



HUMAN
RIGHTS &
FOREIGN
POLICY

The Role of
Government

A Report of
Two Colloquia
Convened by
AMERICAN
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FOR THE
INTERNATIONAL
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INTRODUCTION

Inspired by U.S. Congressional initiatives in the 1970's which made human rights an integral part of the foreign policy of the United States, the American Association for the International Commission of Jurists, in cooperation with the U.S. Department of State and the foreign ministries of other countries, has arranged a series of fora over the last eight years for bilateral exchanges of view on this very important aspect of foreign policy. This report contains the précis of the two most recent meetings in this continuing effort held in London (1983) and Paris (1984) on "The Role of Government in the Implementation of Human Rights Considerations in Foreign Policy."

Earlier conferences brought together government officials and non-governmental experts, and included "Human Rights in United States and Canadian Foreign Policy" (Ottawa, 1977), "Human Rights in U.S. and United Kingdom Foreign Policy" (House of Lords, 1978), "U.S. and German Initiatives to Promote Human Rights in Foreign Policy" (Bonn, 1980), "Human Rights and Netherlands Foreign Policy" (The Hague, 1980).

In 1983, a new formula emerged for a similar dialogue, but limited to governmental participation. Since early 1973, many governments had established "desks" or "bureaus" within their foreign ministries which dealt exclusively with human rights. The United States had mandated the office of Assistant Secretary of State for Human Rights and Humanitarian Affairs by statute, and other governments designated officials with ministerial rank or special posts charged with implementing the human rights aspect of their foreign policies.

It occurred to us that these very important implementors of governmental human rights programs never met and that a forum was needed to allow them to meet each other and to exchange experiences and compare perspectives. It was hoped that each partici-

pant would share with the others the day-to-day problems and difficulties in the bilateral arrangements between their own and other governments in the United Nations, as well as in various multilateral and regional institutions concerned with human rights.

The first of the governmental meetings was held at Chatham House in London in October of 1983 and the second, under the auspices of the Quai d'Orsay, was held in Paris in October of 1984. This is an account of these meetings, the subjects discussed, the participating governments and their representatives, and the people who made it all possible.

We are particularly grateful to all those who participated and for the cooperation of all their governments. In London, we were fortunate to have had the help of Chatham House, Anthony McNulty, Director of the British Council for Human Rights, and David Heaps as our Rapporteur. In Paris, Cécile Sportis of the French foreign office, Richard Moore of the AAICJ and Dr. John P. Humphrey, our Rapporteur, all contributed generously to the success of that meeting.

Finally, we are everlastingly grateful to the Ford Foundation and to Dr. Shepard Forman who, over the years, provided the encouragement and funding to help us further governmental cooperation for the international implementation of human rights.

William J. Butler
President
New York, New York
August 1984

COLLOQUIUM ON

The Role of
Government in
the Implementation
of Human Rights in
Foreign Policy

CHATHAM HOUSE
LONDON

October 3 and 4
1983

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Mr. Anthony B. McNulty, C.B.E. *Director, British Institute of Human Rights*

Rapporteur

Mr. David Heaps *Private Consultant, Ford and Rockefeller Brothers Foundations*

AGENDA

- I. Defining Human Rights Policy
 1. Relevant human rights issues in policy-making
 2. Weight of human rights in foreign policy
 3. Costs and benefits of a human rights policy
 - a) Consistency and globality
 - b) Indigenous factors: Different standards for different cultural bases?
- II. Interpretation of International Human Rights Treaties
 1. Utility of treaties and international and regional restrictions
 2. Multilateral vs. bilateral pressures
- III. Human Rights Policy and the Principle of Non-Intervention
- IV. Enforcing Human Rights in International Affairs
 1. Diplomatic possibilities: Vigorous vs. quiet diplomacy
 2. Domestic legislation
 3. Sanctions: *Démarche* to termination of diplomatic relations
 4. Voting in international institutions
- V. Comparison of Existing Governmental Institutions and Procedures for the Implementation of Human Rights Policy
- VI. Initiatives for More Effective Enforcement
 1. International and regional organizations
 2. Strengthening indigenous human rights institutions
 3. UN High Commissioner for Human Rights
 4. Parliamentary commissions for human rights
 5. Creation of human rights desks in foreign ministries
 6. Ratification of international human rights treaties
 7. Creation of standing consultative bodies on human rights in NATO, EEC, etc.
- VII. Evaluation and Conclusion

DEFINING HUMAN RIGHTS POLICY

Relevant Human Rights Issues

The need for improved cooperation and contacts among Western governments concerned with human rights was stressed. It was emphasized that a concerted emphasis on specific human rights problems by joint or coordinated actions had manifest advantages: pressures on recalcitrant or repressive regimes to moderate their conduct would be increased; and the likelihood of resistance or opposition to external disapprobation would in consequence be decreased. Moreover, governments acting in concert could learn from each other, and could facilitate the development of effective policies and results in varying situations. Collective approaches in specific situations could help generate "a family of interests" that would make remedial action more acceptable and hence more attainable.

Human rights policies, a preliminary speaker noted, have two fundamental aspects: (a) a positive or active phase which would promote democratic principles and permit generalized and often non-specific policies to be established; (b) "reactive" policies which comprise primarily specific responses or countermeasures to prevent or mitigate abusive situations.

Another speaker defined the categories of problems as primarily "promotional and protective." Activities designed concretely to promote human rights, it was noted, were far more difficult than those concerned simply with protecting known conditions or protesting undesirable situations; it is easier to issue broad statements of principle about human rights or to criticize an adverse situation than to further human rights through tangible measures feasible for distant countries with different historical traditions and cultures.

This preliminary exchange among the delegates led to a discussion of what range of human rights should be encompassed in government programs. One set of opinions, advanced by a minority of participants, was that promotion of social and economic rights as a matter of government policy should be subordinated to political and civil emphasis. Social and economic policies or prescriptions to advance national development, these discussions noted, are essentially a matter of national determination and do not lend themselves to international or universal criteria; social and economic goals are variable, they asserted, while basic political and civil standards and aspirations have an irreducible universal validity. Another speaker supporting this position asserted that the objectives of government human rights policies should be the furtherance of more democratic regimes throughout the world; despite the rhetoric on social and economic rights, the speaker emphasized, Western governments in practice feasibly can advance only the range of rights encompassed in political and civil formulations.

