
Human Rights in United States & United Kingdom Foreign Policy

A Colloquium

Palace of Westminster
November 27-28, 1978



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Geneva, Switzerland**

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Shirley Stewart, Editor

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Preface

This is the record of a colloquium on the role of human rights in the formulation of the foreign policies of the United Kingdom and the United States.

The conference, held in the Palace of Westminster on November 27 and 28, 1978, was the result of initiatives taken by the American Association for the ICJ, JUSTICE (British Section of the ICJ) and the British Institute for Human Rights. It brought together leading experts from both governments, interested parliamentarians, and selected representatives of non-governmental human rights organizations.

It was the second in a series of meetings designed to further intergovernmental cooperation for the international protection of human rights. The first colloquium was held with the Canadian Government in Ottawa in December, 1977. The third is scheduled with representatives of the German Foreign Ministry, the Ministry of Justice and the Ministry of Overseas Development in Bonn on January 16 and 17, 1980.

The object of the London conference was to compare the criteria and procedures adopted by the United Kingdom and the United States to ensure that human rights considerations are taken adequately into account in the formulation and application of foreign policy and foreign aid. It offered human rights specialists from both countries an unusual opportunity to exchange experiences and compare perspectives.

The participants gained a firsthand glimpse into the machinery developed by each government to implement human rights within their respective ministries. They shared day-to-day problems and difficulties encountered in carrying out their governments' human rights decisions in the United Nations and its Specialized Agencies; in the international financial institutions; in the various multilateral and regional institutions, as well as in the area of bilateral arrangements between their own and other governments.

The AAICJ is particularly indebted to the Rt. Hon. Peter Archer, QC, MP, and former Solicitor General of England; to Tom Sargent, the distinguished Secretary-General of JUSTICE, the British Section of the ICJ, and to Paul Sieghart, Chairman of the Executive Committee of Justice; to

Anthony McNulty, presently Secretary-General of the British Institute for Human Rights; to the Honorable Donald M. Fraser, former Chairman of the Sub-Committee on International Organizations of the United States House of Representatives Committee on Foreign Affairs; to Mark L. Schneider, Deputy Assistant Secretary of State for Human Rights; to Stephen Oxman, Esq., formerly Executive Assistant to Deputy Secretary of State Warren Christopher; to Alexander Shakow, Assistant Administrator for Program and Policy Coordination of the Agency for International Development, and to the various Session Chairmen and discussants, all of whom made substantial contributions to the success of the colloquium.

A special note of appreciation is extended to the Honorable Kingman Brewster, Ambassador of the United States to the United Kingdom, and to David Watt, Secretary of the Royal Institute of International Affairs, for their gracious hospitality during our stay in London.

To the Ford Foundation, our gratitude for the grant which made the meetings and the publication of this report possible. Finally, to Shirley Stewart, editor, to Peter Mollman of Random House, and to Nicole A. Bourgois and Peter Ashman, rapporteurs, our thanks for their valuable assistance in the preparation, editing and printing of this manuscript.

August, 1979

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**HUMAN RIGHTS IN
UNITED STATES
AND
UNITED KINGDOM
FOREIGN POLICY**

SESSION ONE

Human Rights and Foreign Policy

CHAIR:

Sir John Foster, KBE, QC; UK
Chairman of JUSTICE

SPEAKERS:

Evan Luard, MP; UK
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Richard Luce, MP; UK
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Mark L. Schneider; US
*Deputy Assistant Secretary for
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DISCUSSANTS:

Donald M. Fraser; US
Alexander Shakow; US
Niall MacDermot; UK

Mr. Evan Luard: Concern for human rights has existed for centuries. The relationship between human rights and foreign policy is a subject of more recent interest. Governments have become increasingly aware of human rights in different countries. Through their foreign policies they are now attempting to influence and affect such rights.

This meeting should focus primarily on human rights situations where there is conflict between the needs of human rights protection and the needs of foreign policy. For example, Iran severely violates human rights, but as a country strategically and economically important to the West, it is cushioned from public criticism. Cambodia, on the other hand, is an easier target because other factors are less significant.

Should governments criticize South Africa when trying to negotiate Namibia's independence? Should President Carter criticize the Soviet Union in the midst of SALT¹ negotiations?

Recognizing that difficult foreign policy considerations affect the formulation of human rights policy, five factors are important for the policy to be effective

- Consistency is essential although hard to achieve. Selective application undermines policy credibility. To ensure a uniform human rights policy, the UK has set up an assessment system to measure violations in different countries.²
- Using international fora to voice human rights concerns. With the introduction of the confidential communications procedure (Resolution 1503),³ the UN bodies have become more effective. The regional organizations should also strengthen their human rights machinery.
- Focusing attention on all countries violating human rights, not on just the “fashionable ones.”
- Maintaining contact with violating countries. Rather than cutting off communication, every effort should be made to ensure contact with countries where human rights are being violated, to give moral support to the victims, and to seek to influence the governments that are responsible, not ignore them, as in Equatorial Guinea, Cambodia, etc.
- Non-governmental organizations (NGOs), which can often have the most influence, should be given more support. There should be more communication and cooperation between NGOs and governments.

Mr. Richard Luce: In human rights matters domestic policies cannot be divorced from foreign policies. At the same time, it is inappropriate to proclaim human rights in other countries if the rights of individuals are not respected in your own country. Guidelines for a foreign policy with human rights considerations include:

- Fundamental consistency, although it is difficult to lay ground rules. Each country has distinct problems.
- Evenhandedness when criticizing governments.
- Keeping the relationship with the other government in mind. How much can be done? The impartiality of non-governmental organizations is important here.
- The Foreign Secretary should make human rights a permanent concern, even though trade ties and investment factors may differ from country to country. The methods of influencing will vary.
- Aid and development factors should be noted. The Lomé Convention⁴ should be renegotiated to include a human rights factor. There should be an understanding of reciprocity.
- Despite shaky UN credibility, the UN and the UN Human Rights Commission have an important role to play. A High Commissioner for Human Rights is needed. The UN should provide the broad framework and be more impartial. Regional human rights agreements should take the UN procedures into consideration.

Mr. Mark L. Schneider: The United States has been attempting to raise the priority of human rights in its foreign policy decision-making for the past two years. The Government of the United Kingdom has been pursuing the issue with at least equal vigor for a longer period of time.

The Carter Administration came to office with a determination to make the promotion of human rights a fundamental tenet of our foreign policy. The Deputy Secretary of State, Warren Christopher, has said, "We believe our underlying principles and values must be reflected in American foreign policy if that policy is to have the support of our people and if it is to be effective. The pursuit of this cause is not an ideological luxury cruise with no practical port of call. Widening the circle of countries which share our human rights is at the very core of our security interests, because such nations make strong allies."

Some have questioned governments taking human rights into account in their conduct of foreign affairs. We believe that the international community has established a bedrock of legitimacy for our actions. The Universal Declaration of Human Rights, whose 30th Anniversary we commemorate in two weeks; the United Nations Charter; the International Human Rights Covenants;⁵ the Helsinki Final Act⁶—all set forth the conviction that there are international standards which governments cannot wantonly violate. They also set forth the obligation of all nations to take account of how their own actions affect the cause of human rights.

The object of our policy, spelled out in confidential Presidential directives and in public statements, is to effectively encourage greater respect for human rights in all countries.

The definitions we use stem from the international standards. They encompass not only rights of the person and civil and political liberties, but economic and social rights as well.

We have used the following guidelines:

- First, the policy must be global. It is not directed with an ideological bias. It is not part of an unstated cold war strategy, nor an indiscriminate attack on rightist regimes. The policy focus is across all regions; it is not aimed at a particular country. It is aimed at securing some greater access to liberty for all peoples.
- The human rights policy cannot be implemented in rigid lock step, bound by automatic formulae. Computerizing the numbers of detainees cannot produce appropriate policy decisions. Short-term and long-term objectives for human rights advancement, and the choice of tactics to promote them, must reflect each country's political, social and cultural reality. We are asking how we can best promote progress, and what steps are most likely to move us closer to that goal in each country—not whether we will take steps.
- Finally, human rights objectives in US foreign policy are flanked by other fundamental interests. Some, such as the avoidance of nuclear war, go to

the very core of our security and the security of all nations. There will be a balance.

The difference is that human rights concerns no longer are on the margins of discussion. They have moved to the center of debate. Even where significant security or economic interests exist, we have communicated our concerns and taken some action to underline the seriousness of our message.

Many will criticize specific tactics for carrying out this policy, or reach contrary judgments about the balance of interests in a given country. What should not be doubted is that we have pressed forward human rights objectives as a central aspect of our policy. The confirmation comes as much from the criticism of certain governments as from our own assertions.

To implement the policy the US has attempted to institutionalize human rights factors in the foreign policy bureaucracy, with an independent Bureau of Human Rights and Humanitarian Affairs in the Department of State; identifiable human rights assignments in each regional bureau in the Department; a separate portfolio for human rights in the National Security Council; and a series of interagency committees and groups charged with human rights reviews of US bilateral and multilateral assistance programs.

In our bilateral relations, we are discussing human rights with presidents and prime ministers. With the level of diplomatic discussion raised, other governments inevitably re-examine their practices, and calculate anew the costs and benefits; knowing that penalties will be imposed by the US in bilateral relations if repression continues. The very process of weighing the costs of a particular practice is often a step toward its elimination.

In addition to quiet diplomacy, all of the instruments of vigorous diplomacy have been applied in a graduated and sequential order. Symbolic affirmations of our concern have been made in meetings with opposition political figures; with exiled victims of human rights abuses; and, inside repressive countries, with champions of human rights causes.

When Administration officials have visited a country—as President Carter did in Brazil, Vice-President Mondale in the Philippines, and Secretary Vance in Argentina—visible evidence of our concern for human rights has been manifested.

Where there is no response to our concern for human rights, our laws and our policy demand that we examine our assistance relationships.

Our bilateral economic assistance programs will increasingly channel larger shares of aid to countries that are improving their human rights records.

We have opposed more than 30 loans in the international financial institutions to countries seriously and persistently violating human rights, and told other countries that if they brought the loans to a vote we would oppose them. A half dozen loans have been withdrawn from consideration as a result.

We have advised the Export-Import Bank⁷ and the Overseas Private Investment Corporation (OPIC)⁸ on our views about the human rights

conditions in other countries. We have made those countries aware that all aspects of our relationship can be affected by continuing violations of human rights.

We have incorporated human rights concerns in our security assistance programs. We have reduced or declined to increase military aid to a number of countries in recent months. We have also refused to sign certain military assistance agreements, and to issue export licenses for commercial arms sales in consideration of human rights.

Our decisions are embedded in thorny complexities of competing interests; conflicting information; and constantly changing social, economic and political currents.

We cannot be paralyzed by such difficulties. As a major actor in the international arena, the only question before us is not whether we act, but how we act. In our dealings with other governments we will continue to assert human rights concerns as vigorously as we have in the past two years.

We have used a calibrated approach in the bilateral arena to press our concern for human rights. Our policy has also been characterized by a sharp rise in human rights advocacy in international organizations.

We have sought to strengthen agencies in the United Nations and the Organization of American States (OAS) most directly responsible for human rights. We believe that we have seen some response. From expanded activity by the UN Human Rights Commission to the new procedures adopted by UNESCO, the level of attention to human rights issues has increased.

Similarly, in the OAS, we have supported the Inter-American Human Rights Commission's quantum leap of activity in the past two years.

With President Carter's signing the human rights Covenants⁹ and submitting them to the Senate, we have taken the first step to join you in support of more effective international legal constraints against the abuse of human rights.

That is how the human rights policy has been threaded through the patchwork of US foreign policy.

After two years, where are we?

First, the human rights policy is alive and well and clearly the all-time leader in generating international conferences and symposia.

The policy remains inevitably under attack, mostly from the Right—for failing to focus solely on Eastern Europe and the Soviet Union, or because it intrudes into certain arms export markets—and under attack from the Left also, for not completely obliterating other foreign policy interests.

It has boosted the visibility of human rights in other governments, in international organizations and in the media.

The human rights policy is the flagship of the Administration's foreign policy, popular among the American public; attracting support from significant sectors in many developing countries; strengthening the US image in the world. It is a strong link between our ideals and our self-interest.

Finally, we can see progress in a host of countries, in quite specific ways. We are not often able to link our diplomatic démarche, our threat of sanction or promise of greater cooperation directly to their fulfillment. Other governmental actions—the petitions or reports of non-governmental organizations, the actions of international organizations—play vital roles as well.

In some cases we can trace specific easing of repression to our policy. In most, we believe that the policy has been at least a positive contributor to the environment of change. Political prisoners have been released; civil legal procedures have been reinstated; torture halted; censorship has been lifted and in certain countries, movement has begun from military rule toward democratic institutions.

Perhaps Robert Kennedy's words go to the heart of the matter: "Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, those ripples build a current which can sweep down the mightiest walls of oppression and resistance."

QUESTIONS AND DISCUSSION

Congressman Donald M. Fraser: Are the UK reports evaluating human rights performance published publicly?

Mr. Evan Luard: The reports are not intended to be published for the public. They take the form of a questionnaire using 10 major criteria for evaluating human rights. Each country is given a mark from one through 10.

Mr. Alexander Shakow: What range of action can the British Government take against a violating government?

Mr. Evan Luard: The UK Government published a paper explaining its procedure for human rights violators. The first approach is through quiet diplomacy, followed by action at the UN. If there are still no results, aid and military cutoffs are considered; then finally perhaps the cutting off of diplomatic relations.

Mr. Niall MacDermot: The criteria used in the UK questionnaire are very important. It would be helpful if the UK made its questionnaire public, to see what types of queries are used to evaluate the degree of human rights protection.

The doctrine that human rights are a legitimate concern of the international community is universally accepted. The real issue now is: What are

“gross violations of human rights”? The phrase is written into US legislation, and has come to be interpreted as meaning torture, prolonged detention without trial, and denial of fair trial procedures. This is a limited set of standards for assessing violations.

It is important not to run away from the significance of the interrelationship between economic, social and cultural rights, and civil and political rights. Many of the world's people suffer human rights violations because they live under inequitable economic systems. There is little movement in this sphere: a country's whole political structure would be put in jeopardy. It is necessary to look at the total situation in promoting human rights.

