
HUMAN RIGHTS AND U.S. FOREIGN POLICY

**The First Decade
1973-1983**

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International Commission of Jurists**

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American Association for the International Commission
of Jurists) after consultation with members of the Associ-
ation's Board of Directors and the Secretary-General of
the International Commission of Jurists in Geneva.

INTRODUCTION

The American Association for the International Commission of Jurists (AAICJ) was founded in 1967 to uphold and strengthen the principles of human rights and the Rule of Law on a global scale. It is affiliated with the International Commission of Jurists, a Geneva-based international non-governmental organization which has official observer status with the United Nations and selected specialized agencies. The International Commission membership includes leading jurists throughout the world committed to the protection and advancement of international human rights.

Within the United States, the American Association works closely with the American Bar Association, with state and local bar societies, and with legal scholars and academic institutions. It maintains contact as appropriate with members of the Senate and House of Representatives, the Department of State, and other relevant organizations and individuals in the public and private sectors in order to provide analyses and information on human rights developments.

The American Association has undertaken, either independently or in conjunction with the International Commission, observer missions and commissions of inquiry to diverse countries including, among others, Iran, Nicaragua, and Philippines and South Korea. It has sponsored, singly or in cooperation with the International Commission, seminars and colloquia on significant human rights issues in Africa, Asia, the Caribbean, Western Europe and North America. The American Association and the International Commission are prepared to offer counsel and services to all nations and *bona fide* national institutions which

display a willingness to achieve basic human rights standards for their citizens.

The American Association is dedicated to fostering a wider and more meaningful acceptance of provisions in the United Nations Charter which assert that all member nations have the obligation to observe and respect human rights. The AAICJ believes that the International Bill of Human Rights—comprising the Universal Declaration of Human Rights, the two International Protocols on Human Rights and the Optional Protocol on Civil and Political Rights—must be considered as a totality in United Nations theory and practice. The American Association has repeatedly urged that the United States Congress ratify the Covenants as a matter of basic principle and as a tangible expression of American Government commitment to international human rights.

The AAICJ is a close observer and, when required, a vigilant critic of United States policies concerned with human rights goals. It believes that informed citizen participation is essential for an international human rights policy fully responsive to American values and traditions. To encourage further public discussion and analysis of this subject, and in commemoration of the 35th Anniversary of the Universal Declaration of Human Rights, the AAICJ Board of Directors commissioned in early 1983 a study of human rights and American foreign policy over the decade of 1973–83. This chronological period was chosen because it spans a critical decade when successive legislative measures were passed which led to a cumulative commitment by the Congress and Executive Branch to pursue human rights as a cardinal element in the conduct of American foreign policy.

Earlier AAICJ studies and reports have addressed broad human rights policy issues with international or inter-governmental implications. Their findings often reflected the collective viewpoints and opinions of participating experts in conferences and seminars characterized by wide-ranging discussions. The AAICJ Board of Directors concluded that the present document should provide more than a historical review or a series of consensual conclusions. It should seek to promote public discussion and debate on the U.S. Government involvement with human rights over the past decade, be characterized by frank and critical observations, and should not shrink from contentious judgments on an important policy issue. It would not be a formal policy statement by the AAICJ, but a document written to stimulate public discussion and debate. David Heaps, a former Ford Foundation consultant who had planned and initiated the original Foundation human rights program and has had a lengthy association with international human rights organizations, was commissioned to write the report.

The finished product is a compressed and summarized review, not lacking in critical assessments, of U.S. Government policies and actions

over the past decade. It is based on voluminous research of official and unofficial documents, and on interviews with diverse human rights policy-makers and activists. The observations and judgments presented will not be equally accepted by all readers; some will be considered controversial and may elicit sharp disagreement. The Board of Directors believes however that issues and questions raised in this publication merit attention by those—government officials, activists, scholars and others—concerned with the need to improve a portentous official policy still in an evolving stage of development.

The American Association is planning to follow publication of this document with a number of meetings and conferences on various aspects of U.S. Government human rights policies so that this basic issue will receive the considered public examination it so urgently requires.

We are grateful to Ed McGill of Random House and to Charlotte Staub for their valuable assistance in the editing and designing of this manuscript. We are most grateful to The Max and Anna Levinson Foundation which, again, has encouraged and supported from the outset the ideas and conceptions expressed in this document; and which generously provided the grant to make possible the research and publication of this book.

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

December 10, 1983

FOREWORD

The government of the United States, uniquely among major nations, is committed through historical tradition, Congressional legislation and Presidential pronouncement to the defense of international human rights. This policy—pursued fitfully, uncertainly and on occasion even disparaged—exemplifies a set of principles enunciated originally by the Founding Fathers.

Thomas Jefferson, in 1787, wrote to James Madison that “A Bill of Rights is what people are entitled to against every government on earth”; and the Bill of Rights was incorporated into the new Constitution on December 15, 1791. In his Inaugural Address in 1801, Jefferson defined “the essential principles of our government,” emphasizing that first among them shall be “equal and exact justice to all men, of whatever state or persuasion, religious or political. . . .”

The revolutionary ideas advanced two centuries ago by Jefferson and his colleagues of the Continental Congress now reverberate with insistent force on a global scale. In modern times, American presidents and the Congress periodically have given impetus to the concept that individuals and peoples must be afforded protection against the dangers of state-inflicted tyranny. Current official concern for human rights was foreshadowed by Woodrow Wilson’s crusade for “self-determination,” by the Four Freedoms enunciated by Franklin Roosevelt; and by U.S. leadership in founding the United Nations with its subsequent adoption of the Universal Declaration of Human Rights and the International Bill of Human Rights.