This general thesis was sharply contested by the majority of participants who noted that Western governments cannot and should not restrict their advocacy to civil and political rights without acknowledgement of economic and social needs. A "Western" approach or emphasis, one speaker stated, is questionable because the essential issue facing all countries, including those in the West, is how to build effective bridges of cooperation and understanding to the needy and often impoverished Third World, and to develop an improved environment for effective cooperation and understanding. Western recognition of social and economic needs was deemed to be indispensable for this task.

Another speaker emphasized that the involvement of most Western governments in development aid leads these countries implicitly and explicitly to be concerned with social and economic goals among governments receiving such aid. Another speaker stressed "the uncomfortable fact" that economic and social rights are the preeminent concern among both the leaders and the peoples in much of the world, and they cannot be disregarded by Western governments in their advocacy of international human rights.

Other speakers emphasized that Western values and priorities

cannot be imposed on countries with different backgrounds and traditions. All rights essentially are interdependent; it is unwise to think we must make a choice among rights, but instead should be concerned with developing integration or linkage among all basic rights which are really mutually interdependent. Another participant emphasized that civil and political violations by many countries derive frequently from adverse economic and social conditions, and that it is unrealistic to believe that political and civil criteria can be advocated in an ideological vacuum without proper attention to economic and social factors which foster political instability and civil repression.

A final set of exchanges, on which broad agreement prevailed, centered on observations that Western countries concerned with human rights are lacking in a coordinated basic policy within individual government structures and between governments. Part of the problem, it was pointed out, derived primarily from a double set of factors: individual Western governments have different perceptions of national interests and therefore stress different economic and political priorities in their foreign policies; human rights offices in Western governments are established in variable ways ranging from small units operating at a low level of policy influence to others which have a greater degree of status, voice and working relationships throughout the government structure.

Weight of human rights in foreign policy

No common denominator of agreement was expressed on the significance of human rights factors in the foreign policies of Western countries. Individual participants uniformly emphasized that human rights considerations should underlie important foreign policy goals, but recognized that the political ideal was not always consistent with the actuality of government operations. It was generally agreed that current human rights interests by Western governments stemmed both from the classical human rights tradition in Western countries and from a recognition of growing aspirations for all rights throughout the world.

It was concluded in principle that egregious violations of human rights should be protested even in countries traditionally allied with the West. At the same time, however, it was agreed that in

practice the foreign policies of Western countries gave varying and inconsistent emphasis to human rights objectives depending both on individual situations and prevailing government positions.

Some participants remarked that their governments did not have a fixed policy based on sustained and objective criteria. It was often *ad hoc* rather than systematic. It depended often on the specific priorities of an incumbent government which could change from election to election, and frequently was further affected by the interests of the foreign minister or prime minister (or president) or by the status of the human rights office within the government decision-making structure.

The opinion was expressed that in recent years basic concern for human rights among Western governments has been diminishing. Two reasons were given for this trend: as global tensions and the threat of confrontation between the superpowers has risen, functional concern for promoting human rights has been lowered; the pervasive influence and power of one country has had an effect on the policy-making priorities of other countries. The result, it was noted, could have the effect of reducing advocacy of human rights by some other Western governments.

Costs and benefits

Attention in this session also was given to the problem of consistency in government operations favoring a human rights approach. Several participants questioned the capacity of governments, even when politically and statutorily committed to human rights, to engage in policies characterized by uniform consistency. Although comparable or standardized approaches should in principle be adopted by individual countries to onerous situations abroad, it was believed that in practice political and economic realities frequently produced variable approaches.

The representative of one government with a colonial history cited problems encountered: former territories, now independent, were clearly guilty of human rights violations of their citizens; yet, although the metropolitan authority deplored recurrent abuses, past historical ties and current trade and political relationships precluded the suspension of foreign aid to the offending governments. Other examples were cited of relations with oil-producing

countries, whose petroleum was necessary for the economic well-being of Western powers, which produced policies designed to avoid imperilling trade or diplomatic associations.

Other participants cited similar instances that had conditioned the actions and policies of their governments. Some believed that a more satisfactory answer might be provided by a greater concentration on working through international agencies which would relieve or avoid tensions inherent in bilateral confrontations. Some suggested that Western countries should emphasize generally the need for human rights rather than engage in specific accusations against individual countries; such an approach might achieve constructive results by pointing out the disadvantages of maintaining deleterious policies to offending countries without making specific accusations against them.

A number of participants emphasized that human rights offices within foreign ministries or elsewhere in the government do not operate in a vacuum. They are responsible to the Cabinet and to Parliament, and must work within established guidelines and directives under the supervision of their minister. They are not free agents, and are frequently not in a position to modify basic policies established at a high political or administrative level. While some Western governments have parliamentary or statutory guidelines which restrict aid to countries engaging in egregious violations, occasions recurrently arise when these criteria are abridged or ignored in the interest of what is perceived as national economic and political interests. One delegate pointed out that there is sometimes inconsistency between short-term and long-term priorities; some governments should be rebuked for human rights violations but this censure could be contradictory or in conflict with a firm commitment to long-term bilateral aid to these same countries which need economic assistance.

One participant stressed the adverse public effects, and was supported by the comments of others, of policies that could turn foreign aid on and off depending on perceived conditions abroad. If foreign aid is used as a weapon by a donor government, it could be counterproductive politically and injurious to the objectives it seeks to accomplish. A couple of participants cited possible techniques or methodologies to avoid or diminish the problems of inconsistency. This might be done through the establishment of

commissions to oversee human rights policies which could comprise government policy-makers, parliamentarians and perhaps representatives of selected non-governmental organizations. The problem of consistency, it was broadly felt, is one with which foreign aid officers must grapple with daily; it would be facilitated by having a set of objectives that is consistent and a threshold of operations that is uniformly recognized. Beyond that, it was stated, it must be recognized that there are limits on what human rights offices *per se* can do by themselves, or in the context of limitations imposed by political decision-makers and senior administrative authorities.

The problem of maintaining consistency of approach in an even-handed manner which transcends ideological or geographical preference was noted. One participant cited the attitude of some European governments to Latin America, and stated that far more criticism could be heard of conditions in a right-wing country like El Salvador than in a left-wing country like Cuba. A similar observation was made of political emphases and condemnations in the United Nations which were said to be one-sided and tendentious.