SESSION TWO

The Role of the Legislature

US Congress

UK Parliament

CHAIR:

William J. Butler; US

Chairman, Executive Committee, International Commission of Jurists

SPEAKERS:

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DISCUSSANTS:

Evan Luard; UK

Mr. William J. Butler: The US definition of human rights can be found in a speech given by Secretary of State Cyrus R. Vance in April, 1977.¹⁰

Congressman Donald M. Fraser was the “architect” of the Carter human rights policy. Mr. Fraser initiated much of the Congressional human rights legislation in the early 1970s.

Mr. Donald M. Fraser: I would like to ask three questions and then attempt to answer them:

WHY DID CONGRESS BECOME INTERESTED IN HUMAN RIGHTS?

Three circumstances prompted Congressional concern: The easing of cold war tensions; the changing perception of the US role after the Vietnam war; and the realization that the US had directly abetted many human rights violations.

In 1973, Congressional hearings began to inquire systematically into the status of human rights in various countries in the world. In 1974 Congress adopted Section 502b of the Security Assistance Act. It says that security assistance to governments exhibiting a consistent pattern of gross violations of internationally recognized standards of human rights is to be terminated or reduced. The language was carefully chosen. "Gross violations" means violations of the integrity of the person—such as torture; prolonged detention without trial; cruel and inhuman or degrading treatment; denial of fair trial; flagrant denials to the life, liberty and security of the person.

An exception was written into the section for the benefit of the executive branch. It says that the injunction on aid can be avoided if there are "extraordinary circumstances."

The legislation also refers to access by non-governmental organizations in the human rights field as a factor to determine the status of human rights. There is a requirement under which the State Department must publish a report publicly, on the status of human rights in each country supported by US security assistance.

Congressman Tom Harkin added almost identical language to legislation for the economic aid programs and international banks. He replaced the "extraordinary circumstance" provision with another which says that aid can continue where it directly benefits needy people.

Fraudulent elections were explored in Congressional hearings, on the theory that when they are grossly fraudulent, such elections lead to gross violations.

WHAT IS THE CURRENT STATUS OF THE HUMAN RIGHTS LEGISLATION IN CONGRESS?

There has been no action on ratification of the International Covenants or on the other human rights conventions before the Senate.¹¹ To monitor implementation of the Helsinki Final Act, Congress created a Commission on Security and Cooperation in Europe, with members from both the executive and legislative branches.

In addition to general provisions on human rights attached to Aid legislation, there have been some specific country bans, such as on aid to Chile and Argentina. Military aid to Turkey was banned (but is no longer); the export of torture devices was prohibited. Meanwhile, US economic assistance to the developing world has been declining.

On the issue of trade and investment, Congressman Tom Harkin placed a human rights provision on the bill for the Export-Import Bank; but a stronger amendment was rejected by Congress. A Harkin amendment was added to the bill for the Overseas Private Investment Corporation (OPIC), which primarily writes insurance for investors. Then there is the Jackson-Vanik amendment¹² which denies non-discriminatory (Most Favored Nation) trade terms and credits to those Communist nations which do not permit free emigration. The human rights amendments affecting interna-

tional banks instruct the US representatives to vote against loans to governments grossly violating human rights. An effort to attach Congressman Harkin's amendment to the International Monetary Fund legislation failed.

The US does not have a good record on refugee legislation.

WHAT FUTURE ROLE SHOULD CONGRESS PLAY?

Enthusiasm for human rights is waning. Congress will have to fight to keep what it has. The legislative framework is in place: There are human rights considerations in force in aid allocations; the executive branch is required to gather and publish human rights information; and there are Congressional hearings on the human rights situation in various specific countries.

The reporting requirement will be under steady fire. Neither the countries described nor the US executive branch like it. However, it is important that the reports be continued. They are a very good indication of US policy and attitudes toward certain countries.

Specific country bans imposed by Congress should be avoided. Such bans and boycotts are used too often by both liberals and conservatives according to their own ideological leanings.

The four main duties of the Congress ought to be:

- Ratify the International Covenants;
- Increase economic aid levels;
- Reform refugee practices;
- Hold further hearings to oversee the executive branch's response to human rights violations.

A good relationship with the non-governmental organizations developed in the Congressional human rights hearings. It may be useful for Congress to help finance NGOs. For this purpose, there was an attempt to create an International Human Rights Institute.

Mr. Philip Whitehead: The situation in the UK is different from that in the US. Parliament cannot take "congressional" initiatives such as Congressman Fraser described. There is no separation of powers. However there is continuous debate on human rights issues in Parliament. It has increased in the post-colonial period because of the interest in civil rights.

The Parliamentary Group was launched on the initiative of several non-governmental organizations. This all-party group helps to promote general debates on human rights, invites speakers from different countries, and tries to act as an investigative group.

There are select committees in Parliament, but they are not really investigative committees. They are not very interested in human rights. There is not even a committee to investigate the security services in the UK. A committee to scrutinize the Foreign Office was recommended by the Procedures Committee. Aid programs need to be examined and reformed.

Refugee policies are better in the UK than in the US. A large number

of Ugandan Asians were let into the country, for example. The UK has used the international organizations, particularly the European Commission of Human Rights, to promote human rights.

QUESTIONS AND DISCUSSION

Mr. Eyan Luard: The UK does consider human rights factors when allotting aid. There is concern that the aid should not affect the governing regime's prestige but should help the people. No economic aid goes to Iran; military aid poses a dilemma. Total aid cutoffs are not favored.

Existing committees in Parliament are inadequate but they should not be underplayed. The Committee on Overseas Aid and the Race Relations Committees have some effect on human rights issues. The External Affairs Select Committee reported on the Helsinki Agreement. Similar committees in the House of Commons would help to make its voice heard.

Mr. William J. Butler: Additional thought should be given to the following questions:

- What are the specific obligations of UN member countries which ratify the International Covenants?
- What criteria should be employed by States attempting to balance, for example, human needs against the need for security?
- As the largest exporter of military supplies in the world, to what extent does the United States prevent the realization of social and economic rights?
- When large measures of such exports go to underdeveloped or semideveloped countries, do they implement dictatorial regimes militating against desirable national expenditures on basic human needs?
- What is the United States' obligation to develop a concrete policy supporting a North/South dialogue—or put another way—to favor participating in the evolution of a more humane economic order?
- What are US obligations to countries with such meager resources that it would be impossible for them to fulfil the UN Covenant's social and economic goals without bilateral or multilateral assistance?
- Must civil and political rights be sacrificed for a long period of time to build nation-states, and to meet their citizens' basic needs?
- Can more equitable distribution of wealth and income be achieved when a society has at least minimum civil and political rights?

It was noted in discussion that human rights language appears to be Western, but human rights philosophy is universal. It was observed that many developing countries have adopted human rights language and parts of the UN human rights instruments in their constitutions.

US and UK participants asserted the importance of considering economic rights in the country reports; and for the UK to publish its country assessments.

SESSION THREE

The Role of Government Departments

*UK Foreign and Commonwealth
Office; US State Department*

CHAIR:

Lord Avebury; UK
Chairman, Parliamentary Human Rights Group

SPEAKERS:

Michael Simpson-Orlebar; UK
*Head, United Nations Department,
Foreign and Commonwealth Office*

Stephen A. Oxman; US
*Executive Assistant to the
Deputy Secretary of State*

DISCUSSANTS:

William J. Butler; US
Niall MacDermot; UK
Paul Sieghart; UK

Mr. Michael Simpson-Orlebar: I have been asked to speak about the role of the Foreign and Commonwealth Office (FCO). I take this to mean that the seminar would like to hear how officials in the FCO lay out the facts before Ministers, with properly considered recommendations to help them decide what their policy should be.

What are the options and how are they presented?

Responsibility within the Office for advising on the subject rests first with the United Nations Department. The UN Department serves its Under-Secretary, Michael Weir. He in turn advises Mr. Luard, the Minister deputed by the Secretary of State to oversee human rights policy.

At the same time, all other departments of the Foreign and Commonwealth Office are enjoined to take human rights into account in their policy advice. That includes the Financial Relations Department; the Trade Relations Department; those dealing with the world's particular geographical areas; and my own UN Department.

The UN Department works closely both with other executive departments and with our legal advisers. The latter make a big contribution to our work on human rights, symbolized in the presence today of John Freeland, the Second Legal Adviser to the FCO.

In Whitehall,¹³ we are in touch with a wide range of the home departments on which human rights impinge—the Home Office, Law Officers' Department, Department of Employment and so on. The seminar will hear later about the roles of other government departments.

The FCO's contacts with the home departments center on the implications for domestic policy of international standard setting.

Outside the UK we cooperate closely with like-minded countries. We have a system of regular consultation between officials from capitals in a number of countries. Ministers frequently see their counterparts. It supplements the steady contact work of our embassies and intensive work throughout the year by our UN Missions in Geneva and New York.

For example, Michael Weir and I had a useful round of discussions with our friends in the State Department in Washington last September on UN matters, in which human rights were covered in some depth.

Under their arrangements for political cooperation, the nine countries of the European Economic Community (EEC) consult regularly on UN affairs at different levels. When they do, human rights are usually prominent on the agenda.

If officials are to give sound advice to Ministers, it must be based on the most reliable information available. We draw our information about human rights from a wide range of sources, official and non-official. The contribution NGOs can make is often very important. They can sometimes delve where diplomats cannot.

Our official posts abroad are under instructions to report from time to time on any human rights incident or situation which they think the FCO needs to know about. Our posts also take part in the annual assessment exercise, which the Government instituted two years ago. The exercise has been the subject of several questions in Parliament and was mentioned this morning, so many seminar members will know how it works:

Posts are asked to report on the human rights record of their country according to a set of criteria listing some of the worst violations. Their reports are assessed in London and the results collated in a table of good performance.

The widespread knowledge outside the UK that this exercise takes place is not a bad thing. It has analogies with and differences from the State Department's procedure. It will also be agreed, I hope—or perhaps it won't be—that the Government is right not to reveal the results.

I emphasize the object of the exercise, which is to help us judge the performance of different countries by common standards. The human rights assessment is only a single tool for the purpose. It would be quite wrong for decisions about human rights to be taken on the basis of the so-called

“results” alone. It is far too crude an instrument for that. But in this and other ways, the FCO is trying to build up consistent standards to apply, and on which to base recommendations for action.

The standards, then, are as uniform as we can manage. The recommendations are bound to vary according to the circumstances of each particular case. There is a whole range of options from which the Government can decide how to react to human rights violations around the world. As Mr. Luard said this morning, some of the possibilities are listed in the paper on human rights published in the FCO Foreign Policy Document #26, “British Policy Towards the United Nations.” Copies are in the Library of the House of Commons.

I might recall that the choices include: Statements of our concern in semiprivate form, such as letters to MPs or members of the public; confidential representations to the government; joint confidential representations with other governments; public statements of concern in Parliament or elsewhere; cancellations or postponements of Ministerial visits; restraints on cultural and sporting contacts; embargoes on arms sales; reductions in our aid program; withdrawal of our Ambassador; a cessation of all aid; the breaking of diplomatic relations; trading sanctions.

How are officials to decide which, if any, of the courses of action from this incomplete list they should advise Ministers to adopt in any particular case—remembering that I have not repeated the range of more positive measures, some of which Mr. Luard described this morning—and not forgetting the option that the right course may be not to react at all?

The sort of questions we must ask have never been better summarized, I think, than by Mr. Cyrus Vance in his speech last year to the University of Georgia Law School. Mr. Vance said:

“First, we will ask ourselves, what is the nature of the case that confronts us? For example, what kind of violations or deprivations are there? What is their extent? Is there a pattern to the violations? If so, is the trend toward concern for human rights or away from it? What is the degree of control and responsibility of the Government involved? And, finally, is the Government willing to permit independent, outside investigation?”

“A second set of questions concerns the prospects for effective actions. Will our action be useful in promoting the overall cause of human rights? Or will it be likely to make things worse instead? Is the country involved receptive to our interest and efforts? Will others work with us, including official and private international organizations dedicated to furthering human rights? Finally, does our sense of values and decency demand that we speak out or take action anyway, even though there is only a remote chance of making our influence felt?”

“We will ask a third set of questions in order to maintain a sense of perspective. Have we steered away from the self-righteous and strident, remembering that our own record is not unblemished? Have we been sensitive to genuine security interests, realizing that outbreak of armed conflict or terrorism could in itself pose a serious threat to human rights?”

Have we considered all the rights at stake? If, for instance, we reduce aid to a Government which violated the political rights of its citizens, do we not risk penalizing the hungry and poor who bear no responsibility for the abuses of their Government?"¹⁴

On what basis do we raise human rights matters with foreign governments? We have an obvious right where British nationals or interests are directly involved. In other cases we may be able to invoke a treaty—for example, the International Covenant on Civil and Political Rights; the European Convention on Human Rights and Fundamental Freedoms, or the CSCE Final Act, which, although not a treaty, gives us political standing with the other signatory states.

Successive British governments have accepted the principle that violations of human rights in individual cases not involving British subjects are excluded by Article 2 (7)¹⁵ of the UN Charter.

We also take the view that Articles 55 and 56 (by which members pledge themselves to take joint and separate action to promote human rights) impose on member governments a positive obligation to pursue policies to promote respect for, and observance of, human rights; to cooperate with the United Nations to that end; and that a consistent policy on the part of a member government in breach of these obligations is a proper matter for discussion in the United Nations.

If the range of possible actions open to government is wide, so too are the channels through which it can operate. Some of the cases where direct bilateral action would be appropriate have already been discussed. The multilateral channels through which action may have to be considered include the European Convention on Human Rights; the follow-up to the Helsinki Final Act; and the international finance institutions.

The bulk of the UN work on standard setting has been completed. The major task of effective implementation remains largely unfulfilled.

I think our US colleagues would agree with the Government's view that more effective implementation should be based mainly on existing machinery and systems. Flaws should be removed and duplication ironed out where possible.

We do, however, make an exception of the proposal to establish a UN High Commissioner for Human Rights. We are supporting the resolution on this, which Costa Rica has introduced once again at the current session of the Assembly.

The UK played a considerable part in drafting the existing Conventions. We want to make an active contribution to the current work on the draft conventions against torture and on women. But strengthening the existing institutions is at least as important to us.

The key instrument is the UN Human Rights Commission. Among its procedures the confidential 1503 process¹⁶ is crucial. We would like to see the Commission move away from its inclination to scrutinize the human

rights performances of only a few countries. There have been some modest signs of progress: Cambodia and Uganda were mentioned this morning as being two of them. We would like to see the Commission examine the worldwide incidence of certain types of offense, such as torture, and the records of less glaring offenders.

People have been encouraged by the good start made by the recently established Committee on Human Rights. We also acknowledge the work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. We support suggestions to improve its procedures and effectiveness.