In the aftermath of World War II, President Harry Truman declared,

"A requisite for peace among nations is common respect for basic human rights." Fifty nations with diverse political and economic systems then met in San Francisco to ratify the United Nations Charter which in its Preamble called on all signatories "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations, large and small."

The adoption of the Universal Declaration of Human Rights by the U.N. General Assembly on December 10, 1948 gave more precise definition to the term "human rights." Prepared under the guidance of Mrs. Eleanor Roosevelt, U.S. representative to the United Nations and chairwoman of its Human Rights Committee, the Declaration stated, "It is essential, if man is not to be compelled, as a last resort, to rebellion against tyranny and oppression, that human rights be protected by the rule of law. . . . Members have pledged themselves to achieve. . . . the promotion of universal respect for and observance of human rights and fundamental freedoms." "The Declaration was amplified in 1976 by United Nations approval of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Protocol to the latter Covenant which together comprise the International Bill of Rights, as well as by other international instruments."

Over the past decade, from 1973 onward, these various precedents and articles have been transmuted by the United States Congress into legislative measures which mandate human rights criteria as a specific factor in the conduct of American foreign policy. This series of actions has become a recurrent source of animated and even acrimonious debate in the national political dialogue. It has been acclaimed as the international extension of the finest traditions in American values; it has been condemned as an unwarranted intrusion into the internal affairs of sovereign states. Advocates assert that the pursuit of human rights represents more than a theoretical ideal or moral abstraction; they view it as an indispensable element for American foreign policy in a troubled world and as a tangible contribution to prospects for a more tolerable co-existence among governments and peoples. Skeptics and critics assert that advocacy of human rights can impair the central foreign policy concern for national security, confuse and weaken strategic but fragile allies, and create international expectations that are dangerous because they are inherently unrealistic.

Traditionally, the pattern for American foreign policy initiatives has been set by the Presidency, and implemented by the Department of State after Congressional deliberation. Significantly, however, it was the force of legislative directives that provided the essential stimulus to establish human rights objectives as an explicit factor in this country's relationships with other nations. The application of this policy has provoked

recurrent and still inconclusive public discussion on the essential nature, purposes and modalities of American foreign relations.

The object of this report is to review critically salient developments during the past decade. It will endeavor to assess in compressed form the significance and effectiveness of human rights policies now established by statute, precedent and tradition; and to illuminate problems posed when a major power attempts to blend international political and economic interests with moral values. The initial chapter will provide a synoptic account of the Congressional progression from initial concern about human rights to the passage of legislative measures which now condition the international policies of the Executive Branch. The second will provide a summary analysis and appraisal of the four years of the Carter administration. The third chapter will deal similarly with the first thirty months of the Reagan administration. A final section will posit some observations and conclusions on basic issues which underlie Government efforts to promote international observance of the rule of law.

The document seeks, in brief, to raise fundamental questions which do not lend themselves to simple solutions or facile formulas. It is hoped that, in consequence, concerned citizens, policy-makers and human rights activists will be encouraged to examine further the implications of a portentous set of goals still in the early stages of its application to complex global conditions.

I

THE ROLE OF U.S. CONGRESS: The Legislative Framework

In 1973, in the wake of the national debate precipitated by controversial government policies toward Indochina and Chile, an unprecedented study of the relationship of human rights to U.S. foreign policy was launched by the Subcommittee on International Organizations and Movements of the House Foreign Affairs Committee, under the chairmanship of Congressman Donald M. Fraser. From August to December of that year, an intensive series of hearings was held with witnesses invited from non-governmental organizations, universities, international agencies, the Department of State and the Congress. The lead-off witness, imparting an unmistakable international dimension to the deliberations, was Niall MacDermot, Secretary-General of the Geneva-based International Commission of Jurists. The Subcommittee report noted:

The human rights factor is not accorded the high priority it deserves in our country's foreign policy. . . . The State Department has taken the position that human rights is a domestic matter. . . . When charges of serious violations of human rights do occur, the most that the Department is likely to do is make private inquiries. . . . The prevailing attitude has lead the United States into embracing governments which practice torture and unabashedly violate almost every human rights guarantee pronounced by the world community. Through foreign aid and occasional intervention—both overt and covert—the United States supports these governments. . . . A higher priority for human rights in foreign policy is both morally imperative and practically necessary.¹

¹"Human Rights in the World Community: A Call to Leadership," issued by the Subcommittee on International Movements and Organizations, March 7, 1974.

The result of the Subcommittee hearings was to give unparalleled official recognition to the largely neglected issue of international human rights. The Subcommittee report recommended creation of a human rights office within the State Department's Bureau of International Organization Affairs; assignment of a human rights officer in each regional office; appointment of an Assistant Legal Advisor on Human Rights. Charles Runyon, a former Yale University law professor with a strong personal commitment to human rights, was appointed as Assistant Legal Officer. The State Department legal office soon became the principal locus for human rights concerns at a time when Secretary of State Henry Kissinger and other senior officials were still resistant to the new Congressional emphasis.