A reply was forthcoming that such a condition was not surprising; in addition to one-sided political biases among many countries in the United Nations, Western public opinion concentrates more on the countries which have relationships with the West, and on which Western influence can more readily exert leverage. Other participants expressed the need to view non-Western societies in the context of indigenous cultures which have different traditions from the West and which frequently put the group or the community before the individual; they stressed the need for this differing societal concept to be understood.

The representative of a government which has signed all the basic United Nations human rights covenants and instruments stated that violations should be equally protested by all concerned governments wherever they occur. Another opinion, however, stated that, while uniform standards must be kept in mind, situations in differing cultures must be appraised within a broader human rights spectrum that takes into account cultural and traditional differences. The view was also expressed that governments must be sensitive to political realities as well as concerned with theoretical objectives, that the goal of peaceful coexistence must

be observed, and that ultimate objectives and immediate events must be carefully balanced in the assessment of actions to be taken. Even in some transgressor countries in the Third World, it was said, there are often indigenous forces concerned with the rule of law and civility that should not be ignored and should be encouraged.

INTERNATIONAL HUMAN RIGHTS LAW

The international and regional treaties, covenants and instruments are designed, one participant noted, to promote greater recognition of diverse forms of human rights standards; serious observance of these documents, however, poses real problems because varying historical traditions and indigenous factors elicit different interpretations on what these documents mean. While concerned governments must seek more consistent standards and effective observance, another delegate noted, we must recognize that the existing machinery, aside perhaps from the Strasbourg conventions, is only incipient in practice and little-used by most sovereign governments. We must reconcile ourselves during this historical period to the reality that flexibility in application will characterize the conduct of most signatory governments. Others noted, however, that concerned governments should be prepared to hold offending governments accountable so that the various regional and international treaties can gain increased credence.

Some delegates pointed out that regional treaties, which deal with countries more likely to share similar traditions and historical conditions, may in the foreseeable future be a more feasible means of seeking effective results. One participant cautioned against undue hopes that international or even regional treaties could gain serious observance outside of Western Europe; he emphasized that their primary utility would not be in their inherent effectiveness but as a reinforcement to bilateral pressures on governments that violate human rights.

Another participant emphasized that Western countries concerned with promoting multilateral and regional human rights trea-

ties must have their own philosophical position in place, and be prepared in their bilateral policies to exemplify the objectives established in diverse international instruments; otherwise, inconsistencies and contradictions in the national responses of governments that support international treaties will leave them open to charges of hypocrisy and will damage the goals that they seek.

THE PRINCIPLE OF NON-INTERVENTION

One participant asserted that some of the human rights criteria contained in national and international documents are so extensive and so idealized that they cannot feasibly be expected to be observed by most governments in the world. At the same time, he noted, others are so fundamental for minimal standards of behavior—such as the right to be free from arbitrary arrest and imprisonment without trial—that they cannot be disregarded, and must be defended by all governments claiming to be concerned about human rights criteria.

The concept of “non-intervention” in the sovereign affairs of other nations was viewed by participants as a concept that can be interpreted differently in different cases. One speaker emphasized a difference between “interference” or meddling in the domestic affairs of other countries, and legitimate “intervention” of the right of nations as members of the international community to express appropriate judgment on the comportment of offending nations. The thesis was advanced that government policies which promote international harmony and respect for the rule of law should not be construed either as intervention or interference. Concern for international human rights requires that the behavior of states towards their citizens should be observed, and that the criteria embodied in international treaties and conventions take precedence over the “right” of the state to act abusively within its own frontiers. Certain fundamental human rights violations (e.g., genocide, *apartheid*, etc.) were said to be so egregious that they cannot be considered just as national actions, but have assumed a dimension of international significance that justifies international attention.

No established guidelines, and considerable uncertainty, were expressed on how governments concerned with international human rights could proceed beyond rhetoric and verbal censure, or infrequent and generally ineffective forms of sanctions. Although one speaker claimed that ratification of United Nations conventions and covenants imposed treaty obligations or some equivalent on United Nations members, it was generally agreed that in fact nations do not accept the principles of the Universal Declaration and the covenants, and that the absence of implementation facilities militates against effective remedial actions. Nonetheless, it was concluded, intervention in the sense of governments expressing disapproval of improper behavior is broadly accepted as an appropriate form of response. One caution was raised that Western governments should be careful to understand underlying factors and developments in non-Western cultures, that criticism must be responsibly made, and that a high moral posture which implies moral superiority should be avoided.

ENFORCEMENT

Diplomatic possibilities

The issue of "public versus quiet diplomacy" was explored with comparative agreement among the participants. It was concluded that there is a place both for quiet diplomacy as well as public and more vigorous advocacy. General agreement prevailed that, by and large, governments seeking to promote human rights should avoid confrontation and adversary relationships whenever possible, should fully explore conventional diplomatic channels to effectuate useful changes before engaging in overt criticism, and that public censure in principle should be an action of last resort to be used when other remediable means were not possible.

An advocate of "quiet" diplomacy stated that this approach offered greater flexibility and latitude, took greater account of sentiments of national sensitivity and pride, did not act as a destabilizing force against fragile Third World governments, and permitted individual cases and country situations to be chosen on

the basis of real need rather than popular politics. He observed that one practical disadvantage of the unpublicized approach is that the intervening government does not receive credit or recognition for its efforts, and often is attacked for doing nothing when in fact it is actively seeking to redress adverse situations.

Another speaker pointed out that sometimes Western countries have no alternative except public criticism, as with regimes with which relations are strained or with which diplomatic association is severed. The important issue in the question of private and/or public representations, the speaker continued, is not to be dogmatically wedded to any one method but to recognize the need for Western countries flexibly and pragmatically to coordinate policies, and to act constructively together.

Domestic Legislation

The relatively brief discussion revolved around the experience of those countries with specific legislation, established by parliamentary action or statute, which directs the government to pursue international human rights objectives. The discussion recognized the major significance of legislative guidelines as an expression of commitment, but some participants thought this type of approach was not always fully suitable or applicable to conditions in all the countries represented at the meetings. The experience of explicit policy directives established by legislative or parliamentary action was noted, but doubts were cast that this particular experience was entirely appropriate or adaptable to the parliamentary traditions and experience of some European democracies. It was thought that the nature of Western European political associations, and the historic European tradition of human rights commitment, permitted these objectives to be pursued through statutory and administrative channels without the complication, uncertainty and public fanfare of recurrent legislative enactments.

