contemptuous of citizen rights and aspirations; it suppresses civil and political liberties that could provide for individual incentives needed to stimulate national development. Moreover, governments committed to the protection of political and civil rights may be stimulated over time by public pressures to pursue wider forms of justice for their citizens, including economic and social equity. A favorable environment for civil and political rights can serve to reinforce public policies leading to a better distribution of economic benefits responsive to public and private needs.

5. The achievement of social and economic rights may be realized in a variety of political and economic settings. There is no one single assured or ordained road to this goal. Successes and failures have been registered in both market and non-market economies, in both centralized and decentralized political structures. The ultimate path of progress for all countries will be determined by the indigenous traditions, history, culture and aspirations of the peoples directly concerned.

6. It has become increasingly apparent that development in its fullest sense goes beyond economic growth to the concept of a dynamic process which contributes to the fullest realization of the human potential. Essential rights—political and civil, economic and social—need to be encouraged with equal favor. Although the development process inevitably will vary from country to country and culture to culture, its ultimate objective everywhere should be to strengthen the aspiration for individual self-fulfillment and dignity within the improved well-being of the total community.

7. Most governments have approved the Universal Declaration of Human Rights; many have ratified the supporting Covenants; virtually all have recognized the United Nations Charter. They have thus accepted the objective of improving the human rights of their citizens. They can be held responsible for conscious dereliction or failure to seek this goal. Article I of the Covenant on Civil and Political Rights notes that "All peoples have the right of self-determination . . . (to) freely determine their political status and freely pursue their economic, social and cultural development." No government, therefore, can properly claim the shelter of "national sovereignty" to violate or to condone violations of the basic rights of its citizens. The modern state, by virtue of its acceptance of UN governing principles, has assumed the legal responsibility under Article I of the Charter of the United Nations for "promoting and encouraging respect for Human Rights and for

Fundamental Freedoms" of its citizens and for establishing them to the maximum of its ability and resources.

8. The International Covenant on Economic, Social and Cultural Rights notes that because of differing national economic, political and historical factors, these rights may in practice be established "progressively." The Covenant states further that such rights should be established according "to the maximum of (a nation's) resources." This implies that progressive steps will often be necessary to attain basic economic and social rights, and that different forms of these rights will be achieved at varying stages in a nation's development. The rate of attainment of these rights will vary therefore from country to country; some can be established more quickly than others. The goal of seeking all basic human rights cannot be considered a valid reason or excuse for withholding or delaying those rights which are immediately or foreseeably feasible.

9. In contrast, the Covenant on Civil and Political Rights does not include a comparable reservation about the "progressive" nature of this form of rights. The conclusion is clearly evident that the most fundamental civil and political rights, like freedom from torture, arbitrary arrest or cruel and inhuman treatment, can be established immediately if the official resolve and intent to do so are present. This Covenant stipulates that under no circumstances, even during conditions of public emergency, should derogations be permitted which imperil certain basic rights including the right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, the right not to be held in slavery or servitude, the right to be free from systematic patterns or racial, religious and ethnic discrimination, and the right to freedom of thought, conscience and religion.

10. The developing countries face formidable problems in achieving viable economic and political structures to provide a fuller and freer life for their citizens. For them, the road to economic development and to a wider array of available human rights is strewn with cruel choices on how to allocate scarce resources for national well-being and development. The road to political development faces the onerous problems of harnessing constructively the national energies and tensions which are released when a policy of political liberation succeeds a period of authoritarian hegemony. Their efforts should be facilitated by a US policy which supports, morally and materially, those governments seeking to improve the quality of life for all citizens within the framework of enhanced individual freedom and personal security.

# IV

## CONCLUSIONS AND RECOMMENDATIONS

In order to implement more fully the United States purpose of advancing all forms of human rights, the following conclusions and recommendations are advanced:

### RATIFICATION OF INTERNATIONAL INSTRUMENTS

United States support for the rights enumerated in both the International Covenant on Civil and Politican Rights, its Optional Protocol, and the International Covenant on Economic, Social and Cultural Rights should be affirmed by Congressional action. The Covenants have been signed by the President. They should be ratified expeditiously by the Senate with the minimal reservations needed to assure their compatibility with the United States Constitution.