On July 10, 1974, Chairman Fraser wrote to Deputy Secretary of State Robert S. Ingersoll, "The Department should [also] have someone at the policy-making level to insure that human rights factors are given reasonable consideration. . . . It is particularly necessary to have someone with overall responsibilities who could oversee developments in human rights and decision-making in this area."

On August 14, Deputy Secretary Ingersoll responded by letter, "I plan to have an officer in my office who can advise me regarding over-all progress on these matters and insure full consideration of human rights factors in decision-making." Subsequently, James Wilson, a career foreign service officer, was appointed Coordinator of Humanitarian Affairs. The new position, Mr. Ingersoll wrote, was "expressly created to bring a clear focus on human rights issues to activities throughout the Department, and to assure attention at the highest level. . . . Our objective . . . is to expand and upgrade the time and attention devoted to human rights considerations in the working of the Department of State."

Congressional advocates of human rights, aware of Secretary Kissinger's continuing opposition, were still not reassured that the State Department pledges would be fully implemented. They noted that the new human rights desk officers were of junior status with little effective policy influence, and that human rights issues in the new Office were clearly subordinated to concern for refugee affairs, particularly displaced Vietnamese. Apprehensions of the legislators were further fanned by diverse Administration actions—including hearings on Paraguay, where State Department officials refused to admit that the Stroessner regime had consistently violated human rights; and Secretary Kissinger's public rebuke to the U.S. Ambassador to Chile for raising human rights issues with the Pinochet government.

The Congressional Response

Congress subsequently introduced a series of amendments to the Foreign Assistance Act which progressively imposed on the recalcitrant Executive Branch and State Department human rights directives and guidelines that materially altered the focus and direction of United States foreign policy.

First, in 1973, came the generalized "sense of Congress" Section 32 of the Foreign Assistance Act. Introduced by Senator James Abourezk, Section 32 stated: "It is the sense of Congress that the President should deny economic or military assistance to the government of any foreign country which practices the internment or imprisonment of that country's citizens for political purposes." Although not binding on the executive branch, Section 32 sent out the first palpable signal of growing Congressional restiveness about human rights. Deputy Secretary of State Ingersoll quickly informed the House Foreign Affairs Committee that the new provision would be fully considered in U.S. foreign relations.

Congressional human rights leaders, still wary about Executive and State Department attitudes, soon concluded that more explicit measures were required to insure that the legislative intent would be honored. As a result, Congressman Fraser introduced in 1974 an amendment to Section 502B of the Foreign Assistance Act which called for the application of human criteria to military assistance. The amendment affirmed "the sense of Congress . . . that, except in extraordinary circumstances, the President shall substantially reduce or terminate security assistance to any government which engages in a consistent pattern of gross violations of internationally recognized human rights." The terminology, taken textually from United Nations Economic and Social Council Resolution 1503, defined "gross violations" as "torture or cruel, inhuman or degrading treatment or punishment, prolonged detention without charges or other flagrant denials of life, or security of person." If military assistance should be planned despite "gross violations," the President was required to report to Congress the "extraordinary circumstances" necessitating such assistance.

The next step in the escalating Congressional campaign for more specific directives came in 1975 when freshman Congressman Tom Harkin proposed an amendment, Section 116, to the International Development and Food Assistance Act. Aimed at economic and non-military aid, the amendment went beyond an unenforceable "sense of Congress" resolution by tying economic assistance concretely to human rights standards for recipient governments.

In language identical to the 502B amendment on security aid, Section 116 barred economic assistance to "the government of any country which engages in a consistent pattern of gross violations of internation-

ally recognized human rights," but added the conditional clause, "unless such assistance will directly benefit the needy people in such countries." It called for a "detailed explanation on how such assistance will directly benefit the needy people," and required the President to submit "in the annual presentation on economic development assistance programs, a full and complete report regarding the steps he has taken to carry out the provisions of this section." Sub-section (e) allocated "not less than \$1,500,000 (annually) . . . for programs and activities which will encourage increased adherence to civil and political rights . . . in countries eligible for assistance."

In 1976, reacting against the still dilatory application of Section 502B for military security and arms assistance, a stronger Senate version of the 1974 Fraser amendment was sponsored by Senators Hubert Humphrey and Alan Cranston. The revised 502B measure was an explicit congressional directive that barred security assistance to governments construed as "gross violators" of human rights. The proposed legislation, opposed by the White House and Secretary Kissinger, was vetoed by President Ford on the grounds that Congressional action to deny foreign aid by concurrent resolution of either House would infringe traditional Presidential prerogatives in foreign affairs.

The Humphrey-Cranston bill was then amended to provide for joint resolution on aid termination to violating governments. The revised bill passed both Houses with clear majorities and was signed by the President on June 30, 1976. The amended Section 502B contained four major provisions:

1. "Increased observance of internationally recognized human rights" was recognized as a "principal goal" of U.S. foreign policy;
2. Military aid programs should be formulated to promote human rights and to avoid identification of the United States with repressive regimes;
3. Security assistance could be restricted or terminated for "any government which engages in a consistent pattern of gross violations of internationally recognized human rights;"
4. The Secretary of State was directed to make an annual "full and complete report" to the Congress for each fiscal year, "regarding the observance of and respect for internationally recognized human rights in each country proposed as a recipient of security assistance." The scope of the annual report was later expanded to go beyond aid recipients by including human rights analyses of countries throughout the world.