Mr. Stephen Oxman: I think it is important to observe at the outset that the State Department would have great difficulty carrying out an effective human rights policy if the President of the United States did not have a strong, personal commitment to the cause of human rights. That commitment is the key to a successful human rights policy. It is because of the strength of President Carter's dedication in this area that the State Department is playing a much more active role in behalf of human rights.

While the impetus for the policy lies with the President, and while other departments of the government must be involved, the main responsibility for articulating and implementing the human rights policy rests with the Department of State. Secretary Vance shares the President's deep commitment to enhancing respect for human rights. Early in the Administration he devoted his first major address to a comprehensive exposition of the tenets underlying the human rights policy. I am referring to his April 30, 1977 address at the University of Georgia Law School, from which Mr. Simpson-Orlebar quoted a few moments ago.¹⁷ This speech was a seminal document in the evolution of the Carter Administration's human rights policy, and has provided important policy guidance.

There are two aspects of it I would like to mention. First, Secretary Vance defined in that speech the human rights that are the subject of our policy. As he explained, we emphasize three categories of human rights:

- First, the right to be free from governmental violation of the integrity of the person. Such violations include torture; cruel, inhuman or degrading treatment or punishment; arbitrary arrest or imprisonment; denial of fair public trial; and invasion of the home.
- Second, the right to the fulfillment of such vital needs as food, shelter, health care, and education.
- Third, the right to enjoy civil and political liberties: freedom of speech, of thought, of religion, of assembly; freedom of the press; freedom of movement both within and outside one's own country; freedom to take part in government.

I think it is important to emphasize that our policy is to promote greater observance by governments of all three groups of fundamental human

rights. There may be disagreement on the priorities they deserve, but it is a basic tenet of our policy that, with work, they can all become complementary and mutually reinforcing.

The second aspect of US policy which Secretary Vance stressed and which I would like to underscore is the salutary role that quiet diplomacy can play. As a general rule, if we have concerns about human rights conditions in another country, we raise them in a private, diplomatic exchange, since our objective is improvement in human rights conditions, not embarrassment of others.

The sheer fact of these diplomatic conversations is of very great importance. Sometimes we achieve explicit understandings; more commonly there is an implicit recognition of the need for improvement and for further consultations as the situation evolves.

Either way, the raising of the issue has profound significance. Rather than being conveniently ignored, human rights are brought to the center of the diplomatic interchange. There, they must be addressed.

This new consciousness not only helps curb existing human rights abuses; it also acts as a deterrent to new violations. Obviously, our tools for implementing the human rights policy extend beyond quiet diplomacy (and are essentially the same as those outlined by Mr. Simpson-Orlebar), but I wanted to emphasize the importance and potential we attach to quiet diplomacy in this area.

Early in the Administration, Secretary Vance charged the Deputy Secretary of State, Warren Christopher, with maintaining day-to-day oversight of implementing the human rights policy. The Deputy Secretary is the number two official in the State Department, and the fact that he was given this responsibility indicates—and was perceived to indicate—the importance attached to the policy.

At the operational level within the State Department the principal responsibility for implementing the human rights policy rests with the Bureau of Human Rights and Humanitarian Affairs, headed by Assistant Secretary of State Patricia Derian. In prior administrations the human rights office at the State Department was not a separate bureau and was not headed by an Assistant Secretary. This upgrading was done as part of President Carter's overall effort to give human rights a higher priority in US foreign policy. The bureau was also considerably enlarged and strengthened by the addition of regional and functional experts.

Each of the regional bureaus of the State Department—the “backbone of the Department” in the phrase of one veteran State Department official—is also intimately involved in the implementation of the human rights policy. There is a human rights officer in each of the five regional bureaus who carefully follows human rights developments in the countries of the region and who works closely with the Bureau of Human Rights.

The Bureau of International Organization Affairs also plays an important role. It is the State Department's counterpart to the United Nations Depart-

ment in the Foreign and Commonwealth Office. The Bureau, in consultation and cooperation with the Bureau of Human Rights, monitors human rights developments in the United Nations and its constituent bodies, and helps to formulate US policy with respect to those developments.

Finally, our embassies abroad are of critical importance in the conduct of the human rights policy. They recommend steps that should be taken relevant to the human rights situation in their host countries, and help implement such steps as may be decided upon. They also provide invaluable reporting on the human rights conditions in their host countries.

At the beginning of the Administration all of our ambassadors were charged with personal responsibility for oversight of the human rights reporting of their missions. As a result, the quality of human rights reporting is perhaps at an all-time high. While we also rely on other sources to provide data on human rights conditions abroad, our embassies are perhaps the most important and most prolific source.

The information we gather on human rights conditions abroad is not only important in our decision-making processes; it is also the basis on which the State Department fulfills its statutory obligation to submit to Congress an annual report on human rights conditions in all countries receiving US economic or military assistance. The drafting of these reports is a collaborative effort of the Bureau of Human Rights, the regional bureaus, and the embassies, with the Bureau of Human Rights coordinating the overall endeavor. We have taken the statutory requirements seriously and have reported in detail.

On a given human rights issue, the State Department's human rights machinery will work something like this: The Bureau of Human Rights will make a recommendation for action to the Deputy Secretary, based in part on the reporting of our embassies. The affected regional bureau, as well as any other bureau with an interest in the matter, will be given full opportunity to present to the Deputy Secretary its views on the recommendation. This is most commonly done in a single, integrated memorandum.

On the basis of the views—frequently conflicting views—presented to him, the Deputy Secretary will make a recommendation to the Secretary who will decide the issue or, on certain matters, make his own recommendation to the President.

Needless to say, some human rights issues affect interests of other US Government departments. For example, a decision to oppose multilateral economic assistance to a particular country on human rights grounds is one that cannot fairly be made without giving the Treasury Department and the Agency for International Development and others an opportunity to make their views known.

To accommodate these concerns, and to be sure that human rights considerations are brought to bear on the full range of US foreign assistance programs, an interagency mechanism was established by the White House at the outset of the Administration. This entity is called the Interagency

Group on Human Rights and Foreign Assistance, chaired by Deputy Secretary of State Christopher.

In addition to the State Department representatives on this body, there are representatives of the National Security Council staff; the Treasury Department; the Departments of Defense; Commerce; Agriculture and Labor. There are also representatives of the Export-Import Bank; the Agency for International Development; and the Overseas Private Investment Corporation. The United States representatives to the World Bank and the Inter-American Development Bank attend the meetings of the Interagency Group.

A working group consisting of representatives of all of these agencies screens virtually every upcoming item of foreign assistance, both bilateral and multilateral. In the preponderance of proposals no objection is raised on human rights grounds. This may be because the human rights conditions in the proposed recipient country are not adverse or because the proposed assistance would clearly serve basic human needs.

When a human rights objection is interposed, the matter is referred to the full Interagency Group. After discussion, the Deputy Secretary makes a recommendation to the Secretary who, again, may decide the matter himself or refer it to the President.

Meetings of the Interagency Group graphically demonstrate that concern for human rights, while a basic tenet of our foreign policy, must be considered in conjunction with other critical interests and cannot always be pursued in the same manner in different countries. Nevertheless, we believe that so long as the basic principles of the policy are sound, and so long as the machinery we have established gives all interested parties an opportunity to be heard, the policy can and will be implemented fairly and effectively.

QUESTIONS AND DISCUSSION

Mr. William J. Butler: President Carter asserted that "every State has a legal right and responsibility to protest against violations." If governments do not uphold the international human rights obligations outlined in the UN Charter, particularly Articles 55 and 56, and in other international instruments, they cannot claim that concern for human rights is an interference in their internal affairs. The decision of the International Court in the 1970 Barcelona Traction Case states: "Obligations derived from principles and rules concerning the basic rights of the human person are obligations owed by all States to the international community as a whole."

Mr. Paul Sieghart: The apparent contradictions in the Helsinki Final Act can be resolved. Principle 7 calls for respect for international human rights obligations. Principle 6 prohibits interference in domestic affairs; but Principle 10 requires that domestic legal systems should accord with international

legal obligations. That now includes the UN Covenants. Where domestic legal systems do not conform with them, Principle 10 entitles others to complain without infringing Principle 6.

Mr. Niall MacDermot: It is important to look at the word “essentially” in the phrase “essentially within the domestic jurisdiction . . .” in Article 2(7) of the UN Charter.

Mr. Stephen A. Oxman: We believe—and international law and practice since 1945 confirm—that the way a government treats its own people is a matter of legitimate international concern. Most governments do not dispute this. Having put their names to international human rights agreements, and having in most instances enacted constitutions of their own which espouse respect for human rights, they have not charged “interference.” The most significant exceptions to this general rule are the governments of the Soviet Union and the Eastern European countries.

Mr. Niall MacDermot: The US and the UK use the same criteria to evaluate human rights violations in countries. Do the UK or the US Governments assess economic, cultural and social rights in their respective country reports?

Mr. Michael Simpson-Orlebar: The UK uses a marking system, not full reports. It does not mean that the Foreign Office is not conscious of the issue.

Mr. Mark L. Schneider: The US reports do take economic rights into consideration.

Mr. Paul Sieghart: Are there also disadvantages in having a separate bureau for human rights issues within the State Department?

Mr. Stephen A. Oxman: There is some risk that the presence of a separate human rights bureau will give some people the idea that they do not need to be concerned about human rights. I believe we have managed to avoid this pitfall by the various procedures and instrumentalities that I described earlier. The human rights coordinator acts as a gatekeeper. As long as the human rights bureau is vigorous, others will have an incentive to become knowledgeable about human rights issues and to make their views known.

Several British participants suggested that the UK Government should also have a “human rights gatekeeper.” Some sought to use the Royal Family symbolically, to promote human rights in specific cases.

The structural differences between the US and UK Governments, accounting for some of the varying approaches to human rights violators, were noted.

SESSION FOUR

The Role of Government Departments

Other Agencies

CHAIR:

The Rt. Hon. Lord Scarman, OBE; UK

SPEAKERS:

The Rt. Hon. Peter Archer, QC, MP; UK
Solicitor General

Mark L. Schneider; US
*Deputy Assistant Secretary for
Human Rights and Humanitarian Affairs*

DISCUSSANT:

William J. Butler; US

Mr. Peter Archer: Most of the discussion has focused on the US and UK Governments' reactions to human rights violations in other countries. The role of the domestic departments in human rights matters must also be looked at.

The UK has more experience than the US in international human rights litigation. Moreover, the domestic aspect of human rights in the UK is considered part of the relationship with Western Europe.

The existence of the European Court of Human Rights has three advantages:

- It does have some sanction, some teeth;
- It offers a degree of consistency;
- It offers the opportunity for the individual to appeal.

On several occasions the UK has been accused of violating human rights. There is a government structure to deal with such accusations. The basic

responsibility rests with the Foreign Office. The actual human rights "feed-in" depends on how much administrators in the domestic departments, the Law Officers, and the Treasury Solicitor are committed to human rights.

Mr. Mark L. Schneider: Governmental responsibilities are divided in carrying out the US human rights policy. A National Security Council member has been designated as a liaison with the State Department and the President to deal with human rights issues. This person also sits on the Interagency Committee, which reviews US bilateral and multilateral assistance programs.

The Department of Defense representative also sits on the Interagency Committee. Given the extent of US defense relations, the Defense Department is quite influential. The Justice Department has an operational role in US immigration policies. The department consults with the State Department on whether certain persons do qualify as refugees.

As a party to various international conventions, what are US domestic obligations?

The Assistant Attorney General for Civil Rights coordinates responses to UN allegations of violations in the US. Several groups have been formed in the US to monitor adherence to the Helsinki Agreements.

Another area under exploration involves the US Civil Rights Commission, which was established to act on violations of constitutional rights. This body will monitor the US international human rights obligations in the future.

QUESTIONS AND DISCUSSION

Mr. William J. Butler: Implementing international human rights through the domestic legal process is developing. Some cases involving Namibia, Rhodesia and South Africa have been taken up in this way.

In the assessment of the European Court's effectiveness in the European Economic Community, and in relation to the European Commission of Human Rights, it was observed that trade action through the EEC could be a powerful weapon for the promotion of human rights. It was perceived that EEC decisions can have greater impact on human rights than member countries acting alone.

SESSION FIVE

International Organizations

The United Nations

CHAIR:

Paul Sieghart; UK
Chairman, Executive Committee, JUSTICE

SPEAKERS:

Niall MacDermot, QC; UK
*Secretary-General,
International Commission of Jurists*

Ben Whitaker; UK
*Director, Minority Rights Group
Member, UN Sub-Commission on Prevention of
Discrimination and Protection of Minorities*

Mark L. Schneider; US
*Deputy Assistant Secretary for
Human Rights and Humanitarian Affairs*

DISCUSSANT:

Michael Simpson-Orlebar; UK

Mr. Niall MacDermot: The UN bodies concerned with human rights are chiefly the Commission on Human Rights; its Sub-Commission on the Prevention of Discrimination and Protection of Minorities; and the Human Rights Committee set up under the International Covenant on Civil and Political Rights. Many other UN bodies also cope with human rights issues.¹⁸

Because of the four-tier UN structure, there is an unending cycle of human rights meetings, all with almost identical agendas, producing the same discussions, speeches, arguments and resolutions throughout the year:

- In August/September the Sub-Commission meets in Geneva. Theoretically, it is a body of independent experts.
- In February/March the Human Rights Commission meets in Geneva for a six-week session. More than 30 nations are represented. The Commission reports to the Economic and Social Council (ECOSOC).

- In April/May ECOSOC meets in New York to deal with human rights.
- In September/December the General Assembly meets. Human rights are dealt with by the Third Committee in December.

There are clearly too many tiers. There is a movement to eliminate the ECOSOC, and to arrange twice-yearly meetings of the Human Rights Commission, with one session devoted to implementation, so that this aspect does not fail by default. The Commission could then report directly to the General Assembly.

Full-time government human rights officers tend to be in New York. UN mission staffs are larger there. The Western Group Policy Formulating Committee is also in New York. Final decisions are taken there.

The people in the Geneva missions deal with human rights as one aspect of their many duties. With the Human Rights Commission and the UN Division of Human Rights located in Geneva, it would probably be a better arrangement for governments to station their human rights experts there.

There is a frequent complaint about too much politics in the Human Rights Commission; but human rights are a very political subject. One must accept that. Paradoxically, it is very rare for politicians to attend the Human Rights Commission.