Sanctions

The discussion of sanctions was also somewhat brief because delegates felt that many of the issues—pro and con—on the application of various forms of sanctions had been covered in previous

sessions. It was noted that few examples of effective applications of sanctions or embargoes could be cited. The arms embargo against South Africa and trade sanctions against Rhodesia and other countries had not worked out in practice. Similarly, votes and actions advocating censorious action at the United Nations had proved practically ineffectual.

The point was made that the concept and practice of sanctions entails an act of disassociation against a country or countries which is punitive in nature. It should be considered an avenue of last resort; uncertainty was expressed whether such an action really can modify the behavior of a transgressor government or whether it instead may punish the citizens of a targeted country. It was mentioned that recent unilateral trade restrictions against an Eastern European country did not appear to deter the government of that country, but did impose economic hardship on many of the people.

Participants emphasized that in principle dialogue should be maintained; effective results might often be best achieved through sustained pressures which, at the same time, save the face of offending regimes. It was, however, recognized that on occasion overt and strategic sanctions can bring a violating government to more tolerable forms of behavior. The international pressures which excluded South Africa from international participation in sports were cited as one example that did modify to some degree the internal behavior of the government. Similarly, sometimes only public protest and international censure remain as an ultimate course of action to inhibit or prevent deleterious policies, even though no assurance prevails that they will succeed. In general, it was concluded that sanctions had limited effectiveness and should be considered only after all courses for private intervention had been exhausted.

Voting in international institutions

Two primary points were made by participants. One was the already noted observation that it is difficult to change basically the behavior or policies of major offending governments. The other is that the offices concerned directly with human rights issues encounter difficulties within their own governments because of di-

verse interests involved; note was made of the powerful position of treasury offices which often tend to resist political factors that could detract from financial, trade and investment objectives. Human rights offices generally occupy in power terms a subordinate position to the treasury or ministries of finance. Although human rights factors can modify or influence national government positions within the international financial institutions, a pro-human rights position is achieved only if there is a firm overall government commitment to human rights objectives. It was concluded, implicitly rather than explicitly, that in practice human rights factors have generally been subordinated in the financial policy positions adopted by national governments in international financial institutions.

EXISTING GOVERNMENTAL INSTITUTIONS AND PROCEDURES

The Chatham House proscription on identifiable reporting and references prevents a detailed rendition of this lengthy discussion on departmental behavior. It can be noted, however, that the various presentations of individual country situations and the many questions posed and observations made by participants made this exchange on factual information and practical operations one of the most fruitful segments of the two-day agenda. Various delegates expressed the opinion during this section, and in subsequent informal meetings, that the occasion provided for frank exchange and examination of diverse government activities was of unparalleled utility.

This section of the agenda primarily covered individual presentations on structure and operations of individual human rights offices in the governments represented. Noticeable variations in approach, organization, size and institutional arrangements were noted.

In some cases, a modest human rights office exists within the foreign ministry and is in a subordinate or ancillary position to other substantive operations. In several situations, human

rights responsibilities were not clearly delineated within a single office but placed within an interdepartmental context that often encompassed the legal, political and United Nations sections.

In at least three countries, the human rights office had a separate or somewhat independent structure, but ultimate decisions and actions were subject to higher authority and determinations based on other national interests. More often, the status of the human rights office was not clearly delineated, and was situated in a somewhat imprecisely defined context embodying varying traditional operations of the foreign ministry. In one larger country, the human rights office had a larger and more explicit focus of operational responsibilities, including application for political asylum, and also had access to the allocation of funds for human rights promotion abroad. This example was untypical, however, and not replicated by other governments.

INITIATIVES FOR MORE EFFECTIVE ENFORCEMENT

Due to limitations of time or previous coverage of issues in preceding sessions, not all the items in this final agenda topic were discussed.

Strengthening indigenous human rights institutions

It was generally agreed that efforts by external governments to encourage indigenous human rights movements can pose difficult problems. They will be opposed by the ruling authorities in the countries concerned. A delicate balance has to be struck between maintaining on-going diplomatic relations and showing support for local forces concerned with defending human rights. Nevertheless, it was felt that efforts should be made when possible or appropriate to foster and encourage local groups which encourage human rights. Sometimes this can be done directly; more often it can be done only by channeling such assistance through regional or inter-

national bodies or sources with access to the country. One speaker noted that this function was done by his country through their diplomatic missions which are confronted constantly with the basic problem of identifying human rights groups, making appropriate contact with them, devising means of assisting them in a way consistent with bilateral operations, and in seeking to encourage cooperation of regional and international bodies with indigenous groups.

UN High Commissioner for Human Rights

It was noted that this subject had been much discussed in past years. It is an objective generally but not strongly supported by Western governments, and is still firmly opposed by Eastern bloc countries and many less-developed nations. No fixed policy by Western governments had yet been reached on seeking this type of appointment. Problems and lack of clarity still prevail on what the mandate of such an appointment should be, and what kind of an individual could be chosen for this task in a manner that would permit effective actions to be taken. A suggested proposal of alternating High Commissioners from different parts of the world posed problems, it was suggested, because of the possible application of inconsistent human rights standards and priorities.

Parliamentary commissions for human rights

The reaction to this item on the agenda was similarly uncertain and fluid. It was generally agreed that the idea of a Parliamentary commission in Western countries to foster or develop a more effective legislative constituency was desirable in practice, but thus far potentially interested governments had done little to systematically promote such an idea. In practice there was not much concrete experience or precedent on which value judgment could be made. Reference was made to an incipient interest in a human rights ombudsman for the Council of Europe, but the idea was still under uncertain study after mixed reactions and no great enthusiasm from the European governments.

*Creation of standing consultative bodies
on human rights in NATO, EEC, etc.*

The creation of standing human rights bodies raised concern about the lack of expertise on human rights issues matters in regional intergovernmental agencies concerned primarily with political and economic issues. Reservations were expressed about government civil servants becoming actively involved in this activity. Concern was indicated that undue problems could be created unless consultative commissions were established with professional staff competence and operational structures to achieve constructive results. The experience garnered to date on this issue was not viewed as sufficiently developed to warrant conclusive judgments, but doubts were registered that these bodies were now set up to handle human rights issues.