Congressional Viewpoint

Commenting on this period, Representative Don Bonker, Congressman Fraser's successor as Subcommittee Chairman, wrote: "It was really Congress which laid the groundwork for our human rights policy. As far back as 1973, Congress began limiting bilateral, and later multilateral, assistance to countries that persisted in a systematic pattern of gross violations of fundamental human rights. By amending the Foreign Assistance Act of 1961, the Congress mandated by law that all future Administrations must enforce human rights policy . . . It was Congress that required the State Department to publish, annually, country reports on human rights practices. . . . The position of Assistant Secretary for Human Rights and Humanitarian Affairs was also created by Congress. In a variety of other ways, Congress has made explicit its concern for human rights, ranging from the Jackson-Vanik amendment which linked freedom of emigration to East-West trade to inclusion of a human rights curriculum in international military education and training programs.²

Dr. John Salzberg, former director of the AAICJ office who became a key Subcommittee aide to Congressman Fraser, noted:

It is clear that the Congress is capable of taking an active role in the implementation and protection of human rights. . . . The parliamentary body has the opportunity to legislate the general guidelines for foreign policy. Looking back to 1973, it appears that Congress was at first looking for just that—the establishment of guidelines. However, the reluctance of the executive branch to accommodate congressional pressure led to firmer and more specific legislative mandates. . . . This serves as an example of the role a legislative body may play. Such a body, through controls over the purse and through legislative mandate can modify the behavior of the government in its representations to the international community.³

The congressional initiatives taken during 1973–76, largely stimulated by Representative Fraser and his Subcommittee on International Organizations, carried far-reaching implications which were perhaps not even fully discerned by their sponsors. They emitted early but unmistakable signals to foreign governments and to overseas reformists and human rights proponents that American parliamentary concern for human rights had now made the Congress an independent focal point for U.S. foreign policy formulation and leadership. In 1977, when a new adminis-

²*The Christian Science Monitor*, February 25, 1981.

³"The Parliamentary Role in Implementing International Rights," *Texas International Law Journal*, Spring/Summer 1977.

tration openly advocating the pursuit of international human rights came to office, the legislative conditions were in place* for a significant dimension to be added to the conduct of American foreign policy and the U.S. role in world affairs.

*For a detailed historical description of the 1973-76 legislative process, see "Human Rights Legislation and United States Foreign Policy" by David Weissbrodt, *Georgia Journal of International & Comparative Law*, Volume 7, 1977. Supplement.

II

THE CARTER YEARS: (1976-80)

By the end of 1976, sustained congressional pressures had imposed a basic legislative framework for international human rights on a reluctant President and a resistant Secretary of State. With the election of James Earl Carter in November, the concept that human rights criteria should be an integral component of American foreign policy was to receive unprecedented recognition.

In both his campaign for the Democratic Party nomination and for the Presidency, Jimmy Carter alone among the candidates stressed the issue of human rights. Announcing his candidacy for the Democratic Party nomination in December 1974, he advocated, "This country [should] set a standard of . . . dedication to basic human rights and freedoms." As candidate for President, Carter stated, "Many of us have protested the violation of human rights in Russia. . . . But such violations are not limited to any one country or ideology. There are other countries that violate human rights by torture, by political persecution, and by racial or religious discrimination."⁴

In his acceptance speech as Democratic nominee, Carter asserted, "Peace is not the mere absence of war. . . . Peace is the unceasing effort to preserve human rights."⁵ Two months later, he declared "We want to see basic human rights respected by all governments. . . . We cannot pass over in silence the deprivation of human rights in the Soviet Union. . . . We all know that liberty is sometimes denied in some non-communist

⁴Speech before the Foreign Policy Association, New York City, June 23, 1976.

⁵Acceptance Speech, Democratic National Convention, New York City, July 15, 1976.

countries [as] in Chile and in South Korea . . . We should use our tremendous influence to increase freedom, particularly in those countries that depend on us for their very survival.”⁶

Initial Policy Statements and Actions

In his Inaugural Address of January 20, 1977, President Carter devoted a significant portion of the speech to human rights. “Our commitment to human rights must be absolute,” he declared. “Because we are free we can never be indifferent to the fate of freedom elsewhere. Our moral sense dictates a clear-cut preference for those societies who share with us an abiding respect for individual human rights.”

From the outset, the new President took symbolic and material steps to mark the difference between his approach and that of his predecessors. When the noted Soviet scientist and dissident, Andrei Sakharov, appealed to the President for support to “those who suffer because of their nonviolent struggle,” Carter quickly responded by letter, emphasizing, “Human rights is a central concern of my Administration.” He took early and conspicuous action to contrast his position from President Ford who, on Secretary Kissinger’s advice, had refused to meet with the exiled Russian literary hero, Alexandr Solzhenitsyn, for fear of prejudicing U.S.-U.S.S.R. relations. Vladimir Bukovsky, another Soviet expatriate, was openly received in the White House and assured that “our commitment to human rights is permanent.”

The unusual emphasis on human rights—reiterated with increased zeal as public approbation was registered by the President’s private poll-taker—captivated liberals and conservatives alike. It attracted many liberals because it advocated an ethical consistency and a moral tone to U.S. foreign policy whose deficiency had been decried during the decade of Watergate and Vietnam, the C.I.A. and Chile. It appealed to some conservatives because the initial focus was clearly anti-Soviet in sound and substance. The recurrent Carter pledges to promote “basic global standards of human rights . . . so that our country may be once again a beacon light for all humankind” had generated a broad and perceptible national response.