There is a need for people with continuing experience in human rights to head delegations. This is UK practice. The US changes its representatives on the Human Rights Commission frequently, to its disadvantage. It takes time to make influential contacts and understand the politicking that occurs.

A substantial delegation is needed by any government wanting to play a significant role. The UK's is often too small. In contrast, the Soviet Union sends a large body of experts. Its delegation plans strategy very carefully. Because of this it tends to be more successful. The Western Group does not seem to preplan to the same extent as the Soviet Group.

The Human Rights Commission and the Sub-Commission's work is threefold: standard setting, studies, and implementation.

STANDARD SETTING is the formulation of principles in Conventions or Declarations of Principles such as the two International Covenants¹⁹ prepared by the Commission, and the Draft Convention on Torture. The Draft Body of Principles for the Protection of Persons in All Forms of Detention or Imprisonment was delegated to the Sub-Commission.

STUDIES cover many subjects, some very political. Most start in the Sub-Commission. One recently completed is sponsored by the UK on the Rights of Non-Citizens, arising from the expulsion of the Ugandan Asians.

Two newer studies are worth mentioning: Human Rights under States of Exception or Emergency; and the Independence of the Judiciary, proposed by Sri Lanka.

Partly because the Sub-Commission is an independent body of experts,

Western governments tend not to consider future studies. It should be part of government policy to think ahead and propose useful subjects.

When asked for information, governments normally respond only about their own countries. NGOs must provide information that governments do not give.

There is a feeling that the Human Rights Commission has done enough in the field of standard setting and should concentrate on implementation; but there is still a lot to do. Most of the Conventions state very general principles. Much detail needs to be worked out.

For example, the draft Convention on Torture implementing the general principles in the UN Declaration (which was based largely on the work of Amnesty International), will have specific provisions for the prevention and repression of torture at the national level. The ICJ is sponsoring a draft optional protocol to the proposed Convention on Torture, suggesting a much stronger implementation procedure than exists under any international declaration or covenant. The optional protocol as yet receives little support from Western governments, despite their complaints about the Commission's lack of implementation.

The Draft Body of Principles on Torture was passed unanimously by the Sub-Commission with a surprising degree of consensus. If adopted and applied, it will effectively end a great deal of torture. It will now go to the Human Rights Commission. Efforts will hopefully be made to ensure its place high on the agenda.

IMPLEMENTATION takes two forms:

Reports from States and Parties on legislative and administrative action to implement the various conventions and declarations. A number of them, such as on Freedom of Information and of the Press, go to the Commission. They do not form a large part of the Commission's activities and are not very effective. More impressive are the reporting procedures under the Convention on the Elimination of Racial Discrimination and under the Convention on Civil and Political Rights.

Alleged Violations Procedures can be public or private. They are public when a government raises an issue: the UK brought up Cambodia in the last session. Until recently, public investigations were confined to South Africa, Chile and Israel. An ad hoc committee is set up to study the subject and receive evidence, usually from NGOs and individuals. They tend to be one-sided in their views, often because the government under investigation has failed to cooperate. Governments do not regard them as fair tribunals.

The other system is the confidential so-called communications procedure directed to situations of a consistent pattern of gross violations of human rights, rather than to individual complaints.

The UN receives 30,000–40,000 complaints yearly, mostly from individuals and most of which do not begin to provide evidence of a consistent pattern. In practice, the Commission acts on complaints from NGOs.

The Human Rights Commission can set up a Commission of Enquiry with the consent of the concerned government; or it can order a thorough study. Neither has ever been done. Occasionally a complaint has been referred to a government for its comment. That is another delaying tactic. At that stage the government usually takes the matter very seriously, as it wants to avoid a condemnation by the Commission.

Very, very slowly progress is being made to strengthen and improve implementation. This year it was decided to send a former Nigerian judge to Uganda to discuss allegations against it with the Ugandan Government.

Certain conditions seem to be necessary for such an exercise to have any value:

- The persons sent must have a thorough knowledge of the situation. A general investigation is not sufficient.
- There must be a real possibility of seeing and hearing evidence on the spot.
- Linked with this, the UN must have a safe base in the country visited.

Those conditions were fulfilled in the recent mission to Chile, which worked well. They do not exist in Uganda, where it is unlikely that much will come of such a visit.

This year the President of the Human Rights Commission named nine countries on which action had been taken, although that seems to have been only to send a complaint to the government and invite its comments.

To be effective, the UN fact-finding capacity must be increased. At the moment the Human Rights Commission has neither the facilities nor staff to be an effective fact-finding body. This provides one of the strong arguments for a Human Rights Commissioner with his own staff to fulfill the function.

The Human Rights Committee under the International Covenant on Civil and Political Rights is in many ways the best UN body on human rights. Its independent experts are all lawyers. Their study of States-Parties' reports and cross-examination of States' representatives on those reports has been done very well. They have worked out their own rules of procedure and strengthened to the limit their own powers under the rules.

Apart from the reports, they can investigate individual complaints under the Optional Protocol, but this has been publicized very little. To date only some 45 complaints have been received. If they build up to the number expected, the two meetings of three weeks yearly will not be adequate. The committee of experts will probably have to be paid an adequate salary if the standard is to be maintained.

Mr. Ben Whitaker: The UN is at its best when considering specific problems, such as slavery, hard narcotics, torture. UN members are as unpoliticized as possible when they focus on a specific issue.

Improved UN performance depends on informed press and public criticism, and the intelligent interest of legislators. International press corre-

spondents are not human rights specialists familiar with UN human rights bodies, who know where to apply intelligent criticism. NGO lobbying and criticism is very welcome. It would be especially helpful to see non-English speaking, non-white individuals and organizations taking part in human rights meetings in Geneva. There is now an overwhelmingly white Anglo-Saxon presence in the field. It lays NGOs open to Communist accusations that they are tied too closely to Western governments.

If the West can build a coalition with the neutral uncommitted Third World enclave in the UN, every human rights issue will be won. The West must understand the Third World's attitude to human rights and build cooperation, even if it does not agree with them. If the West is isolated as a rich, white, North Atlantic bloc, it will be defeated on human rights issues. Human rights will end if they become a political football or part of the cold war.

An example of the Sub-Commission's work can be given from this year's activities. There was significantly less Third World support for Eastern bloc delaying (and obstruction) tactics. More countries were condemned than ever before, and more impartially. For the first time they ranged from Marxist countries, Cambodia and Ethiopia, to Burma and several Latin American countries. After lobbying massively to avoid being condemned, Argentina was put on probation for a year. The country will be re-examined next year to see if it keeps its promises to the Sub-Commission. This probation technique can be very useful.

The Sub-Commission has also agreed that decisions on communications under Resolution 1503 should be by secret vote, to avoid the sort of pressure employed so skillfully by Argentina. It will protect the independence of Third World delegates, some of whom had felt personally threatened.

The reform, which I proposed, was passed by the Sub-Commission *nem. con.* It must be ratified by the Human Rights Commission and ECOSOC.

The Sub-Commission has transcended its preoccupation with Southern Africa and the Middle East in the last four years. The breakthrough came with the investigation into Chile, which the Soviet bloc failed to veto. Hopefully it will lead to a more investigative approach by working groups or independent investigators such as the one sent to Uganda.

GROWTH AREAS:

- Moving on from condemnation to understanding the sources of human rights violations—for example, why people torture in this day and age.
- Monitoring and preventing human rights breaches, where much work remains.
- Ensuring the receipt of accurate information, on which human rights field work depends entirely. Here is a useful role for NGOs and parliamentarians.
- Engaging the UN University in Tokyo in human rights work.
- Setting up a UN broadcasting network. Publicity creates the only effec-

- tive UN sanction that can penetrate censorship by individual nations.
- Cultivating the concept of individual responsibility, as in the Nuremberg Tribunal. Denying those who breach human rights, such as individual police officers and prison warders, the defense of “carrying out superior orders.” The UN or NGOs could develop a dossier of alleged culprits.
 - Increasing the number of Sub-Commission sittings—perhaps with one on implementation and another on deeper studies—was an overwhelmingly endorsed view in the 1978 session. With some 30,000 communications yearly, there is enough work for continuous session, if only to catch up on the backlog.
 - If the Sub-Commission could develop into a Human Rights Tribunal, with cross-examination and questioning to gain the truth of allegations, individual governments would be rendered accountable. At each session the Sub-Commission could then monitor progress in implementing promises.
 - Creating machinery for emergency hearings and to strengthen the UN Human Rights Division in caliber and numbers. At present, only 0.8% of the UN budget is spent on human rights. More should be. The Soviets in particular argue that more work cannot be done for financial reasons.
 - Appointing a UN High Commissioner for Human Rights in the next five to ten years, with adequate financing and staff, and possibly five regional assistants.

There are dangers in a regional approach. Some Africans have said that there is a risk of double standards, one for black Africa and another for Western Europe. They argue that this would be a new form of colonial patronage: Africans should have the same human rights as Western Europeans.

The corollary is that the West must recognize the very real and widespread concern in the UN for economic and social rights, the prime consideration of the majority of the world's people. It would be tragic if human rights were seen to be the sole concern of white, rich inhabitants of the shores of the North Atlantic.

The West must press the argument—which it is failing to do at the moment—that economic and political human rights are far from mutual contradictions, but can help each other in being implemented.

The Soviet bloc too often gets away with a superficial argument attractive to the Third World: That one should work for economic human rights now, and ignore individual human rights and liberties until later.

The West must promote the argument that the two levels are indivisible. Where there is freedom of the press, corruption in economic development can be exposed much more easily. Where universal suffrage exists, land reforms basic to agricultural development in many countries can be achieved.

The West, however, is vulnerable when its human rights position appears to be hypocritical. For cold war purposes, the Soviets deploy most success-

fully the argument that the West makes an issue of the denial of the human rights of a few dissident individuals in Eastern Europe, but supports the violation of the human rights of millions of black people in Southern Africa and elsewhere, with commercial, and in some cases, defense assistance. That is the sort of substantive charge the West must answer with action as well as words.

Mr. Mark L. Schneider: Most of the two prior speakers' comments reflect US feelings about the UN system's strengths and weaknesses. In the last meetings of the General Assembly and the Human Rights Commission, the US tried to prevent the Soviet bloc from defining each issue as part of a cold war debate. The US tried to join with other countries to create a human rights coalition with strong Third World participation.

The key to success lies with the African delegations. They are beginning to see that the US is taking steps to enable them to join the US on these and other issues. If the US fails to live up to their expectations, some Third World countries and the Eastern bloc may come together again to prevent fruition of these initial developments. Less will then be accomplished in the coming session.

There have been other positive moves, as much because of their sponsors as their contents. India pressed a resolution for other nations to declare their actions in response to the 1975 Declaration on Torture; and at the Human Rights Commission, for countries to create national human rights commissions.

Nigeria's resolution to encourage the formation of regional human rights commissions in areas where they do not exist was adopted in the Human Rights Commission. It would be a natural progression to see the Organization of African Unity (OAU) try to develop its own institutional structures.

The development at UNESCO of probably some of the best procedures for receiving and investigating individual complaints, and requiring governments to respond to those complaints, should be mentioned.

In the coming General Assembly, the US will continue to support strongly the creation of a High Commissioner for Human Rights. The political moves the US makes at the General Assembly will determine whether this or similar institutional reforms take place. However, the US will have to step carefully. In the past it has tended to move aggressively in the human rights arena, and may not have been as effective as possible.

The US is also pressing for an increase in the Human Rights Commission and Human Rights Division budgets, to pay witnesses to go to Geneva to testify. It is a real problem for many people suffering human rights violations.

The US also hopes to see two sessions of the Human Rights Commission, or at least that it gain the capacity to decide its own number of sessions. The US has introduced a resolution to establish some form of reporting by the Secretary-General on procedures to coordinate the various human

rights activities in the UN. It would be a step toward creating an institutional coordinating mechanism.

The US has encouraged the Secretary-General to use his good offices in the human rights area, and to find ways to enable the chairman of the Human Rights Commission to use his good offices productively on issues brought to the Commission. With encouragement from the US and UK, the Secretary-General has agreed to go to Cambodia.

In the current session the US is introducing a resolution to establish a UN Registry of Human Rights Experts, with each country naming two or three experts for the Secretary-General to call on to assist carrying out the "good offices" role. The US joined with the UK to promote a resolution expressing concern for the problems of disappeared and missing persons.

With India, the US has explored possibilities for a resolution seeking to have national human rights bodies monitor progress on economic and social rights. Criteria developed by the Overseas Development Council, such as mortality rates; daily intake of calories; educational standards; and a general quality-of-life index would be used. Progress in these fields would be reported on. It is a very difficult area.

The US continues to believe that the High Commissioner for Refugees has played the non-partisan and politically neutral role in bringing relief to refugees around the world that was hoped for from the UN.

There is a problem about receiving accurate information. An international documentation center is needed, a place where not governments, but private institutions and individuals can gather information on human rights problems and cases, from either the European Court of Human Rights or from national courts applying human rights laws.

There could also be a more active clearinghouse to collect such information, building on the work of the NGOs and augmenting the exchange of information. By integrating all the human rights—economic, social, civil and political—in time, it could issue comprehensive human rights reports.

The US feels that UN bodies, despite less than desired capabilities in enforcing human rights standards, are probably the best long-term hope for a system of constraints on governments and for protecting human rights.

QUESTIONS AND DISCUSSION

Mr. Michael Simpson-Orlebar: If the West is to retain Third World confidence, it must show that the economic and social rights are as important as civil and political rights.

It is not fair to say that the Western argument is not being put strongly enough. There have been a great many speeches by American and British Government representatives advocating the equality of such rights. There has also been coordinated action by the nine European Economic Community countries.

In the long run the West should not feel that it is going to lose the battle. Economic and social rights really mean the development of Third World economies to advance the quality of their peoples' lives. If Eastern efforts are compared with what the West has done for developing economies, the West has much to be proud of.

The nonaligned states themselves seem to recognize this. After the Belgrade Conference²⁰ it was remarkable that all 85 nonaligned countries subscribed to the paragraph noting with disappointment the minute level of gross national product distributed as aid by East European countries.

The West will be criticized as long as the Southern African situation continues. Once that is resolved we can be more confident that Western arguments will prevail in the long term.

The UK considers that the prospects for setting up a High Commissioner for Human Rights this year are no better than last year. It would sooner see the resolution withdrawn than defeated. The UK also supports more frequent sittings of the Human Rights Commission. It has not yet seen the text of the proposals on torture to form an opinion.