EVALUATION AND CONCLUSION

Positive opinions were expressed that further meetings should be convened, under the sponsorship of the Jurists, that would continue to provide the opportunity for informal and private exchanges among government human rights officers. Differences were expressed on what the specific focus of subsequent meetings should be.

One body of opinion felt that future meetings, held perhaps on an annual basis, should be essentially similar to the one held at Chatham House; the emphasis should be on free-wheeling and informal discussions that are seldom possible in official meetings. Another thought that in the future the meeting should focus on specific country situations or geographical regions to ascertain common problems, policies, approaches and methods of cooperation. Another suggestion was that future meetings should concentrate on more specific agenda items that deal with the operational and administrative realities of human rights offices; a further one advocated discussion of basic issues confronting Western governments rather than specific country situations.

These differences of opinion apart, participants unanimously lauded the colloquium, both for initiating idea and its conduct. The consultation opportunities during the meeting had proved highly useful, it was agreed, because governments with human rights offices confronted common problems that would benefit from recurrent informal exchanges with colleagues from other countries. The question was then raised that the present membership of the discussion group—comprising Western European governments, the United States, Canada, Australia—should be changed in some way or supplemented. The opinion was expressed that there are disadvantages to making these meetings a "Western club," and that other areas of the world with governments concerned with human rights issues should be included, such as certain Mediterranean and Third World countries.

Another view held that the score and range of human rights problems were so vast that discussion should be centered on areas of the world on which Western countries should concentrate their efforts. Should efforts be primarily directed, for example, to countries where influence can be most effectively exerted; should it be concentrated on improving understanding between the East and the West; should it be pragmatic and eclectic? This position elicited a vigorous assertion that the basic problem did not lie with countries that can be more readily influenced or on which leverage can be exerted, but that clarity and emphasis are needed on policies toward those countries which are the major violators of human rights.

Most speakers felt, however, that it would be inappropriate and unproductive to take up specific country situations, and that future meetings could be more useful if they concentrated on basic substantive issues rather than specific country situations. This position was supported by those who felt that government officials should not conceive of themselves as activists; they are civil servants, and do not have independent power or authority beyond carrying out official policy decisions. Their task was to provide professional advice and effective implementation of basic government decisions.

Another delegate cautioned against over-ambitiousness in the organization of future meetings. He believed that it was preferable to meet regularly for the essential purposes of understanding and

coordinating mutual interests; a pertinent but restricted agenda would produce better results for everyone concerned and for the purposes to be sought. He thought it essential that the privacy and confidentiality of the meetings be maintained, but that other countries should be added as long as essential privacy could be maintained.

Several speakers were concerned about too large a meeting in the future which could detract from frank exchanges and productive debate. The suggestion was made that the present membership essentially should be maintained with a selected few additional countries with human rights offices and perhaps invited guests with specialized experiences or backgrounds.

The meeting concluded with the hope that the experience would be repeated in 1984, and an offer of hospitality was proffered by one participant. Thanks were expressed by participants to the AAICJ and its president for the initiative taken in planning and convening the colloquium.

David Heaps, 1983
Rapporteur

COLLOQUIUM ON

The Role of
Government in
the Implementation
of Human Rights in
Foreign Policy

THE CENTER FOR
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AGENDA

While the agenda of the Paris Colloquium was formally similar to the London Colloquium (see page 4), the discussion followed a slightly different course. It was decided at the beginning of the meeting to give particular attention to three broad areas during the discussion of each of the items: (1) national mechanisms; (2) UN and regional machinery; (3) processes and tactics, particularly in the matter of follow-up after making *démarches*.

The normal restriction on non-attribution of comments was lifted for the opening discussion on the comparison of existing governmental institutions and procedures for implementing policy.

GOVERNMENTAL ADVISORY COMMITTEES

To open the discussion on the first item of the agenda, the participant from the French Ministry of External Relations was asked to describe the new human rights commission which is attached to her ministry. It was, she explained, a purely advisory commission with a mixed membership of 45 members—both governmental and non-governmental—which meets in plenary as a full commission four times a year. Working groups of the commission on different matters, including economic and social rights, the agenda of the United Nations Commission on Human Rights and on information meet more often. The membership of the commission includes some very well-known personalities, including the chairman, Mme. Questiaux. Its working methods are pragmatic, it has no special structure and no special budget: it is funded by the ministry. It can act on its own initiative or on request by the minister. Reports of the working groups do not have to be approved by the plenary.

The participant from Norway said that a similar commission,

including a working group which could act in emergencies, had been operating in her country for the last six or seven years. When a member said that in her country some non-governmental organizations want no contact whatsoever with government, the French participant replied that her experience was exactly the opposite. The member from Spain then said that in his country representatives of non-governmental organizations often approached the government on matters relating to human rights and that the policy of the latter was to explain governmental policy in informal meetings and to take into account suggestions made by NGO's. Since human rights were now "à la page," said another participant, there was talk in most countries of setting up some kind of consultative machinery in matters relating to human rights. What is the proper function of the ministry? The answer, he said, was that government should keep the media informed and take action either unilaterally, bilaterally, through the European Ten or by the Western group. In Italy, the speaker said, there is a group of about 25 lawyers, journalists, etc., with a budget of \$1,500,000. Effective action can, said another speaker, only be taken through diplomatic channels.

The general tendency in democratic countries is now, it was said, to seek some kind of contact with non-governmental organizations. In Finland, there were several advisory commissions attached to the Ministry for Foreign Affairs—for example, on the CSCE process, disarmament and matters concerning the United Nations. There was also a Council on Equality Between the Sexes attached to the Prime Minister's office. Such bodies served as links to political parties and non-governmental organizations in general as well as to research institutions and other interested groups. There were several non-governmental organizations specially concerned with the rights of particular categories of persons (conscientious objectors, homosexuals, prisoners, refugees and others), but no strong organization having a general interest in human rights or a desire to get involved in what might be described as *ad hoc* matters.

In Ireland, non-governmental organizations are the most important factors in human rights matters, but they tended to want to remain at a distance from government. There was no commission such as the one in France.