Two months after his Inaugural Address, President Carter flung the issue of human rights squarely into the international arena by an address to the United Nations General Assembly. “The basic thrust of human affairs points to a more universal demand for fundamental human rights,” he asserted. “We accept this responsibility. . . . All signatories

⁶Address on “Human Rights,” B’nai B’rith Convention, Washington, D.C., September 8, 1976.

have pledged themselves to observe and 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 the world."

One month later, on April 15, the President reiterated this theme in a major address before the Permanent Council of the Organization of American States; and again on May 22, in a Commencement Address at the University of Notre Dame, the President emphasized "We have reaffirmed America's commitment to human rights as a fundamental tenet of our foreign policy. Our policy is rooted in our moral values which never change."

The drumbeat of presidential pronouncements was accompanied by changes to strengthen the modest Human Rights Bureau in the State Department. Patricia M. Derian, an early Carter supporter and civil rights activist from the South, was appointed to the post of Human Rights Coordinator, which was later upgraded to the rank of Assistant Secretary of State. By the end of 1977, the original staff of two professionals had been increased to twelve human rights proponents dedicated to Presidential policy.

During this initial year of vigorous advocacy, high officials—the President, Secretary of State Cyrus Vance, Deputy Secretary Warren Christopher, United Nations Ambassador Andrew Young, Assistant Secretary Derian and others—traveled at home and abroad to promote in public speeches and private discussions the doctrine of international human rights. Secretary Vance met in Argentina with human rights leaders, and saw personally that a list of several thousand *desaparecidos* was brought to the attention of the Argentine government. Assistant Secretary Derian, on a trip to the Philippines, insisted on visiting political prisoners and expressed official disapproval of the Marcos government policies. In Washington, Deputy Secretary Christopher publicly received former political prisoners from Chile and Argentina.

In June 1977, President Carter signed the hemispheric American Convention on Human Rights, which had languished for eight years without discernible progress. This act, supplemented by strenuous United States lobbying, stimulated nineteen signatories and thirteen ratifiers, and the Convention went into effect on July 18. The President further signed, in conformity with his earlier pledge, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights—both of which still remain unratified by the U.S. Senate.

Closer attention was accorded to American aid policies. Bilateral assistance to governments responsible for human rights abuses was more carefully scrutinized. U.S. representatives to international financial insti-

tutions were directed to vote against loans to human rights offenders unless such loans were deemed to serve basic human needs. The U.S. directors of the World Bank, the Inter-American Development Bank, the Asian Development Bank and the African Development Fund were "authorized and instructed to oppose any loan, any extension of financial assistance, or any technical assistance to any country whose government engages in a consistent pattern of gross violations of human rights."

An Inter-Agency Group on Human Rights and Foreign Assistance was set up under Deputy Secretary Christopher to weigh human rights factors in bilateral economic programs, and to assess United States policies in international lending agencies like the World Bank and the International Monetary Fund. An analogous inter-agency committee—the Arms Export Control Board—was established to review military and security assistance; the result was a sharp decrease in military exports during the first two Carter years compared to previous levels.

Secretary of State Vance delivered a major policy speech which reiterated an abiding American commitment to human rights, and stressed the relationship of this objective to U.S. traditions and overseas interests. The address emphasized for the first time that American policy would recognize the full range of objectives, including social and economic, embodied in the United Nations agreements—"the right to be free from governmental violation of the integrity of the person; the right to the fulfillment of such vital needs as food, shelter, health care and education; 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 within and outside one's own country."⁷

Early Impact of Administration Initiatives

The palpable consequence of cumulative administration initiatives and declarations was that public consciousness of human rights was heightened as never before. The question of how the state should treat its citizens, viewed traditionally as an internal matter to be determined by national governments, had been thrust decisively on the national and global agenda.

In official Washington, as in *haute couture*, new fashion can become all the rage when adopted by the right people. Human rights—a subject that had once elicited resolute indifference from all but a small band of true believers—suddenly commanded the vocal allegiance of an army of prominent converts. Some of the President's most trusted advisors, who

⁷Law Day Address on "Human Rights Policy." University of Georgia, Athens, Ga., April 30, 1977.

had accompanied him on the march through Georgia to Washington, embraced the new doctrine with more public fervor than private conviction. State Department regulars, skeptical and uneasy about an alien intrusion into the conventional practice of diplomacy, muted their fears and prepared reluctantly to work with political appointees more familiar with domestic civil rights than international human rights. Pundits in academic and foreign policy research centers, who had dismissed human rights as value judgments irrelevant or inimical to U.S. national interests, discovered the need to reconsider previously unchallenged assumptions. National security adviser Zbigniew Brzezinski, not known previously as a human rights proponent, enchanted a receptive audience of American human rights leaders at a White House reception by announcing a new law of political dynamics that established human rights as "the historic inevitability of our time."

Abroad, governments which had assumed with impunity the right to tyrannize their subjects under the protective cloak of national sovereignty, were suddenly constrained publicly to defend or lie about their more flagrant actions. The ruling cadres of the Soviet Union, increasingly embarrassed by overt dissidence among their intellectual elite, were stung by the American offensive and reacted angrily to public criticism from Washington. The chancelleries of allied democracies, where secret diplomacy had been a sacrosanct doctrine, were discomfited by the policy of aggressive advocacy. The governments of less developed countries, many of them controlled by regimes of varying degrees of repressiveness, responded with stony silence or pained reactions as their citizens were infused with new hopes. The United Nations, whose concern for international human rights had been limited to repeated condemnations of an odd triumvirate comprising South Africa, Chile and Israel, began gingerly to enlarge its frame of reference and to look less blindly at chronic abuses of other member states.