### STRENGTHENING OF THE RULE OF LAW AND AN INDEPENDENT JUDICIARY

The United States Government should take positive steps to assist the efforts of other governments to observe both sets of rights. In respect to civil and political rights, the United States Government, in cooperation with relevant private organizations, should be prepared, by means of technical assistance and education exchanges, to assist countries to strengthen their judicial and legal systems in order to enhance individual freedom, security and dignity. The Preamble to the Universal Declaration of Human Rights notes "It is essential, if man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression, that human rights should be protected by rule of law." The advancement of human rights in the final analysis can be realized only under the protection afforded by the Rule of Law. This requires a legal

system capable of redressing grievances and arbitrating disputes, and a judiciary able to defend citizens against arbitrary or capricious governmental behavior.

#### BILATERAL ECONOMIC ASSISTANCE

In respect to economic, social and cultural rights, the United States should increase the volume of its economic assistance to developing countries so as to help them to meet the basic needs of their people and to favor an improved international economic order. It should, in accordance with U.S. legislation, seek to assure that bilateral aid is directed to alleviate the plight of the poorer elements of the population, and to achieve "self-sustaining growth with equity."

#### AN IMPROVED INTERNATIONAL ORDER

The United States should cooperate with other countries to achieve an improved international economic order. It should therefore support policies to reduce imbalances between the richer and poorer countries in resources, trade, technology and other factors germane to economic well-being and progress.

#### PUBLIC PARTICIPATION IN DEVELOPMENT

The effectiveness of international assistance efforts will be enhanced by measures that recognize, in the words of the United Nations Secretariat paper for the 35th Session of the UN Commission of Human Rights (January 1979), "the central importance of participation at all levels in order to promote the realization of the right of development. . . . Efforts to promote participation are thus crucial in the development process as well as being an essential element in the promotion of human rights." United States policy should favor, to the maximum extent possible, measures to encourage public participation in the planning and execution of development projects.

#### U.S. PREFERENCE TO STATES SEEKING TO IMPROVE THE QUALITY OF LIFE

U.S. economic assistance should be clearly weighted to favor governments which seek to meet international human rights norms—civil and political as well as economic and social. A concern with economic and social rights will be more likely to promote a more just distribution of

the benefits of development; a concern with political and civil rights will not only enhance the security and dignity of citizens, but will also be more likely to avoid costly mistakes in development through greater public participation in economic decisions. The primary claimants of American aid would be those governments which are overtly striving to improve the quality of life of their citizens to the extent permitted by available resources. Such governments would recognize the basic right of all citizens to a minimum state of well-being—that is, the right to be protected against deprivation, suffering or loss of life inflicted by the wilful dereliction or conscious abuse of the state.

#### U.S. POLICY TOWARDS STATES GUILTY OF EGREGIOUS VIOLATIONS

U.S. aid should be weighted against governments which are responsible for egregious violations of the integrity of the person, such as summary execution, torture or arbitrary imprisonment, and other gross actions forbidden under the Covenant on Civil and Political Rights. Failure of the state to take feasible measures to relieve or prevent suffering is moreover as indefensible as inflicting acts that are deliberately cruel and inhumane. Governments whose citizens suffer needlessly through negligence, indifference, corruption or callousness are as responsible for the consequence of their dereliction as those which wilfully perpetrate evils and injustices. A government which, for example, refuses to alleviate famine or plague or the aftermath of violence, or to accept external assistance for this purpose, cannot be exculpated from its failure to act in the public interest.

#### APPLICATION OF HUMAN RIGHTS CRITERIA TO ECONOMIC AID

The United States is the only major donor nation legislatively required to cut off economic assistance to governments which violate basic norms of political and civil rights, except in cases when aid meets basic human needs of people living under repressive regimes. The principle of applying human rights criteria for the provision of economic aid is valid and justifiable. The problem lies in the difficulty of being able to ascertain definitively whether aid channeled through repressive governments actually helps the people to whom it is directed, or whether in fact it buttresses and supports a repressive regime. For governments receiving U.S. development assistance which engage in gross violations of either set of rights, a firm and measured response is required appropriate to the political and economic factors involved in each case.



A total cut-off of economic aid should be employed as an action of the last resort against governments palpably derelict and negligent of the welfare of their citizens.

#### PRIOR CONDITIONS FOR DEVELOPMENT ASSISTANCE

At the time when an allocation of aid is made to any recipient, the United States Government should make its own assessment of the prospects for human rights in the country concerned, and of how the aid program could further the advancement of such rights. Mutually acceptable human rights criteria should be established as feasible with the recipient government to ascertain the extent to which the aid program is helping to promote human rights, including the equitable distribution of development benefits. Clearly established minimal standards of human rights conduct should be expected of recipients of U.S. development assistance as a basic condition of eligibility for such assistance.