SESSION SIX

International Organizations

Regional Bodies

CHAIR:

The Rt. Hon. Lord Gardiner, CH; UK

SPEAKERS:

Anthony McNulty, CBE; UK

Director, British Institute of Human Rights
Secretary, European Commission of Human Rights

DISCUSSANTS:

Paul Sieghart; UK Francis Jacobs; UK

Leah Levin; US William J. Butler; US

Niall MacDermot; UK Tom Sargant; UK

Mark L. Schneider; US

Mr. Anthony McNulty: I have been asked to describe briefly the machinery and operation of the European Convention,²¹ as I was formerly Secretary to the European Commission of Human Rights.

First, 18 of the 21 Member States of the Council of Europe have ratified the Convention. The three recent members, Spain, Portugal and Lichtenstein, have not yet done so.²² Thirteen of the 18 have also accepted the Optional Protocol (Article 25), giving the right of individual application to the Commission.²³ France, Turkey, Cyprus, Malta and Greece have not. Again, 14, including France, of the 18 have also accepted the official jurisdiction of the Court of Human Rights (Article 46).²⁴ The Commission and Court consist of independent jurists from the Member States, although their composition and election procedure are slightly different.

Cases come first to the Commission for a decision on their admissibility. This stage is wholly judicial in nature. After admitting a case, the Commis-

sion's function becomes quasi-judicial. Its role is then dual: to make itself available to the parties to reach a friendly settlement (Article 28); if no settlement is reached, to report the facts and evidence and give an opinion on whether there has been a breach of the Convention (Article 31). It is then up to the Court or, if the case is not referred to it, the Committee of Ministers, to decide whether or not a violation has been committed. A case can be brought before the Court only when the government or governments concerned have accepted the Court's jurisdiction.

The individual and the government are on an equal footing in the *in camera* and confidential proceedings before the Commission. Before the Court, where the proceedings are public, the government is the only party. The applicant has no formal status. The Commission, through two or three delegates, acts as *amicus curiae* and will also present the applicant's case. His lawyer is often asked to address the Court as part of the Commission's team.

The European Commission or government concerned, but not the applicant, can bring a case before the Court. If a case does not go to the Court, the Committee of Ministers decides whether there has been a violation. Neither the Commission nor the parties are represented in its proceedings.

There have been five interstate cases or groups of cases, and more than 7,000 individual cases since 1954, when the Commission was established. About 400 individual applications are registered yearly out of about 2,000 communications received. The Secretariat has a discretion not to register a communication as an application where it is clearly outside the provisions of the Convention.

It is clear from these figures that for its effective implementation the Convention depends on the right of individual application rather than on the initiative of governments.

At the first stage of its procedure, the Commission has the right to declare an application inadmissible on various grounds cited in the Convention. In about 10% of the cases it finds it necessary first to ask for observations from the government concerned, and subsequently to ask for the applicant's observations in reply. The process takes time, often two or three months to get comments from the government but usually less for the reply. Perhaps about 5% of registered cases are eventually declared admissible.

However, such statistics can be misleading as an assessment of the Convention's effectiveness. One admitted case from a single applicant may represent the interest of a group of the public as, for example, a complaint from a detained person about some aspect of prison administration. The results achieved—perhaps the changing by a government of some administrative practice of legislation—will affect whole groups of people for an unlimited future.

In the five interstate cases, the applicant government has usually had a special local interest in the case, such as in *Greece v. UK* over certain emergency legislation in 1956–57 in Cyprus; or *Austria v. Italy* in 1960 over

the conduct of certain criminal proceedings in South Tyrol; or Ireland v. UK in 1971-72, over detention without trial and alleged ill-treatment in N. Ireland of detainees; or Cyprus v. Turkey in 1974 relating to the Turkish intervention in Cyprus. Only in the cases brought in 1967 by Denmark, Norway, Sweden and the Netherlands against Greece was there apparently no special local interest. The allegations there were of incidents of torture and ill-treatment, retroactive legislation, and the absence of an elected legislative body.

The Convention has worked successfully because the relationship between the Commission and the government concerned has become established as one of cooperation rather than that of prosecutor and accused.

For this one needs the confidence of governments, and one requirement is not to trouble them unduly. That is why the Commission gave itself the power to reject obviously inadmissible applications without even informing governments of their existence.

From the government side, such cooperation has often been seen in cases involving threats of deportation, which might show inhuman treatment on the part of the deporting country. The government concerned has always been ready to hold up such deportation notice until the Commission has, with priority procedure, decided the case.

There has hardly ever been a deliberate violation of the Convention. Usually it is caused by inadvertence or, as in the Belgian Vagabonds' case,²⁵ where some time-hallowed practice was simply never seen as a possible violation of the Convention. Very often there are also genuine differences of opinion about the legal interpretation of the Convention. The existence of the Committee of Ministers creates a degree of interrelationship and interdependence in the European regional organization, and a desire among governments not to be embarrassed by being found in breach of the Convention by fellow governments.

Attempts to reach a friendly settlement usually occur in confidential proceedings. It is not always difficult. The respondent government sometimes seems to welcome outside pressure on it to change laws or administrative practice. That happened in Austria in the 1960s over a certain aspect of criminal appeal procedure, where a Minister had stated publicly that a violation might be found to exist.

On an international level there is now a considerable body of case law arising out of the application at Strasbourg²⁶ of the European Convention.

At Luxembourg the Court of the European Communities has referred to the Convention in some 10 cases. It is now declared EEC policy that fundamental human rights should be an element in the application of EEC law.

Discussions are now under way on the best formal method to implement the safeguard of fundamental rights in the Communities. The idea has been floated that the European Communities should become party to the Convention, or that the Convention should be annexed to the Treaty of Rome.

There is already regular contact between judges at Strasbourg and Luxembourg to consider how overlap should be avoided in their jurisdictions.

On the national level the Convention has been incorporated into the domestic law of 11 Member States. It is frequently applied by national courts at all levels. There is a substantial body of national case law in different countries applying identical human rights provisions.

There is also some cross-fertilization resulting from references between national courts, and two-way references between national courts and the Strasbourg organs of the Court²⁷ and Commission.

Norms of human rights and freedoms are thus beginning to emerge out of the various implementations of the Convention's provisions in Western Europe. The Court showed its awareness of this in the *Ireland v. UK* case, when stating in its judgment (paragraph 239) that the Convention: ". . . creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a 'collective enforcement' By substituting the words 'shall secure' for the words 'undertake to secure' in the text of Article 1, the drafters of the Convention also intended to make it clear that the rights and freedoms in Section 1 would be directly secured to anyone within the jurisdiction of the Contracting States. That intention finds a particularly faithful reflection in those instances where the Convention has been incorporated into domestic law."

At the British Institute of Human Rights I am working to set up a reference center of human rights case law in different international and national systems, and in particular, under the Convention of Human Rights in Western Europe.

QUESTIONS AND DISCUSSION

Mr. Alexander Shakow: There are enormous difficulties for the US in the creation of a court higher than the US Supreme Court, such as an Inter-American Court of Human Rights.

Mr. Anthony McNulty: Neither the European Court nor the Commission is a supranational court of appeal. Each is concerned only with whether human rights are violated in the proceedings of national courts. In addition, only individuals who are victims, or perhaps—as in a recent case of alleged bugging of lawyers in West Germany—potential victims, may apply to Strasbourg. NGOs, as such, have no standing and cannot bring cases, although they may inspire them.

Mr. Paul Sieghart: The jurisprudential difficulties faced by the US are not insuperable. The Supreme Court examines domestic laws to see whether they conform to the Constitution. If the US would ratify the American

Convention on Human Rights, the Inter-American Court would judge whether the domestic US law conforms to another Bill of Rights, the Code of Human Rights under the Convention.

A US law could conform to the Constitution but violate the Convention. One way to avoid such a conflict would be to ensure that the domestic constitution conforms to the Convention. When a nation ratifies the Convention and accepts the right of individual application, it agrees to concede that part of total sovereignty reserving to it the exclusive right to test its own laws.

Ms. Leah Levin: A recent UN seminar on setting up national and local institutions for protecting human rights produced a set of guidelines which will be considered by the General Assembly. They were necessarily broad and open, but suggested a role of scrutinizing domestic legislation; providing information on other international positions; and setting up studies.

Such institutions could also promote knowledge of UN and regional systems among the general public. There was a specific role for appropriate associations in the national institutions, although NGOs and the provision of a monitoring role were omitted.

Mr. Niall MacDermot: It is an excellent development. I just returned from Chile. A non-governmental Human Rights Commission of distinguished persons has been formed as a result of the seminar. Its recommendations provide the opportunity to create human rights bodies in countries where human rights are violated extensively, and where no official structures for redress exist.

Mr. Francis Jacobs: In the UK, human rights were always viewed as the concern of other countries. When the Optional Protocol to the European Convention was ratified, attitudes towards human rights in foreign policy changed. The Convention became important. The UK example encouraged other States to ratify. It helped to promote liberal and democratic regimes in Western Europe. The model may aid the US when it considers ratifying the American Convention.

Mr. Anthony McNulty: Most of the articles in the European Convention have 'escape' clauses, for example to prevent crime or protect health or morals in a democratic society. The Commission's most difficult cases occur when it has to balance the protection of the individual's rights or freedoms against such permitted exceptions.

In the *Klass* case—bugging of lawyers in West Germany—the Court clarified Article 13 by stating that every violation of the Convention should have an effective remedy in domestic law.

Mr. William J. Butler: Contrary to the current state of international law, whether or not a country is correct in derogating from the Convention is not for the derogating country but for the Commission or the Court to decide.

Mr. Tom Sargent: The exhaustion of domestic remedies, particularly from administrative bodies, is a very gray area. In the case of prisoners' rights to petition the Home Secretary, a reply sometimes takes 18 months. The Commission itself often takes a long time to decide such a case. Such delays can affect the length of a prison sentence and the prisoner's life.

Mr. Anthony McNulty: Admittedly, there is too much delay. The Commission is short-staffed and part-time, meeting only for two weeks, five times a year. A system of priority procedure mitigates this in important cases.

Mr. Mark L. Schneider: Human rights protection in the Western Hemisphere began about the same time as in Europe, in 1948, with the adoption of the American Declaration on the Rights of Man. There was no Commission of Human Rights until 1959; a human rights Convention was not fully developed until the mid-1960s. However, countries in the hemisphere have had a tradition of individual rights from at least the 19th century.

In 1966 the Inter-American Commission of Human Rights began to receive individual complaints for the first time. Its experts are not government representatives as in Europe.

Its reports on human rights in member countries are submitted to governments; they are private until the government adds its views. The reports are then sent to the General Assembly of the Organization of American States (OAS) for action. That usually takes the form of adopting the assessment by resolution.

The Inter-American Commission also reports annually on the state of human rights. It undertakes studies, seminars, and fellowship programs designed to promote an understanding of human rights in the hemisphere.

The Commission began on-site inquiry last year, when it undertook investigations into El Salvador, Haiti, Nicaragua, and Panama. Human rights were investigated in Chile in 1974; and in the Dominican Republic in 1964-65.

The Commission's work becomes important politically.

When a government accepts an investigation, it feels in the spotlight. It tries to improve its image before the investigation. It agrees to act on the Commission's recommendations so that it can report its practical steps favorably. The Commission's key function—improving the observance of human rights—is thus served.

There was a transition period between the old Inter-American Human Rights Commission and the new one under the American Convention on

Human Rights. The election and setting up of the new Commission is expected to be completed by summer 1979. NGOs will continue to submit reports.

The US has tried to expand the Commission's regional work as part of the overall effort to improve human rights. It has actively encouraged governments to accept the Commission's investigations.

Domestic legislation requires the US to consider whether governments are cooperating with the Commission, as one indication of their willingness to improve human rights conditions in their countries.

Other countries in the hemisphere have recently begun to use the Commission this way, and to see it in a diplomatic role. The Commission has raised individual cases with governments, negotiated changes in prison conditions, and generally begun to play a far greater role than it had only three or four years ago.

The American Convention on Human Rights was drafted and signed by 11 states in 1969. To date, 19 countries have signed and 13 have ratified it. The Convention came into force in July, 1978, with the eleventh ratification.

Under the Convention the Inter-American Court of Human Rights came into existence as an institution. Judges will have been elected and the staff appointed by mid-1979. The Court will sit at San José in Costa Rica.

The Court will follow the same procedure as the European Court, but there will likely be a long period before it operates in the same manner as the European Court. The Convention requires an additional acceptance of the Court's jurisdiction beyond ratification by States. Only two States have accepted it so far; but six more are likely to by mid-1979.

The US is considering ratification. It will need a separate Act of Congress to adopt the additional jurisdiction.

The possibility of the US adhering to the European Convention as a more developed form of human rights protection has been discussed in US academic circles. It is unclear if extraterritorial areas can adhere to the Convention.

SESSION SEVEN

Human Rights in Foreign Aid— *Bilateral*

CHAIR:

John Hunt, MP; UK
Parliamentary Human Rights Group

SPEAKERS:

The Rt. Hon. Judith Hart, MP; UK
Minister for Overseas Development

Alexander Shakow; US
*Assistant Administrator for
Program and Policy Coordination,
Agency for International Development*

DISCUSSANTS:

Paul Sieghart; UK Patrick Montgomery; UK
Geoffrey Garrett; UK Peter Archer; UK
Raphael Tuck; UK William J. Butler; US
Roger Plant; UK Sir George Sinclair; UK
Mary Sibthorpe; UK

Mrs. Judith Hart: In the last two or three years there has been an explosion of UK interest in human rights in developing countries, largely as a result of its priority for President Carter and the US Congress.

This should not mislead people into thinking that current iniquities are new. They have existed for a very long time. People have become aware of them only since the war because developments in communications and technology have turned the world almost into a village. There is greater awareness of the consequences of our own past actions. To some extent guilt has spurred our new concern.

We need not go far back in our own history to discover atrocious abuses of human rights—slavery; the burning of witches; sending trade unionists to convict camps in Australia. Indeed the development of human values demands that life must not be cheap. If life is cheap in economic and social terms it is likely to be cheap in terms of human rights.

Human rights begins with breakfast. Developing economic and social life in the Third World must be a major element in the growth of human rights. The two are linked inextricably.

Financial allocation for the UK foreign aid program is part of total public expenditure. This is an advantage over the US. There are fewer restrictions on operation; but there are also too few opportunities to discuss aid and human rights in Parliament. Once aid is voted, the Minister does not have to obtain Parliamentary approval for particular allocations to individual countries, though how and on what the money is spent must be reported to Parliament.