Virtually unknown voluntary organizations, which for years had labored alone and ignored on the frontiers of the human rights struggle, suddenly gained public recognition and prominence. In one giant leap, their leaders jumped from the marginal status of suspected radicalism or fringe group eccentricity to being honored guests at the State Department, major foundations, and trendy conference centers.

Practical Problems, Unpalatable Consequences

A well-publicized call had been launched for a universal campaign to promote international human rights—but exactly what the campaign should be, to whom it could be applied and how it would be enforced remained still largely undefined. Practical problems soon began to sur-

face. On February 23, 1977, President Carter at his second press conference responded to growing criticisms that the administration stress on Soviet human rights violations could endanger forthcoming arms limitations talks in Moscow. He noted, "Obviously there are deprivations of human rights even more brutal than the ones on which we have commented up until now," and cited President Idi Amin in distant Uganda whose "actions have disgusted the entire civilized world."

Two days later, Amin issued a public statement that the 200 Americans in his country, many of them missionaries, would not be permitted to leave his land-locked fiefdom, and would be summoned to appear before him. The unpredictable dictator then cabled a diatribe to President Carter, challenging him to put his own house in order before criticizing other nations. The unexpected and threatening riposte produced an embarrassed presidential silence, and unpublicized State Department intercessions with friendly African nations to placate the ruffled tyrant. Amin then cancelled the projected meeting with his American hostages, and announced that they would be free to come and go at their will.

This brief episode provided a sobering insight into a series of unpalatable political truths whose full significance was only slowly digested by White House policy-makers. The first was that even a major nation can suffer a humiliating rebuff if it seeks to modify, without effective international support or direct power of enforcement, the internal conduct of a defiant government. Verbal criticism or moral pressures alone produce limited or no results when directed against implacable regimes whose survival depends on maintaining the *status quo*. Human rights was not a political ideology that could be exported by edict or imposed by force.

The second was that advocacy of human rights was not a moral luxury or a rhetorical admonition that could be indulged in on a cost-free basis. The demand for basic change in the domestic conduct of an offending state implies a fundamental political or economic transformation so sweeping in magnitude and character that it could not be routinely requested, and would not be readily accorded. Every gain of a new basic right for some of the victims could entail a commensurate loss in power for some of the privileged.

The third was that the consequences of a universal human rights campaign would not fall impartially on the principal offenders. It would affect primarily vulnerable governments dependent on American goodwill or material support. Monolithic totalitarian giants like the Soviet Union or China, or ruthless lesser dictatorships like North Korea or Kampuchea, were largely immune to unilateral American pressures and exhortations. The brunt of U.S. disapproval expressed through economic measures or political condemnations descended primarily on a limited number of smaller states, largely in Latin America, that were linked by

geography, tradition and economic need with the United States.

The President and his advisers had failed at the outset to grasp the essential reality that systematic government repression is seldom a political accident, a social aberration, or the casual reflex of a wayward dictator. It is more often the calculated instrument of national policy. Regimes that exercise power ruthlessly do so deliberately because dissidence disturbs their authority, and opposition menaces their survival. The more threatened and insecure they are, the more they are prone to use the force of modern weaponry to curb dissent and intimidate resistance. They may on occasion be inhibited or embarrassed by foreign censure, and sometimes influenced by external pressures if the price for internal change is to their advantage. But they are seldom moved, and then often to defiance and intransigence, simply by moral exhortation or pious homilies.

Contradictions Between Policy and Practice

The complex and often arduous problems that confronted the administration as it sought to translate Presidential rhetoric into policy operations became increasingly apparent. Professor Lincoln Bloomfield, human rights adviser on the National Security Council staff in 1979–1980, wrote, “When it came to specifics, whether the aid was military or non-military, complex interests had to be balanced in reaching decisions on individual cases. Inescapably, there were numerous cases in which the administration was exposed to the charge of inconsistency. Human rights performance became a dominant factor in conventional arms transfers to Latin America; but such considerations were clearly subordinate in weighing military aid to Egypt, Israel, North Yemen and Saudi Arabia.”⁸

When Secretary Vance informed the Senate Foreign Affairs Committee in 1977 of the Administration intention to curtail support to Argentina, Ethiopia and Uruguay because of human rights violations, no similar ban was proposed for South Korea, Iran, Indonesia, Zaire and other strategic allies guilty of comparable infractions. “In each case,” the Secretary explained, “we must balance a political concern for human rights against economic and security goals.”

Relationships with this country’s traditional allies in Latin America posed particularly vexatious problems. The military dictatorships of Argentina, El Salvador, Guatemala and Uruguay rejected criticisms published in the first Carter administration annual human rights report

⁸“From Ideology to Program to Policy: Tracking the Carter Human Rights Policy,” *Journal of Policy Analysis and Management*, Vol. II, no. 1 (1982).

as an affront to their sovereign dignity, and rejected further U.S. military assistance. Brazil summarily dismissed the American assessment as "unacceptable and tendentious commentaries," and promptly cancelled a twenty-five year old military treaty. President Carter immediately sent a personal letter, reportedly of a conciliatory nature, to Brazil's President Ernesto Geisel. The Brazilian Government already had been discomfited by Washington actions that castigated publicly its human rights record while urging privately that it cancel arrangements with the West German Government to construct a nuclear fuel processing plant. Guatemala later reconsidered its decision to reject military assistance, and sufficient "improvement" in its human rights performance was then noted in Washington for aid to be resumed; the administration interpretation was viewed by many observers as politically opportunistic and factually dubious.