#### HUMAN RIGHTS AND THE INTERNATIONAL DEVELOPMENT INSTITUTIONS

The international development institutions, such as the World Bank and the regional development banks, play an important role in transferring resources from the industrialized nations to the poorer countries. Increasingly their aid is specified to reach the poorer elements of the populations in recipient nations. But the development banks also operate at the intersection between the two sets of human rights. Loans to promote economic development and meet basic human needs are provided through governments, some of which are gross violators of the civil and political rights of their people. Attempts have been made in the United States Congress to deny use of U.S. funds to the international banks for development projects in countries governed by repressive regimes. By their charters, however, the banks are constrained to consider only economic factors in their decisions on country loans. Nonetheless, it should be within the purview of the development banks' responsibility to weigh carefully the economic consequences of dictatorial behavior that instigates or condones gross mismanagement, massive corruption and other actions which contribute to a persistent widening of the gap between the rich and the poor and to the implicit maintenance of repressive regimes. United States representation in the decision councils of the bank should be prepared to raise such issues for consideration within the framework of the banks' lending policies.

## HUMAN RIGHTS CRITERIA AND THE IMF

The International Monetary Fund assumes critically important functions as it seeks to preserve international financial stability and to prevent the economic collapse of nations in financial distress. In pursuit of these policies, the Fund often imposes stringent fiscal conditions on developing countries in order to stabilize faltering economies. The consequence has sometimes been the aggravation of hardships for the poorest and most vulnerable elements of the population. Social programs are often the first in such circumstances to be reduced, thus weakening further the slender social and economic benefits available to the needy. In some countries, political and civil unrest has ensued which leads to further repression of civil and political rights. United States representatives to the IMF should be prepared to address the need for a greater awareness of the civil and political consequences of externally imposed austerity measures. When severe austerity measures are deemed necessary, compensatory measures through multilateral or bilateral channels are required to ease the burden on the neediest elements in the country affected.

### ANALYSES AND STUDIES OF OUTSTANDING ISSUES

The problems and subtleties of the inter-relationships between the two sets of human rights can in practice be complex and difficult. The broad lines of approach are clear enough. They can be summarized by noting that (i) no processes of economic development can justify the more odious infringements of civil rights such as the use of torture and other types of inhumane treatment (ii) all citizens should have the opportunity to participate in some measure in the processes of governance affecting their own lives, and (iii) improved standards of social welfare should be sought which, within the context of national resources and capacities, promote the alleviation of basic inequities and offer the promise of improved personal security. Within this generalized context, further analysis of specific issues is required. They could include:

- a. An objective re-assessment of the application of the United States Government international human rights policy to date—its consequences, effectiveness, practicalities and future emphases—with particular emphasis on the inter-relationship between the two sets of rights.
- b. The manner in which donor governments and international agencies can favor realistically a more equitable distribution of resources within recipient countries.
- c. The ways in which human rights criteria could be incorporated in the operations of the multilateral development banks in a manner

consistent with the independent and non-political character of their mandates.

d. The application of feasible human rights criteria to U.S. Export-Import Bank credits and to the guarantees offered by the Overseas Private Investment Corporation.

e. The nature of U.S. Government policy to U.S. private investment in countries whose governments are considered as gross violators of basic human rights.

f. The means available through bilateral and multilateral channels to ease the economic adjustment involved when governments seek to make the transition from a development policy of general growth to a basic human needs strategy of development.

These and other issues require realistic study if their inherent implications and significance for U.S. foreign policy are to be understood. Objective analyses by competent practitioners and scholars should be encouraged. The results could contribute not only to the refinement and extension of U.S. human rights policies, but to the operations of international financial institutions in which this country is a major participant.

#### CONSISTENT HUMAN RIGHTS POLICIES WITHIN THE US

And finally, the American commitment to a foreign policy advancing human rights abroad will have credibility only if it is undergirded by morally consistent policies within the United States. Adherence to this principle would be exemplified by such measures as a more expeditious and systematic policy towards refugees from repressive regimes; liberalization of political asylum and visa conditions; increased cultural exchange and technical assistance programs to strengthen institutions and individuals abroad concerned with the promotion of human rights; ratification and signing of international covenants and other instruments favoring international human rights.

**AMERICAN ASSOCIATION  
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