A distinction was made by the participant from the Netherlands

between those advisory bodies that are "inclusive" and those that are "exclusive" in their relationship with government bureaucracy. In other words, the distinction as to whether the advisory body consisted only of non-governmental members or, alternatively, also included government officials or even cabinet members. Both types have advantages and disadvantages, he said. The "inclusive" or "in-house" type might make it difficult to reach a consensus since government and private organizations often have different objectives. On the other hand, any advice rendered by such a commission or committee, whether based on compromise or not, could not be easily disregarded by the principal precisely for the reason that government shared responsibility for drafting it in the first place.

The "exclusive" or "out-house" type of committee would perhaps experience less difficulty in arriving at an agreement, yet, particularly in cases where the committee had issued a report at its own initiative, it would be much easier for a government to disassociate itself from it.

A case in point was the advisory committee operating in the Netherlands, being of the "exclusive" type. It produced a report *propio motu* on the question of the resumption of aid to Suriname after it had been cut off following the violent death of 15 people in December 1982. The government—i.e., the Minister of Foreign Affairs—had warned against issuing any report on the matter, regardless of its contents. When, nevertheless, the committee went ahead with it, the government paid no attention to it at all. Had the Netherlands committee been of the "inclusive" type, he said, the report could, *ceteris paribus*, never have been produced to begin with.

The member from Norway, who is the chairman of the advisory committee in her country, then intervened with a strong argument in favor of including both government and non-governmental members. The advantage was that the latter had both a possibility to influence policy, as well as an opportunity to learn how difficult it is to have an effective human rights policy. But another speaker said that in his country non-governmental organizations would not wish to become members of such joint committees. And, he added, the bureaucracy would look with disfavor on their membership.

The participant from the United States said that there were no

advisory committees in his country and that there was no intention to have them. One reason for this was that in the United States questions relating to human rights were highly politicized. Another reason is the role of Congress with its many committees. He then referred to the problem of confidentiality and the danger of leaks.

There is no human rights advisory committee as such in Australia, and at present no disposition to establish one. There is a human rights commission which is concerned with human rights at home and takes an interest in developments abroad. There is close, regular consultation between the human rights section of the Department of Foreign Affairs and the Minister for Foreign Affairs, the human rights commission, NGO's and members of parliament. This covers adequately the work that an advisory committee might do. The human rights section, set up in 1984, handles all multilateral aspects of human rights, and cooperates with regional desks in dealing with bilateral questions. Another new development in 1984 was the institution of a small human rights fund, administered by the human rights section, to contribute to worthy activities abroad.

In Austria human rights organizations have shown no disposition to approach the Foreign Ministry, which is somewhat wary of new commissions. Human rights considerations are important factors in legislation relating to the export of arms.

In Canada, there is an interdepartmental committee which is, however, only concerned with domestic issues, including the implementation in Canada of the international human rights instruments to which Canada has adhered. There is also a similarly restricted federal-provincial committee of ministers and officials. The Department of External Affairs does, however, conduct informal discussion with representatives of NGO's, particularly the churches, about the agendas of certain forthcoming international conferences, particularly sessions of the United Nations Commission on Human Rights.

In Denmark, an informal liaison group on international human rights issues was set up in 1981 under the auspices of the Ministry of Foreign Affairs. The group, which meets three to four times annually, consists of representatives from relevant authorities as well as major humanitarian non-governmental organizations (but no parliamentarians).

There has been no public demand in Ireland for setting up an

advisory committee. There would, in any event, be the problem of including in the membership politicians of different political backgrounds. Nor is there any such body in Portugal. Relations with non-governmental organizations are conducted on a purely informal basis. Nevertheless, consideration is now being given to the creation of one or two bodies, including one interdepartmental body and an advisory committee. There are no human rights advisory committees in Germany and, indeed, no special offices in the government that are concerned with human rights except in the case of the Council of Europe, for which there exists a separate human rights section. There are committees on specific questions, e.g., certain refugee groups.

Why should human rights be singled out as a matter especially appropriate for the creation of advisory committees? Because, said one participant, the government is here working directly with people. You can't afford to lose contact with them. Recalling that in the seventies—in his country, at least—it was thought that you could solve any problem by setting up a committee, another member remarked that many people would now like to get rid of them. Yes, said another, let us leave the job to the departments. No, another said, in the matter of foreign affairs you must have some kind of a dialogue with the people. There should be, he said, an advisory committee on the United Nations with a subcommittee on human rights.

DOMESTIC AND INTERNATIONAL MECHANISMS

The conference discussed methods for pursuing foreign policy objectives relating to human rights through both domestic and other mechanisms. One participant noted that there was some advantage in what he called fragmentation. It helped prevent conflict between departments in his government that were concerned with human rights, including the legal department and the political department, which deals with the United Nations Human Rights Commission and humanitarian affairs. But there is no coordination between them.

How can you achieve results, questioned a participant? There are, he himself answered, either symbolic or enforcement measures that can be taken. One such step is adoption of a resolution by some institution where there is public voting. This may make the target state suffer, but it is not a sanction such as, for example, the refusal of foreign aid. There is no lack of things that can be done which have teeth in them. Most of the steps that the government takes are symbolic. It is difficult to go beyond symbolic measures if you want to maintain stability in an area. Our problem as a group of countries is the weakness of our response.

The chairman asked participants to comment on their experience. Small countries, said one, must rely on quiet diplomacy which is sometimes successful. What will be the reaction of our people if we do not act? To cut off foreign aid is the wrong approach, said another. The approach should be symbolic, particularly if it is smaller countries that you want to reach. There is also such a thing as subtle persuasion: "We would like to do something to help you, but you must respect certain principles particularly with regard to non-derogable rights." You could suspend aid for large capital projects, said another. In some of the cases where his country had suspended aid, however, the motives were mixed. It was a case of simply not being able to operate, for example in Guatemala or El Salvador. Public funds are not used to support private enterprise in South Africa. We do not make it easy to export materials to that country. There should, he added, be an educational component in foreign aid programs.

And how do we select the target countries?, inquired a participant. In my country, he added, we try to work together with the Ten but there can be difficulties. We do not have the clout to act alone, said another. But there are two sides to what we do: the reaction of our own people and the pressure on foreign countries. We make a distinction between cases where the most fundamental rights are violated and the violation of other rights. There is room, said another, for both the quiet and other approaches. You must first be sure that you have the right information. The next step is to consult with the foreign government in such a way that it will be willing to listen to you. The best approach is to involve a number of countries. Another participant said that in his country no distinction was made between non-derogable and other rights.