After voting in 1977 against loans to Argentina by international financial institutions, United States representatives changed their position the next year to a policy of abstention although conditions within Argentina remained essentially unaltered. The United States later became more conciliatory to the military junta as it sought Argentine cooperation for the U.S. grain embargo imposed after the Soviet invasion of Afghanistan; the junta maintained its wheat sales.

Military and economic aid, including some \$12 million in loans and grants for schools and nutrition, was prohibited to the Somoza regime in Nicaragua. But U.S. military training assistance was extended for the National Guard—the primary instrument of internal repression. In March, 1979, administration representatives were actively lobbying for congressional approval to restore multilateral support to the foundering Somoza regime.

The onerous choices posed between human rights objectives and military and economic interests were dramatically exemplified by relationships with the autocratic rulers of Iran and Pakistan. By 1978, the United States was making private representations to the Shah of Iran to abate government-imposed human rights abuses in his country. On New Year's Eve of that year, President Carter and his wife were the Shah's guests at a glittering reception in Teheran where the President toasted "the leadership of the Shah [in] a land of stability. . . . The cause of human rights is one that is shared by our two peoples and the heads of our two countries." Earlier that same day, anti-Shah demonstrations had erupted and dissidents were arrested.

After the fall of the Shah, the return of Ayatollah Ruhollah Khomeini in February 1979 was accompanied by an epidemic of vengeful summary executions of suspected dissidents, unbelievers and Kurdish nationalists. During this same period, the State Department asserted the readiness of the American government "to strengthen the authority and effectiveness

of the new (Iranian) government" and to resume shipments of military supplies and equipment. After the seizure of American hostages on November 4, 1979, the administration still reiterated its willingness to renew military and economic ties once the prisoners were released. "We are prepared to work with the government of Iran to develop a new and mutually beneficial relationship," the President declared in his 1980 State of the Union Address as the hostages entered their third month of captivity.

Following the Soviet invasion of Afghanistan on December 27, 1979, the military dictatorship in adjacent Pakistan, to which U.S. aid had been earlier suspended, was quickly promised a \$400 million U.S. military and economic package. President Mohammed Zia ul-Haq, dismissed the offer as "peanuts." Eight months previously General Zia had rejected appeals from President Carter and other international leaders to stay the execution of former Prime Minister Zulfikar Ali Bhutto, who had been deposed by his military coup.

An American mission to Pakistan led by Deputy Secretary of State Christopher, chairman of the Inter-Agency Committee on human rights, and national security adviser Brzezinski, was dispatched in early 1980 to conciliate General Zia. They left just as the State Department's annual human rights report was released. The report noted that the Pakistani government continued to detain, without trial or charges, associates of the executed Bhutto, had kept his wife and daughter under house arrest, and had "indefinitely postponed national elections, expanded the jurisdiction of the military courts and imposed censorship of the newspapers." In Washington, the administration reiterated the hope that closer relationships with General Zia and his regime would still be developed.

Administration Assessments

The conflicts and contradictions that beset the Administration human rights policy were uncomfortably noted by those in the forefront of the human rights operation—the senior personnel for the Bureau of Human Rights and Humanitarian Affairs. Assistant Secretary Derian later observed "Human rights was a brand new concept, and we ran inevitably into bureaucratic and policy problems. We had only a limited amount of staff and funds. We had to make hard choices as to what issues should have our attention, and how much time and energy we could devote to them in view of other pressing demands. We had to deal with the differing interests of Defense, Commerce and other branches as well as with a variety of views in the State Department. What we had to do was difficult, demanding and enormously time-consuming. Our utility lay in being practical in our actions and trying to maintain the symbolism of what we stood for. We could not always be successful or clear or

free in what we wanted or hoped to accomplish."⁹

Deputy Assistant Secretary for Human Rights Mark Schneider, the only ranking member of the Bureau with prior Washington and overseas experience, concluded in an interim assessment, "As the second year ends, there continue to be calls for more aggressive actions as well as complaints that the heavy emphasis on human rights has overshadowed other U.S. interests. In looking back, it is difficult to define precisely the benefits of the policy. In many instances, U.S. expressions of concern were communicated to a host government and subsequently prisoners were released or changes were made in the treatment and processing of political detainees. In many cases, those acts were cosmetic or token, designed to forestall U.S. criticism. . . .

"Whether the human rights policy has been a marginal, complementary or dominant factor in the positive steps which have been taken is unclear. . . . However, it seems clear that the rise to power of human rights was a new factor in the thrust and direction of U.S. foreign policy. Equally important, the concentration on human rights issues not only survived the first two years but had become a highly visible symbol of the administration's approach to foreign affairs."¹⁰

Toward the end of the Carter period, Deputy Secretary Christopher reflected a more sanguine official position that gave little hint of the thorny problems encountered over the preceding years:

"We have effectively institutionalized human rights as a major element of U.S. foreign policy," the Deputy Secretary asserted. "Human rights has been placed squarely on the diplomatic table. The subject has become an item of serious discussion between us and the nations with which we deal . . . (Human rights) is a central part of a pragmatic, tough-minded policy [that] serves not just the ideals, but the interests of the United States. . . . Our human rights policy identifies the United States with leaders around the world who are trying to improve the lot of their people."¹¹

Decline of White House Emphasis on Human Rights

The first two years proved to be the high water days of the Carter administration involvement with human rights. By 1979, an inherent lack of precision in determining how much a well-intentioned government, even one as powerful as the United States, could do unilaterally to mitigate abusive conditions abroad had produced glaring policy con-

⁹Interview with author, Washington, D.C., February 11, 1983.