The UK has found that the universal application of simple principles does not work in this field. It appears to be generally accepted that one has to take a case-by-case approach.

One important question must always be asked when making judgments in case-by-case situations: Is it ever right to punish twice? If people are being abused in a country, can it be right to punish them again by withholding aid that might relieve their economic plight?

There can be cases where withholding is right, particularly when those most concerned feel the action will best help them to obtain human rights and ask for it.

Aid can be linked to human rights in many ways:

Lowest Profile Avoid starting aid programs in countries where the human rights situation is questionable, as in Cambodia and the Central African Empire.

Bilateral Aid Nonrenewal Hold no further discussions about new aid at the end of a three-to-four-year aid program, as in Ethiopia.

Maintain a Small Program to Help the Poorest Some £200,000 were spent in Nicaragua on technical cooperation in forestry, technical institutes, and bringing students to the UK. The support was continued because it was so minor and particularly benefited the poorest section of the community.

Maintain a Program's Level, with Projects Directed Specifically to the Poorest People It was decided not to increase aid to Indonesia as the UK would have done normally, but to exercise pressure with the US and others, to seek the earliest possible release of political prisoners. It is impossible to ascertain how effective the tactic is—but Indonesia has announced that all political prisoners will be released by 1979.

Not to End, But to Suspend Aid This is the most difficult option. In 1977, the UK halted aid to the Bolivian mining sector because of conditions in the mines, and because it was determined that aid would increase the disparity between rich and poor, rather than improve the miners' position. In consequence, the Bolivian situation received greater international attention. One result was that the elections were not postponed, although they were later frustrated by a coup.²⁸

Cut Off Aid Altogether Done rarely, the option has been exercised only in Chile and Uganda.

Channel Aid to the Needy Informally Through Voluntary Bodies and Agencies The UK is doing this in Chile. About £ 1 million are channelled through Oxfam, Christian Aid and the Catholic Aid Agency. Another £ 2 million is spent on educating and training programs for Chilean refugees in the UK. The EEC gives food aid through church groups. This works only in countries where there are such groups. It could not be done in Uganda, for example, because no groups exist there.

The entire UK trade union and labor movement felt strongly about the situation in Chile. It was not so true of the Conservatives. The whole nation opposed further aid to Uganda. Such a step can only be taken when public concern in the donor country is very serious.

Donor aid programs are not popular. The public will be happy to support and pay for them only if they are directed to the poorest nations and people.

The effectiveness of cutting off aid is another question. It depends on how much bilateral donors and multilateral agencies coordinate their actions. Whatever aid donors withhold can also be frustrated if private credit institutions continue operating. Moreover, other countries may step into the breach. That happened in Uganda, when the Soviet Union, Saudi Arabia and Libya replaced the cancelled aid.

However, positive steps can be taken: By pointing out the links between human rights and socioeconomic conditions, people in general can be helped to favor more aid and development. Practical and financial support can be given to victims and refugees.

Human rights can be made an explicit issue domestically, and through meetings and commissions in the UN and other relevant bodies.

In countries like Jamaica, imperfect but democratic structures are threatened by economic problems. Aid can be used to bolster economies where social tensions from economic difficulties would otherwise overwhelm the democratic system. This could be done much more.

Mr. Alexander Shakow: There are many similarities between the US and UK approaches to bilateral development assistance. Except for food aid, US support goes to some 50 or 60 nations outside the Middle East.

Unlike the UK Parliament, Congress plays a very strong role in the aid process. A vast amount of legislation as well as Congressional requirements impose a more formal approach.

Passed in 1973, "New Directions" legislation focuses on reaching poor people in selected categories of assistance, to reinforce the links between progress in economic rights and human rights. The new standards have forced recent changes in the aid program. On review, some differences between bilateral aid and multilateral aid—which does not bear the same legislative restraints—have been created.

The major difference between the present system and that of ten years ago is that for every project, one must now ask: "Who benefits?" The aim is to

reach large numbers of poor people in a systematic way, to enhance their well-being and life styles significantly.

A key feature of the new legislation is the attempt to have the beneficiaries participate in deciding on the character of the aid program. That is not easy.

There is also a legislative requirement to monitor individual governments' commitment to assist poor people equitably, in progress consistent with the emphases of "New Directions" legislation. That is also difficult to measure, but it does force the aiding agency to keep human rights considerations in the foreground.

In some respects the executive branch has gone beyond the legislative guidelines laid down by Congress on development assistance. These are: "That no assistance may be provided under this part to the government of any country which engages in a consistent pattern of gross violations of internationally recognized Human Rights including torture or cruel, inhuman or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial of the right to life, liberty and security of person; unless such assistance will directly benefit the needy people in such countries."

The Administration has refrained from declaring countries to be egregious violators of human rights. The policy has opened up to review a much larger number of countries than usual.

The Human Rights Bureau in the State Department has been examining the position of all aid recipients. The Aid agency looks to the State Department for guidance on which countries are the most serious human rights offenders and so should have their aid programs reduced.

Cutting off aid or taking many of the other steps mentioned by Judith Hart are viewed as last options by the US. Many actions are taken much earlier in the process: diplomatic pressure is brought to bear; military assistance cut off; or other steps taken which do not reduce aid. A positive concern for economic human rights in the US aid program is demonstrated. There is also a desire not to penalize people twice.

THE US PROCESS:

All projects begin with field missions. US Aid Officers throughout the world are responsible for starting development projects. They also examine human rights in their countries and, though careful to avoid a "hit list," they do know which are suspected of violations.

They take great care to follow the US legislative guidelines to ensure that the poorest people benefit directly—this is construed in the broad sense—and that the program does not seem to benefit the government.

All projects then go to Washington. They are reviewed carefully for a variety of factors, including human rights. Many are rejected.

Each project is presented to Congress in great detail in the form of a book. There is extensive testimony before Congress. There are subsequent reviews.

Congressmen and their staffs visit overseas countries to study the aid programs, ensuring adherence to the "New Directions" guidelines.

There are budget levels for every country.

Unlike the UK, the US cannot plan ahead for three to four years, because of Congressional review. In the process of constant review, aid levels are increased or decreased according to a country's performance.

The process also fulfils President Carter's promise that aid levels will reflect human rights considerations. To achieve this goal, the State Department tries to consider the complexity of the aid program. The interagency Christopher Committee reviews all projects, both multilateral and bilateral, to try to ensure evenhandedness and consistency.

The US rewards countries observing human rights. Limited funds are allocated by law also, to identify programs encouraging and promoting greater adherence to political and civil rights. For example, in Latin America there is a US-financed study on the broad range of Latin American cultural interpretation of human rights. Another program is under way to help US universities gain better understanding of human rights and develop their own programs to promote them.

Clearly, there are a great number of tensions in the system. There are problems particularly in getting people in development to understand the critical interrelationship between economic/social and civil/political rights.

For example, a good project for land reform in Latin America was formulated. It meant increasing aid to a troublesome human rights country by several million dollars. This proposal was hotly debated within AID and State, given the conflict between two important objectives. Ultimately, the program went ahead because the benefits to the poor of a significant land reform seemed worth the risk.

That is one sample of the problems all people administering aid cope with daily when they try to adhere to a strong concern for human rights as well.

QUESTIONS AND DISCUSSION

Mr. Paul Sieghart: Does the UK Overseas Development Ministry rely on Foreign and Commonwealth Office assessments on human rights situations when measuring the performance of countries eligible for aid? Or does it have its own criteria, which include social, economic and cultural factors, such as welfare level and the distribution of wealth?

Mrs. Judith Hart: The Overseas Development Ministry does rely on assessments by the Foreign and Commonwealth Office. They also cooperate in all human rights situations; but there is room for debate. There are no problems when the question is one of gross and persistent violations.

The Overseas Development Ministry gives weight to factors like the

presence of a free press; the literacy rate; and whether the violations occur in what was at one time a reasonably democratic state.

Mr. Geoffrey Garrett: In what way is the donor's disapproval conveyed to the offending country when it is decided to exercise one of the negative options?

Mr. Alexander Shakow: The US makes its position, and what it expects from the recipient country known through a whole range of actions in State Department diplomatic exchanges. No US action comes out of the blue. Aid reduction or cutoff are the last steps.

Mrs. Judith Hart: In the UK it depends on the option. The recipient country always knows why aid reduction or cutoff is happening.

When the UK decides not to commence aid, it may not be so clear to the government concerned. The reasons and statements given in the House of Commons usually gain publicity. Or a government can ask for aid and be informed of the reasons for its refusal.

Mr. Raphael Tuck: To overcome the strong sentiments about charity beginning at home, are the moral issues about aid given enough publicity in the UK to achieve "the subtle penetration of the national mentality"?

Mrs. Judith Hart: Even the best newspapers give very little space to the beneficial aspects of development aid. The popular press devoted no space to it at all. It is very difficult to overcome.

The Overseas Development Ministry is building a development education program on a budget of £3 million yearly, to send journalists overseas, and to work through groups to provide publicity.

Mr. Roger Plant: What exactly is meant by economic and social rights in the field of economic aid? There is a tendency to equate economic need with economic rights, but general economic rights are enshrined in the international covenants and declarations, and translated into domestic law through labor codes and so forth. However, the State Department reports refer to the quality-of-life index. That seems to fall within basic economic needs rather than economic rights.

Mrs. Judith Hart: Two bundles—civil and political rights and social and economic rights—are recognized in international law. Anyone talking about human rights must refer to both bundles. It is correct for aid programs to be concerned with economic and social rights, in the hope that they will lead to situations encouraging the development of civil and political rights.

Mr. Alexander Shakow: Many people see the provision of basic human needs as a kind of welfare program. The US sees the provision of basic human needs as part of a general development strategy for agriculture, land distribution, and general economic growth; not just providing something like a few schools. It is US policy not to determine other countries' basic human needs, but to leave it for them to decide what aspects of economic development to emphasize.

Mr. Patrick Montgomery: The US State Department is trying to persuade governments in the Third World to change their standards, and to recognize that gross violations do occur. In many of the countries local customs and attitudes tend to support abuses, such as the status and treatment of women in Asia and elsewhere. What efforts are being made to change such local opinions?

Mr. Alexander Shakow: US legislation strongly seeks to encourage the role of women in development, but there is no place for US paternalism. Modesty in dealing with other cultures is called for. It is necessary to work together with other countries in international forums to change opinions gradually. The fact that two years ago the International Labour Organization supported the Basic Human Needs Strategy shows that this approach can be effective.

Mr. Peter Archer: Clearly, absolutes cannot be formulated in this field, but perhaps one can be agreed on: That finance not be given to schemes with human rights infringements inherent in them. A few years ago, when it became obvious that slave labor would be used in a project, pressure was put on the Overseas Development Ministry and the project was abandoned.

Mr. Alexander Shakow: I agree with the principle. There is a need for constant awareness of a project's social impact, and constant review of its operation, because without them it is difficult to be certain what the impact on human rights really is.

Mr. William J. Butler: The UN has considered these questions for the last 25 years. It was agreed that political factors would not be taken into account in UN aid programs. The concept of aid reduction or cutoff for violations of human rights began to have impact only when Donald Fraser and other Congressmen supported it.

On the other side there is the McNamara²⁹ position that only economic criteria should prevail. Is there any empirical evidence that a withdrawal, or suspension, or cutoff of aid and assistance produced changes in the political directions of the countries violating human rights; or has the cessation of violations, where it has occurred, been due to other factors?

Mrs. Judith Hart: One cannot be sure. In Indonesia and Bolivia it is likely that international action had some effect. A difficulty arises when stopping official aid is countered by an increase in private credit, as happened in Chile.

Mr. William J. Butler: However, as in Iran there are many countries where aid was not reduced or where there was no aid, but advances were made in human rights.

Mrs. Judith Hart: The improvements in Iran were linked with the economy's development. A reverse case is Chile, where the military coup occurred in part because of the failure of the international agencies to assist Chile during the Allende period.³⁰

Sir George Sinclair: Population growth is totally related to the process of socioeconomic development. Our own history provides examples. The status of women, literacy, and all the factors contributing to the choice of a smaller family system are ultimately linked to economic development. So one does give it weight.

Mr. Alexander Shakow: US legislation makes it clear that weight must be given to population planning.

Miss Mary Sibthorpe: What part did human rights play in US policy in Vietnam and Cambodia?

Mr. Alexander Shakow: The Carter Administration came to power partly in reaction to those events. The present concern for human rights also came about partly because of them.

SESSION EIGHT

Human Rights in Foreign Aid— *Multilateral*

CHAIR:

Eli Whitney Debevoise; US
*Chairman, American Association,
International Commission of Jurists*

SPEAKERS:

Stephen A. Oxman; US
*Executive Assistant to the
Deputy Secretary of State*

Douglas Williams; UK
*Deputy Secretary, Ministry of
Overseas Development, 1974–1977*

DISCUSSANTS:

Mark L. Schneider; US Paul Sieghart; UK
William J. Butler; US Robert Wood; UK
Sir John Foster; UK

Mr. Stephen Oxman: The effort to bring human rights considerations to bear on multilateral assistance is a significant component of the US Government's human rights policy. At the same time, our experience has been that this is one of the most challenging and complex dimensions of our policy. The Multilateral Development Banks (MDBs)—the World Bank, the Inter-American Development Bank, the Asian Development Bank and the African Development Fund—were created in part to insulate decisions about development from so-called “political” considerations. It was thought that the development process requires stable and predictable sources of financing and therefore could not afford to be completely exposed to the changeable winds that tend to swirl around bilateral assistance programs.

Toward that end, MDB charters state that assistance decisions should be based on “economic considerations.” It has therefore been argued that there is no room for taking human rights considerations into account in MDB

decision making; that recipient nations would not tolerate such a course; and that any such effort would put at risk the continued viability of these institutions.

The US Government views this matter differently. We believe that the development process is inherently related to respect for human rights and that the realization of economic and social rights cannot be achieved when political and civil rights are being systematically abused. It is also a matter of common moral sense that the MDBs cannot simply turn a blind eye to egregious violations of human rights in proposed recipient countries. In short, human rights considerations are not distinct from "economic" considerations and are more fundamental than mere "political" considerations.

At the same time it is not the intention of the US Government, and it has not been its practice, to use the MDBs to spearhead its human rights policy. Where possible and appropriate, we prefer to commence with bilateral approaches. However, the Administration and Congress are disturbed that MDB lending to repressive regimes has been increasing in recent years.

Under US law, the US representatives to the MDBs are required to use their voice and vote in the MDBs to advance the cause of human rights. A positive role is preferred, rather than one involving sanctions. That is why we are urging the MDBs to channel aid to countries that show respect for the rights of their peoples and to projects that serve basic human needs.