His government had a different standard for each country. He agreed that a certain degree of consultation with other governments was desirable. A participant agreed that the principle of equal treatment is not always applicable.

It is a question of credibility, said a participant. Some violations are so serious that you must speak up. And he put a question to another participant: what would you do about violations of human rights in a country near to you? We would, was the answer, try to engage in a dialogue with that country. And he gave some examples.

A participant referred to what he called systematic change and mentioned Uganda. The problem is whether the situation there can be changed. Perhaps we should be spending more money on trying to improve the discipline of the Ugandan army. Public reaction is hardly enough. To which another participant replied that if you improved the discipline of the soldiers they would only become better killers.

The solution lies, a participant said, in the human rights advisory services program of the United Nations. We must offer real services to the developing countries. And let us set up some kind of clearinghouse. Don't talk about sanctions. A participant said that there could be mixed motives for intervention. In any event, economic sanctions only begin to work after a country begins to feel the pinch. He then challenged the legality of the invasion of Grenada. To which a participant replied that it would go too far to say that under no circumstances can a country invade another country where there are gross violations of human rights. And he mentioned the case of Hitlerian Germany. Respect for human rights had, he said, priority over national sovereignty. He then went on to speak of particular cases: efforts to get people out of Rumanian jails, for example. The next speaker said that military intervention should be ruled out.

At the request of the chairman, a participant described the situation in his country. We do not have the answers to all the questions, the latter said, but the policy of my government is one of caution. You can only use normal methods of bringing pressure on other governments. These include deprivation—including refusal to sell weapons—of aid or responding to other requests. But deprivation will only work if it is pursued by the international commu-

nity as a whole. You should, moreover, combine deprivation with other more positive measures. Thus, when explaining why you cannot supply arms you express cautious friendship: "We would like to have better relations with you but you must show some progress in the observance of human rights." Deprivation is the best negative response. The power of governments to make *démarches*, he went on to say, is usually exaggerated by the public. You need to be quite clear as to what you can achieve and take care that you are not simply cutting yourself off from further dialogue. You may even be giving strength to those elements in the foreign country who are prepared to ignore all pressures. And, unless you invoke standards which they themselves establish, you may not get very far with your *démarche*. Persuasion should be both public and private. It is surprising to what extent a country like the Soviet Union will respond. But you must not expect to see immediate results. The Russian government will not change the system, but it does respond in individual cases. You can't expect the same results from all countries. The multilateral approach is, of course, the most effective. You may have to use a whole range of techniques. Breaking off diplomatic relations is the last resort. When you do so you deprive yourself of the possibility of influencing the other government. You sentence yourself, as it were, to silence.

WHO DO YOU APPROACH?

Whom should you approach?, the chairman asked. The ambassador of the foreign country, a legal adviser, etc.? A member said that Eastern European countries like routine; the more you change that routine the better the result, because they do not know what is coming next. In his experience, another speaker said, it was not very profitable to do anything in your own capital. It is better to approach some official in the country concerned. It is true that you do lose something; by approaching someone in your own capital you remain in charge, whereas if someone is approached in the other country your ambassador is in charge. You should perhaps begin by sending a cable to the ambassador.

Another participant said that he favored quiet diplomacy. His

country had never used the name of Chile, for example, in United Nations debates. The object was to achieve a practical result, to get people out of a country for example. Another speaker agreed that quiet diplomacy is often best. Referring to the use of ambassadors, she said that the experience of her country had been that they do not want to intervene. Our job, they say, is to maintain good relations with the country to which we are accredited. Still another said that his country operated on two levels. The tendency was increasingly to cooperate with the Ten, and an elaborate (and time-consuming) procedure had been developed which was based on reports from ambassadors. Ambassadors in the field were then responsible to make a *démarche* on the basis of agreed policy. The chairman said that governments sometimes preferred to proceed through non-governmental organizations, and he mentioned the American Bar Association mission to Uruguay for the release of certain lawyers. Another participant said that use of NGO's could be useful if the purpose were narrowly focused.

A participant recalled Bismarck's remark that ambassadors should only say pleasant things. But, he went on to say, only the ambassador on the spot knows the people concerned and who to approach. Later in the debate, however, it was pointed out that ambassadors have to be educated, as it were. While confusion might first prevail, bilateral discussions and discussions at the United Nations and other organizations and conferences had the advantage that the people to whom you were talking knew what you were talking about. An often-heard complaint was that there were too many *démarches* in countries with "soft" governments and not enough where they were "hard." Another participant said that in his country responsibility for human rights cases had been taken away from the regional offices in the ministry. "We discuss what is the best way to deal with them and then use the most appropriate channel." You must, he added, check very carefully all information that you receive about violations of human rights. He then went on to mention the loyalty of his country to the Ten. But it was often difficult to reach agreement. It very often happened that to make a *démarche* alone produced better results for the victims. A participant said that the experience of her country was that more *démarches* were made in Eastern European countries than in the rest of the world. It was important, said another, to

decide to whom you should talk in a foreign capital. A good technique would be to try to build up areas of interest in human rights in the country concerned. You should also invite people from that country to visit yours.

REFUGEES

The discussion then turned to the matter of refugees who are often repatriated against their will, as in parts of Africa. Perhaps we should condition our aid to the UN High Commissioner for Refugees and insist that he have his people in the field guarantee that there will be no involuntary repatriation. There was also the problem of persons who are not real refugees. What should countries do? The participant was skeptical about the usefulness of a proposed United Nations resolution on the matter. Another participant agreed, adding however that the principle of *non-refoulement* must be respected. The test, said another, is whether the illegal immigrant will be badly treated if returned to his country. The problem about *non-refoulement* is that you can't be sure that the person is a real refugee. In his country there was a special committee that has been set up to deal with such cases. The mere fact of a person attempting to leave his country could in certain cases make him a refugee and entitled to *non-refoulement*. There should be more cooperation between countries in the matter of refugees. If all countries agreed to take a given number of refugees, countries of first refuge could be more generous.

UN MECHANISMS AND INTERNATIONAL REPORTING

A participant mentioned the experience of the Working Group on Disappeared Persons that was set up by the United Nations in 1980. It was, he said, one of the first cases of the topical- or issue-oriented, as compared to the country-oriented, approach. The group had, however, also been authorized to look into individual cases. Some thirty countries were mentioned in the group's report. Many countries that would not cooperate with country-specific

investigations will go along with the issue-oriented approach. The weakness is that in certain investigations you might have to take on the whole world. The group was now working more like a team and has solved some 300 cases. The record of non-governmental organizations is, however, better.

The discussion then turned to the role of UN rapporteurs and how they could be helped. Governments must help provide them with material and help them enter certain countries. A participant made a distinction between country and topic rapporteurs and said that the report on Guatemala had been badly received. But two other participants defended both the rapporteur and his report, one of them saying that the criticism was politically motivated. Another thought that the United Nations should do away with country-oriented, in favor of issue-oriented, rapporteurs. But another, while recognizing the value of issue-oriented reports, raised the question of a country like Afghanistan. Somebody wanted to know why it had taken so long to get a rapporteur appointed for Poland. Still another pointed out that there was less information available for rapporteurs in Africa, for example, than in South America, where there were more non-governmental organizations. The point was made that where a rapporteur has been in operation with respect to a country, it becomes easier for organizations to act, even if the rapporteur may appear to have achieved very little. Another participant raised the question of continuing attention being paid to old cases for which a government in power may not be responsible. It was necessary, he thought, to have both country and topic rapporteurs. What was, he asked, the purpose of these mechanisms? It should be, he said, first to solve individual cases and then to help the countries in question. It should never be to punish.

UN HIGH COMMISSIONER FOR HUMAN RIGHTS

Reference was made to the proposed office of UN High Commissioner for Human Rights. Every effort must be made to keep the idea alive and to prevent it from being pingponged from the Commission on Human Rights to the Sub-Commission, and back again.

Perhaps the only thing that can be done now is to keep talking about it in the Human Rights Commission. Someone referred to the new proposal to set up an office of Coordinator. But it was pointed out that "coordination" often meant lowering effectiveness to the lowest common denominator. A participant said that this was not the time to revive the idea of a High Commissioner, the debate about which had become part of the East-West conflict, causing skepticism among Third World countries. As for coordination, that was the prerogative of the Secretariat. We should be very cautious and take no initiative at this point. The next speaker agreed. It would be a pity to water down the idea of a High Commissioner by accepting the appointment of a Coordinator. Let us not be bought off by a watered-down solution. It would be a retreat, said another. As for the High Commissioner, another participant said, it would be a mistake if we were to scare away governments by giving him too powerful a mandate. A good appointee could build up the institution. As for the proposed Coordinator, said another, objections might be raised not only by the Secretariat but also by the specialized agencies of the UN.

POSITIVE MEASURES

The meeting then turned to a discussion of positive measures for the promotion of respect for human rights, which one member suggested would be a good item for discussion by the UN Human Rights Commission. He then referred to such organizations as the Asia Foundation and the National Endowment for Democracy in the United States. An independent board decides how the funds of the latter are to be spent. You should give scholarships to the right people, he said; it should be possible to create in each country a constituency for human rights. There should be coordination between governments as to which programs should be supported in, say, South Africa. Asked to describe the kind of program he had in mind, the speaker said that in Zimbabwe, for example, an effort could be made to improve the judicial system which was a legacy of colonialism. He then mentioned certain initiatives that were taken by the ambassadors of his country abroad. Grants which were given in the discretion of the ambassadors tended to be

small. They avoided giving money for conferences and travel but supplied, for example, typewriters and xerox machines, etc. The next speaker referred to the United Nations advisory services program which, he said, should be developed. Help key people, he said. The seminars now held under this program were probably not as useful as they had been in the past. Programs that have long-term results should be favored.

A speaker said that in his country there was a ministry fund for promoting respect for human rights in connection with development aid. In the case of Uganda, however, the reports from the ambassador were so bad that the Minister of Development stopped the project because he did not want to be identified in any way with that country. The speaker favored advisory services. The difficulty was how to identify the persons who were in need of help. He then referred to the problem of illiteracy. We should widen our notions of human rights, he said.

A member said that in his country certain things could be done without the approval of the ministers. Another said that missions of his country abroad had certain funds which they could administer in their discretion. He would look into the possibility of using some of these for human rights purposes. Another participant said that in his country they also had small funds to administer.

There should be some kind of international fund to which countries could contribute, said a participant. Another speaker then again referred to the advisory services program of the United Nations which should, he repeated, be strengthened. You can't do much because the resources of the UN Secretariat are so limited. We use the NGO's, said another, and so far there have been no problems. We do the same, said another, especially in South Africa. But the projects are not labelled as human rights projects. One of the advantages of using NGO's in a country like South Africa, said another, is that you help build them up.

EVALUATION AND FUTURE AGENDAS

A participant said that a good item for discussion by the group next year would be the relationship between development and

respect for human rights. More stress should be put on certain indirect relationships, including programs for the promotion of literacy. A population that becomes literate becomes politically alert, and that changes its relationship with government. A politically alert population will help bring about respect for human rights.

There was general agreement that there should be another conference. Its agenda, said one participant, should be focused on specific areas, including advisory services, the role of non-governmental organizations and the relationship between human rights and development. Yes, added another speaker, and there should be some further consideration of national machinery, development aid and other indirect methods.

There followed some discussion as to the venue of the next conference. The consensus was that it should be in Rome in October, 1985, and that participants from Japan and New Zealand should also be invited to attend.

John P. Humphrey, O.C., 1984
Rapporteur

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SECRETARY-GENERAL

NIALL MACDERMOT

This report contains the results of the latest phase of an ongoing initiative by the American Association for the International Commission of Jurists to develop and promote intergovernmental dialogue on the practical possibilities and limitations of applying human rights considerations in the formulation of foreign policy. The two Colloquia, convened by the Association in 1983 in London and in 1984 in Paris, provided an atmosphere of frank discussion and open interchange for the fifteen participating governments from Western Europe and North America.

The AAICJ has convened six government-level conferences on the issue of human rights in foreign policy over the past eight years in recognition of the vital role that coordinated and constructive international action must have in the protection of the Rule of Law and basic human rights throughout the world.

The unique format and detailed substance of the project has received the enthusiastic interest and support of an increasing number of governments, and the dialogue is scheduled to resume with expanded participation in Rome in 1985.