Our policies in the MDBs have not caused a North/South confrontation as some feared they would. Indeed, many developing countries support our efforts. It has also been our practice to pursue our human rights policy within the MDBs as non-confrontationally as possible. Thus, if we decide to oppose a given loan because of human rights conditions in the proposed recipient country, we will generally advise that government ahead of time of our intended action and the reason for it. We may suggest that the loan be restructured so that it will serve basic human needs. The government in question may choose to withdraw the loan from consideration pending improvements in the human rights situation.

At the board meeting where the loan is voted upon, we will generally abstain rather than vote "no" in the first instance. Should the human rights situation in the applicant country not improve, or should it deteriorate further, we might then move to a "no" vote on the next loan to that country. In appropriate circumstances we may make a public statement explaining our action. In order to minimize confrontation we do not generally explain our vote to the bank board itself, but there may be occasions where the human rights violations are so egregious that our representative is instructed to make a statement to the board.

Thus far in this Administration out of a total of over 700 loans considered by the MDBs, we have abstained or voted against 36 loans to 12 different countries. I think these figures indicate the care and seriousness with which we have pursued human rights concerns in the MDBs.

As I noted a moment ago, our human rights efforts within the MDBs are

regulated by statute, laws that were largely the work of Donald Fraser and his colleague in the House of Representatives, Tom Harkin.³¹ Those laws require that the US Government:

- Seeks to channel aid to countries other than those engaged in serious violations of human rights;
- Seeks to channel aid to projects addressing basic human needs;
- Opposes loans to countries engaged in a consistent pattern of gross violations of internationally recognized human rights, unless the loans would benefit the needy, in which event we have discretion whether to oppose them;
- “Initiate a wide consultation designed to develop a viable standard for the meeting of basic human needs and the protection of human rights and a mechanism for acting together [with other countries] to insure that the rewards of international economic cooperation are especially available to those who subscribe to such standards and are seen to be moving toward making them effective in their own systems of governance.”

To discharge the requirement to initiate wide consultation, we have had thorough discussions with the British Government, as well as the governments of a number of other countries. We have met a sympathetic response. I believe it is fair to say there is a growing understanding of the need and desirability of bringing human rights considerations to bear on the decisions of the MDBs.

We feel that US actions in the MDBs are having important and salutary effects. It is still too soon to make correlations between actions taken on individual cases and changes in human rights considerations in applicant countries. Nevertheless, we believe it is clear that governments are sensitive to what happens in the MDBs. They do not like to have their applications opposed. We believe our policy has contributed to an atmosphere in which progress is more likely to occur. It has raised human rights consciousness, thus helping to diminish ongoing violations and to deter new ones.

Mr. Douglas Williams: Although there are some broad similarities of approach to these questions between our two governments, there are also important differences. In particular, the UK does not have the same statutory constraints on policy as the US. It is more concerned about complying with the constitutions of the multilateral aid organizations and would not agree that a resolution of Parliament could override them.

Moreover, the UK does not contribute as much as the US to MDB budgets. The largest UK share is 10% of the International Development Agency. The more usual share is about 6%.

As a result, UK action has been taken within the constitutions of the lending organizations, and is more low-key. Except in the Lomé Convention³² as part of its EEC policy, the UK has not proposed changes in the

constitutional arrangements to force countries to consider human rights more. Instead, like the US, the UK has opposed and abstained from projects and explained the reasons for its vote.

I believe, however, that the UK can go further than it does, but not in the way that most human rights campaigners would prefer, and in a way that would fully respect the constitutions of the organizations concerned.

The background to this is that international aid organizations *must* operate within their constitutions. Some have a clause insisting on political neutrality, as in the World Bank, the International Development Association and most regional aid organizations. Others have no such clause, but their rules entitle every participant developing country to some benefit, regardless of its economic or human rights performance—as in the UN Development Program (UNDP) or the European Development Fund.

These political neutrality clauses are now disliked by human rights campaigners. The developing countries have found them extremely valuable and would view their demise with concern and some alarm, as would most people whose primary interest is promoting economic development. The clauses have provided immense safeguards to developing nations against very undesirable political pressures, many of which most human rights campaigners would themselves disapprove.

The concept of aid with no strings is very dear to the developing countries. It will be given up only with great reluctance. Their fears underlie the opposition of the Lomé participants to the conditions which the European Economic Community seeks to impose in the redrafted Lomé Convention.

Moreover, by their example, the political neutrality clauses have improved the quality of multilateral and bilateral aid over the years. If the clauses were to be abandoned and multilateral aid used as a form of reward and punishment, such use would not stop with human rights, but would soon be bent to other less noble purposes, such as support for taking sides in the Middle East, and so forth. Further, one cannot insist on human rights considerations in UNDP or in the Lomé Convention without changing their constitutions. In Europe there is not much support for such changes, partly because of the hostility of the developing nations.

An alternative and a better approach for the developed countries would, in my view, be to use the law, particularly international law, as an instrument of development, and to insist that the lending organizations themselves, though properly bound by their constitutions, are also subject to a wider international law, insofar as this can be shown to be relevant to their activities. Lawyers and civil servants concerned with Multinational Development Banks would then be required to take the UN Covenants on human rights more seriously than before.

However a basic question needs to be decided before this line can be pursued: Are lawyers who serve in international development organizations correct when they assert that the sole international law applying to their organizations is found in their constitutions? Are the organizations not

generally subject to international law, insofar as it can be held to relate to them and is not in direct conflict with their constitutions?

If they are, the question becomes: What is the international law for human rights, and can it be said to have relevance to the activities of these organizations? Professor Brownlie³³ has argued that the UN Covenants form the basis of international human rights law, even for those states and organizations which have not yet specifically ratified them.

On the question of whether the human rights Covenants are relevant to the operations of the multinational aid organizations—sometimes they clearly are relevant, especially when they prescribe standards for the welfare aspects of development. One task for lawyers should be to join with development experts to examine the ways in which they are relevant.

An example of the concept can be found in the provision in several Multinational Development Bank constitutions that capital aid should be used in accordance with economic criteria to promote “development”; but nowhere in the constitutions of the organizations is development defined. However, it is accepted in the international community that “development” does not mean just a simple increase in the output of goods and services, but also some increase in the provision of welfare. Surely it would be right to insist that (for example) the International Covenant on Economic and Social Rights is relevant to a definition of what constitutes “welfare”?

The purpose should be to reinforce the notion that economic aid should be tied to the general increase in the economic well-being of the people. The principle can then be used, for example, to press MDBs to ensure that as far as possible, loans go to projects generally seeking to achieve the equitable distribution of any resultant economic benefit.

When making loans to countries, particularly those which have signed and ratified the human rights conventions, the MDBs could examine the government’s social policies right across the board and be more ready to support those which pursue policies complying with the Covenants. They can do this legally in terms of their own charters, and with the backing of international law.

Even within their existing frames of reference, Multinational Development Banks can penalize countries which are destroying their economic base through human rights violations. They should be encouraged to do so. The balance of payments in Equatorial Guinea got into serious trouble because of ill-treatment of workers in the cocoa industry. In such circumstances economic arguments can be used to deter human rights violations.

In defense of some of the past policies of MDBs, it must be said, however, that when they increase their lending to human rights violators, it does not generally mean that they support the violations. Some nations have tried to increase the provision of welfare, sometimes in ways encouraged by the human rights Covenants, faster than the resources available would justify. They become extravagant and destroy their creditworthiness in the process, as happened in Salvador Allende’s Chile.

A special problem arises with the International Monetary Fund (IMF). Some 19 developing countries have applied to the IMF for help during the last 10 years because of their balance of payments difficulties. On IMF instructions, they have often been forced to exercise drastic deflationary policies, which have harmed some sectors of the population. However, it would be wrong not to permit the IMF to do its job for human rights considerations, even if its constitution could be changed to permit that. It should continue to impose restrictive economic measures if they are shown to be necessary on economic and financial grounds. But where they cause harm, the international community should come to the rescue of the sections of the population which suffer, by providing additional resources directly designed to help them. Indeed, the failure to provide further substantial aid resources has weakened the US stance on human rights. Some developing countries see the US position as an excuse to renege on its aid obligations.

More generally, it is a fallacy to assume that the provision of aid reinforces a recipient government. The people are aware of a project's source and soon take its benefits for granted. Campaigners for human rights should try harder to understand the complexities of aid, and should beware of the company they keep. Many people seek to use human rights arguments to restrain the operations of the multilateral aid organizations because they are opposed to aid, not because they support human rights.

Moreover, if they wish to make progress in human rights, the donor countries will have to get together and define basic principles and standards—which already exist in the UN Covenants—and then coordinate their actions with them.

QUESTIONS AND DISCUSSION

Mr. Mark L. Schneider: The US has tried to coordinate with other donors. They all want to maintain the MDB institutions' integrity and at the same time encourage respect for human rights.

However, as a matter of political reality, the MDBs must take human rights considerations into account. It will become increasingly difficult for the lending institutions to secure support in Western Europe and the US, if they continue to extend funds to human rights violators.

Mr. Douglas Williams: I agree, but it is difficult to persuade the developing countries of that.

Mr. William J. Butler: A member country participating in an organization agrees to be bound by its constitution. Is it being suggested that the US is violating the MDB constitutions by seeking to impose *ultra vires* considerations?

Mr. Stephen Oxman: The US does not accept that argument, on the ground that human rights considerations are economic to a significant degree, and more fundamental than political considerations.

Moreover, the provision on political neutrality in the UN Charter cannot mean that human rights considerations are to be completely ignored.

It has been suggested that an effort should be made to amend the MDB charters to make explicit reference to human rights considerations. Such an effort might be very divisive.

Mr. Paul Sieghart: It is fallacious to suppose that economic considerations can be isolated from political ones; they are so interrelated.

Most violations of civil and political rights are committed to support unjust economic systems. These are economic considerations, as true in the Soviet Union as in South Africa or Bolivia, so the MDBs are entitled to take them into account.

Besides, to insist that a country should perform its treaty obligations (e.g. under the UN Covenants) can hardly be called "political."

Mr. Robert Wood: Judith Hart's contention that civil and political rights are inextricably related to socioeconomic rights raises two problems. First: World Bank policy is to concentrate aid on the poorest countries. That means aiming it at States where human rights violations are greatest. Secondly: If one seeks to help the poorest people in such places, local costs must be provided, in effect giving the government a free gift of foreign exchange.

Mr. Douglas Williams: I doubt that the historical evidence supports the first contention. There is, unfortunately, some objective evidence suggesting that some measure of human rights violations is almost essential to start economic progress—some restriction of free speech or trade-union activity. There is, however, no evidence that the grosser violations, such as torture or slave labor, are justified. The effects of a project's distribution can be taken into account even at the early stage, and attention can be paid to social welfare.

As for the second contention, while I agree with it, there appears to be no solution for this very difficult problem, given the present attitude of most Ministries of Finance.

Mr. Alexander Shakow: On the second contention, at least one knows that the benefits are going to the people who need them most. About the first contention, it is clear that in certain countries with low per-capita incomes there can still be the provision of fairly broad and equitably based education, health care and political freedom—as in Sri Lanka, where quality-of-life tests indicate a fairly high level of satisfaction.

Sir John Foster: I disagree. In Sri Lanka the Tamils are discriminated against in general and persecuted often.

Mr. Stephen Oxman: I agree with the proposition that good projects do not necessarily redound to the government's credit. US experience shows that, however good the project and however beneficial in providing basic human needs, in some countries the populace sees the aid as US association with the regime in power.

Mr. Mark L. Schneider: An additional problem is that the US might rebuke a country for its human rights violations—warning that they will jeopardize US relations—and then sign or vote for a loan to the country. That often results in the government doubting the credibility of the warnings. It usually ends not only in the continuance of the human rights violations, but also in the denial of economic rights.

Sir John Foster: Did Indira Gandhi's violations of human rights affect the provision of aid to India?

Mr. Douglas Williams: In the UK they did not.

Mr. Alexander Shakow: For reasons dating back to 1972, there was no US aid to India at that time.

Mr. Mark L. Schneider: Today that situation would affect levels of US aid to India.

Mr. Douglas Williams: There was one UK policy change in India. The UK was helping with the population program by sending surgical instruments, with the understanding that they would not be used for compulsory sterilization. But it is difficult to see how that provision could have been enforced.

END NOTE

The American Association for the International Commission of Jurists is grateful for the kind remarks made at the conclusion of the colloquium, by the Rt. Hon. Peter Archer, QC, MP, Solicitor General of England; by Sir Raphael Tuck, MP; by Paul Sieghart, Chairman of the Executive Committee of JUSTICE; by Sir John Foster, QC, Chairman of JUSTICE; by Eli Whitney Debevoise, Esq., Chairman of the American Association for the ICJ, and by Lord Elwyn Jones, Lord Chancellor of England. We are particularly gratified by the appreciation of the contributions made by the sponsors of this meeting.

As sponsors, we are indebted to the United Kingdom Government for the opportunity to convene high-ranking British and United States officials to compare their experiences and their governments' efforts to integrate human rights considerations in their respective foreign policies.

We, in the non-governmental community, regard this conference as an important means to further governmental cooperation for the international protection of human rights. We are honored to have played a part in this noble effort.

William J. Butler, *President*
American Association for the
International Commission of Jurists

APPENDIX I

The Secretary of State



Speech

April 30, 1977
Athens, Ga.

Bureau of Public Affairs
Office of Media Services

HUMAN RIGHTS POLICY

Secretary Cyrus R. Vance on Law Day before the University of Georgia's Law School, April 30, 1977.

Dean Beard, students, faculty and alumni of the University of Georgia Law School, distinguished guests: I am delighted to be here with you on Law Day. And I am honored by the presence of my friend Dean Rusk, a distinguished member of your faculty.

I speak today about the resolve of this Administration to make the advancement of human rights a central part of our foreign policy.

Many here today have long been advocates of human rights within our own society. And throughout our Nation that struggle for civil rights continues.

In the early years of our civil rights movement, many Americans treated the issue as a "Southern" problem. They were wrong. It was and is a problem for all of us. Now, as a Nation, we must not make a comparable mistake. Protection of human rights is a challenge for all countries, not just for a few.

Our human rights policy must be understood in order to be effective. So today I want to set forth the substance of that policy and the results we hope to achieve.

Our concern for human rights is built upon ancient values. It looks with hope to a world in which liberty is not just a great cause but the common condition. In the past it may have seemed sufficient to put our name to international documents that spoke loftily of human rights. That is not enough. We will go to work, alongside other people and governments, to protect and enhance the dignity of the individual.

Let me define what we mean by "human rights."

First, there is the right to be free from governmental violation of the integrity of the person. Such violations include torture; cruel, inhuman, or degrading treatment or punishment; and arbitrary arrest or imprisonment. And they include denial of fair public trial, and invasion of the home.

Second, there is the right to the fulfillment of such vital needs as food, shelter, health care, and education. We recognize that the fulfillment of this right will depend, in part, upon the stage of a nation's economic development. But we also know that this right can be violated by a Government's action or inaction—for example, through corrupt official processes which divert resources to an elite at the expense of the needy, or

through indifference to the plight of the poor.

Third, there is the right to enjoy civil and political liberties—freedom of thought, of religion, of assembly; freedom of speech; freedom of the press; freedom of movement both within and outside one's own country; freedom to take part in government.

Our policy is to promote all these rights. They are all recognized in the Universal Declaration of Human Rights, a basic document which the United States helped fashion and which the United Nations approved in 1948. There may be disagreement on the priorities these rights deserve, but I believe that, with work, all of these rights can become complementary and mutually reinforcing.

The philosophy of our human rights policy is revolutionary in the intellectual sense, reflecting our Nation's origin and progressive values. As Archibald MacLeish wrote during our Bicentennial a year ago, "The cause of human liberty is now the one great revolutionary cause. . . ."

President Carter put it this way in his speech before the United Nations:

" . . . All the signatories of the United Nations Charter have pledged themselves to observe and to respect basic human rights. Thus, no member of the United Nations can claim that mistreatment of its citizens is solely its own business. Equally, no member can avoid its responsibilities to review and to speak when torture or unwarranted deprivation occurs in any part of the world. . . ."

Since 1945 international practice has confirmed that a nation's obligations to respect human rights is a matter of concern in international law.

Our obligation under the UN Charter is written into our own legislation. For example, our Foreign Assistance Act now reads: "A principal goal of the foreign policy of the United States is to promote the increased observance of in-

ternationally recognized human rights by all countries." In these ways our policy is in keeping with our tradition, our international obligations, and our laws.

In pursuing a human rights policy, we must always keep in mind the limits of our power and of our wisdom. A sure formula for defeat of our goals would be a rigid, hubristic attempt to impose our values on others. A doctrinaire plan of action would be as damaging as indifference.

We must be realistic. Our country can only achieve our objectives if we shape what we do to the case at hand. In each instance we will consider these questions as we determine whether and how to act:

First, we will ask ourselves, what is the nature of the case that confronts us? For example, what kind of violations or deprivations are there? What is their extent? Is there a pattern to the violations? If so, is the trend toward concern for human rights or away from it? What is the degree of control and responsibility of the Government involved? And, finally, is the Government willing to permit independent, outside investigation?

A second set of questions concerns the prospects for effective action. Will our action be useful in promoting the overall cause of human rights? Will it actually improve the specific conditions at hand? Or will it be likely to make things worse instead? Is the country involved receptive to our interest and efforts? Will others work with us, including official and private international organizations dedicated to furthering human rights? Finally does our sense of values and decency demand that we speak out or take action anyway, even though there is only a remote chance of making our influence felt?

We will ask a third set of questions in order to maintain a sense of perspective. Have we steered away from the self-righteous and strident, remembering that our own record is not unblemished? Have we been sensitive to genuine security interests, realizing that outbreak of armed conflict or terrorism could in itself pose a serious threat to human

rights? Have we considered all the rights at stake? If, for instance, we reduce aid to a Government which violates the political rights of its citizens, do we not risk penalizing the hungry and poor who bear no responsibility for the abuses of their Government?

If we are determined to act, the means available range from quiet diplomacy in its many forms through public pronouncements to withholding of assistance. Whenever possible, we will use positive steps of encouragement and inducement. Our strong support will go to countries that are working to improve the human condition. We will always try to act in concert with other countries through international bodies.

In the end a decision whether and how to act in the cause of human rights is a matter for informed and careful judgment. No mechanistic formula produces an automatic answer.

It is not our purpose to intervene in the internal affairs of other countries, but as the President has emphasized, no member of the United Nations can claim that violation of internationally protected human rights is solely its own affair. It is our purpose to shape our policies in accord with our beliefs and to state them without stridency or apology when we think it is desirable to do so.

Our policy is to be applied within our own society as well as abroad. We welcome constructive criticism at the same time as we offer it.

No one should suppose that we are working in a vacuum. We place great weight on joining with others in the cause of human rights. The UN system is central to this cooperative endeavor. That is why the President stressed the pursuit of human rights in his speech before the General Assembly last month. That is why he is calling for US ratification of four important human rights covenants and conventions, and why we are trying to strengthen the human rights machinery within the United Nations.

And that is an important reason why we have moved to comply with UN

sanctions against Rhodesia. In one of our first acts, this Administration sought and achieved repeal of the Byrd amendment, which had placed us in violation of these sanctions and thus in violation of international law. We are supporting other diplomatic efforts within the United Nations to promote basic civil and political rights in Namibia and throughout southern Africa.

Regional organizations also play a central role in promoting human rights. The President has announced that the United States will sign and seek Senate approval of the American Convention on Human Rights. We will continue to work to strengthen the machinery of the Inter-American Commission on Human Rights. This will include efforts to schedule regular visits to all members of the Organization of American States, annual debates on human rights conditions, and the expansion of the inter-American educational program on human rights.

The United States is seeking increased consultation with other nations for joint programs on economic assistance and more general efforts to promote human rights. We are working to assure that our efforts reach out to all, with particular sensitivity to the problems of women.

We will meet in Belgrade later this year to review implementation of the Final Act of the Conference on Security and Cooperation in Europe—the so-called Helsinki conference. We will take this occasion to work for progress there on important human issues: family reunification, binational marriages, travel for personal and professional reasons, and freer access to information.

The United States looks to use of economic assistance—whether bilateral or through international financial institutions—as a means to foster basic human rights.

- We have proposed a 20 percent increase in U.S. foreign economic assistance for Fiscal Year 1978.
- We are expanding the program of the Agency for International Develop-

ment for "new initiatives in human rights" as a complement to present efforts to get the benefits of our aid to those most in need abroad.

- The programs of the U.S. Information Agency and the State Department's Bureau of Educational and Cultural Affairs stress support for law in society, a free press, freedom of communication, an open educational system, and respect for ethnic diversity.

This Administration's human rights policy has been framed in collaboration and consultation with Congress and private organizations. We have taken steps to assure firsthand contact, consultation, and observation when members of Congress travel abroad to review human rights conditions.

We are implementing current laws that bring human rights considerations directly into our decisions in several international financial institutions. At the same time, we are working with the Congress to find the most effective way to fulfill our parallel commitment to international cooperation in economic development.

In accordance with human rights provisions of legislation governing our security assistance programs, we recently announced cuts in military aid to several countries.

Outside the Government, there is much that can be done. We welcome the efforts of individual American citizens and private organizations—such as religious, humanitarian, and professional groups—to work for human rights with commitments of time, money, and compassion.

All these initiatives to further human rights abroad would have a hollow ring if we were not prepared to improve our own performance at home. So we have removed all restrictions on our citizens' travel abroad and are proceeding with plans to liberalize our visa policies.

We support legislation and administrative action to expand our refugee and asylum policies and to permit more victims of repressive regimes to enter the

United States. During this last year, the United States spent some \$475 million on assistance to refugees around the world, and we accepted 31,000 refugees for permanent resettlement in this country.

What results can we expect from all these efforts?

We may justifiably seek a rapid end to such gross violations as those cited in our law: "... torture, or cruel, inhuman or degrading treatment or punishment, or prolonged detention without charges. . . ." Just last week our Ambassador at the United Nations, Andrew Young, suggested a series of new ways to confront the practice of torture around the world.

The promotion of other human rights is a broader challenge. The results may be slower in coming but are no less worth pursuing, and we intend to let other countries know where we stand.

We recognize that many nations of the world are organized on authoritarian rather than democratic principles—some large and powerful, others struggling to raise the lives of their people above bare subsistence levels. We can nourish no illusions that a call to the banner of human rights will bring sudden transformations in authoritarian societies.

We are embarked on a long journey. But our faith in the dignity of the individual encourages us to believe that people in every society, according to their own traditions, will in time give their own expression to this fundamental aspiration.

Our belief is strengthened by the way the Helsinki principles and the UN Declaration of Human Rights have found resonance in the hearts of people of many countries. Our task is to sustain this faith by our example and our encouragement.

In his inaugural address, three months ago, President Carter said: "Because we are free, we can never be indifferent to the fate of freedom elsewhere." Again, at a meeting of the Organization of American States two weeks ago, he

said: "You will find this country . . . eager to stand beside those nations which respect human rights and which promote democratic ideals."

We seek these goals because they are right, and because we too will benefit. Our own well-being, and even our security, are enhanced in a world that shares common freedoms and in which prosperity and economic justice create the conditions for peace. And let us remember that we always risk paying a serious price when we become identified with repression.

Nations, like individuals, limit their potential when they limit their goals. The American people understand this. I am confident they will support foreign

policies that reflect our traditional values. To offer less is to define America in ways we should not accept.

America fought for freedom in 1776 and in two World Wars. We have offered haven to the oppressed. Millions have come to our shores in times of trouble. In time of devastation abroad, we have shared our resources.

Our encouragement and inspiration to other nations and other peoples have never been limited to the power of our military or the bounty of our economy. They have been lifted up by the message of our Revolution, the message of individual human freedom. That message has been our great national asset in times past. So it should be again.

APPENDIX II

IN ADDITION TO THE UN COMMISSION ON HUMAN RIGHTS, THE SUB-COMMISSION ON THE PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, AND THE HUMAN RIGHTS COMMITTEE, THE FOLLOWING ARE AMONG THE MAJOR UNITED NATIONS ORGANS CONCERNED WITH HUMAN RIGHTS ISSUES:

- Office of the High Commissioner for Refugees.
- International Labour Organization (ILO); effective, inter alia, because NGO participation is built into its tripartite structure, with the trades unions and employers' organizations having equal membership.
- UNESCO, which now has a Human Rights Desk. A communications procedure was introduced recently, with the right of individual petition for complaints of violations of the UNESCO conventions.
- Committee on the Elimination of Racial Discrimination. Established under the International Covenant on Racial Discrimination, it receives States Parties' reports and cross-examines States Members on those reports. There is a procedure under the Convention for individual petition, but it has not yet entered into effect because not enough members have made the necessary declaration; the Scandinavian countries alone have done so to date.
- Anti-Apartheid Committee of the General Assembly and the De-Colonization Committee of the General Assembly hold hearings and receive evidence on human rights violations.
- General Assembly Third Committee.
- Economic and Social Council (ECOSOC).

NOTES

1. Strategic Arms Limitation Treaty
2. UK criteria for assessing human rights violations are confidential.
3. Resolution 1503 was passed in 1970 by the UN Economic and Social Council (ECOSOC). It established the UN procedure for dealing with complaints by individuals and non-governmental organizations (NGOs) that "appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms."

In 1971, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities adopted detailed rules for submitting and processing such complaints.
4. In force since April, 1976, the Lomé Convention is a cooperative multilateral trade/aid agreement between the European Economic Community (EEC) and 46 countries of Africa, the Caribbean and the Pacific (ACP). It expires in 1980. In negotiations for the next agreement there is an impetus to include human rights principles.
5. The International Covenant on Economic and Social Rights; The International Covenant on Civil and Political Rights.
6. The Final Act of the Conference on Security and Cooperation in Europe (CSCE), adopted at Helsinki, Finland, August, 1975.
7. By direct lending and financial guarantees and insurance to US exporters and private funding banks, the Export-Import Bank of the US (Eximbank) reduces the financial risks of exporting US goods and services, particularly on the smaller scale.
8. OPIC helps to finance and protect private US investments in developing countries against commercial and political risks.
9. In October, 1977.
10. For full text, see Appendix I, page 57.
11. Convention on the Prevention and Punishment of the Crime of Genocide; International Convention on the Elimination of All Forms of Racial Discrimination; the American Convention on Human Rights.
12. Senator Henry M. Jackson; Congressman Charles A. Vanik.
13. Site of the Foreign and Commonwealth Office and other UK Government Ministries.
14. For full text, see Appendix I, page 57.
15. Prohibits UN intervention into matters within the domestic jurisdiction of States.
16. Resolution 1503. See note 3, above.
17. See Appendix I, page 57.
18. See Appendix II, page 63.
19. See note 5 above.
20. February-March, 1978. An international review of compliance with the provisions of the 1975 Helsinki Agreement.
21. The European Convention on Human Rights and Fundamental Freedoms was signed in November, 1950; it came into force in September, 1953.

22. Portugal, Lichtenstein and Spain ratified in November, 1978.
23. Portugal accepted Articles 25 and 46 in November, 1978.
24. See note 22, above.
25. According to the Belgian Suppression Of Vagabondage Act of 1891, magistrates could order detention without trial of persons shown to be vagabonds. Responding to complaints, in June, 1971, the European Court of Human Rights held that the magistrate was not a court; that the Belgian Law deprived vagabonds of remedy against decisions ordering detention, violating Article 5, Paragraph 4 of the European Convention of Human Rights. In August, 1971, a new Belgian law modified the 1891 law. Mentioning the European Court's decision in its explanation, it provided the right of appeal to the Belgian Criminal Court.
26. Site of the European Commission of Human Rights.
27. European Court of Human Rights.
28. President Banzer had originally set 1980 for elections to choose his successor and a new Congress, in the first popular voting since 1966; but they were then held in July, 1978. General Juan Pereda Asbún, considered to be President Banzer's official nominee, was the apparent winning candidate. Following widespread accusations of election fraud, General Pereda staged a coup and established a military government. After scheduling new elections for May, 1980, General Pereda was replaced in another coup in November, 1978 by General David Padilla Arancibia. The elections were then set for July, 1979. Early in 1979 the British Government again sought to aid the Bolivian mining sector.
29. Robert S. McNamara, President of the World Bank.
30. Salvador Allende Gossens was President of Chile from September, 1970, to September, 1973, when his government was overthrown in a coup led by General Augusto Pinochet.
31. See pages 8-10.
32. See note 4, page 65.
33. Ian Brownlie, Professor of International Relations, London School of Economics.

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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 the Rule of Law.

—*United Nations Universal Declaration
of Human Rights, 1948*