¹⁰"A New Administration's New Policy," Human Rights and U.S. Foreign Policy, Lexington Books, 1979.

¹¹Assembly of the American Bar Association, Honolulu, Hawaii, August 4, 1980.

traditions and inconsistencies. Official declarations and actions on human rights declined perceptibly as apprehensions rose about Soviet influence and the enfeebled position of some of this country's traditional allies. The authority of the Human Rights Bureau diminished in the high councils of the White House and State Department. The President's final address to the Congress in January 1980, in which human rights goals were virtually disregarded, marked a stark and, to many, sad contrast with the bold and hopeful pledges of his Inaugural Speech four years earlier.

Six months after his defeat, Mr. Carter ruminated, "Sometimes I wish we had been as idealistic and interventionist as our critics claim, because we might have helped a few more people. I have to admit the results of our commitment were often disappointing, and there were always legitimate reasons put forward for us to compromise."¹²

Reflecting later on his four years of incumbency, President Carter wrote: "I did not fully grasp all the ramifications of our new [human rights] policy. It became clear in the early days [and increasingly so later on] that the promotion of human rights was to cut clear across our relations with the Soviet Union and other totalitarian states, the emerging nations who were struggling to establish stable regimes, and even some of our long-time Western allies."¹³

The Carter administration thus became an early victim of its own hyperbole by inflating public expectation of what a solitary government could do to influence countries with dissimilar political structures and value systems. It had over-estimated its capacity to effect change abroad, and under-estimated the capacity of foreign governments to resist pressures for change. Commenting later on the U.S. failure in Iran, Mr. Carter observed, "There are limits, even on our nation's great strength [to effect change abroad]."¹⁴

U.S. Relationships with Key Dictatorial Allies

The most difficult test for American human rights policy was posed by the authoritarian and often despotic countries that comprised the non-western network of strategically important U.S. allies. Whether the government was the crudely brutal Mobutu regime in Zaire, abundant in mineral resources needed by the industrial West; or the more polished military dictatorships in South Korea and Pakistan, with their strategic geo-political location; or the rapacious Pahlavi hegemony in Iran, con-

¹²Speech to the New York Board of Rabbis, May 16, 1981, New York.

¹³"Keeping Faith: Memoirs of a President," by Jimmy Carter, Bantam Co., November 1982.

¹⁴*New York Times* interview, May 17, 1981.

troller of vast petroleum deposits in the Persian Gulf—the Washington response was relatively constant, and in practice not fundamentally dissimilar from that of preceding administrations.

Military, economic and strategic considerations were the final determinants in the formulation and application of foreign policy. Human rights became a subordinate factor when measured against the perceived imperatives of national security objectives. On occasion, precious humane concessions were extracted, like the release of political prisoners in Indonesia; the imposition of less harsh punishments on foes of the regime in South Korea; the more conciliatory treatment of political opponents in the Philippines; the liberation of prominent dissenters such as Jacobo Timerman in Argentina.

American pressures thus did elicit improved conditions that were vitally important, and, at times, of life and death significance, to individual victims of injustice; their value cannot be underestimated. But the changes registered in the conduct of offending governments were mostly transitory, tactical and expedient; they were not fundamental or structural. The essential nature of the regimes remained intact, and basic U.S. relationships with them remained substantially unaltered.

The Human Rights Community— Disappointment and Confusion

The final result was a cumulative record of confusing contrast between the early White House word and the ultimate State Department deed. Early supporters were dismayed, and then began to voice their concern; conservative critics and skeptics, once silenced by the acclaim accorded the Carter initiatives, became increasingly outspoken. A program which had begun with a rhetorical bang was asserted to have subsided with an embarrassed whimper.

Vocal sounds of distress were first heard among the disappointed ranks of the human rights community. Its diversified representatives had often embraced Washington with uncritical fervor. Flattered by unaccustomed access to political authority, they were lulled into the hope that their historic task could be discharged by an administration in which some of their erstwhile colleagues served. They had initially assumed that a major power with diverse economic and military interests could be a global moral force, free to act with unimpeded constancy against misconduct wherever it was manifest. They subsequently faulted the Administration for something beyond its capacity to provide—consistently elevated American policies which would effect improved behavior by oppressive governments in distant places.

The human rights activists had largely failed to understand that, even

in a more tranquil world, Washington could not serve as a monolithic political or moral exemplar to be their steadfast ally or faithful partner. The administration navigated with an uncertain compass in a complex world of political diversity, economic rivalry, ideological polarization and adversary expansionism. It reflected a consensual compact that continually had to balance diverse external claims and internal needs to compose the national polity. It was an instrument of compromise and accommodation that had constraints on what policies it could agree to within its borders, and limitations on what it could accomplish beyond its frontiers. It would be preoccupied always with the exercise of power; it was concerned only sometimes with the dispensation of justice.

A more just and restrained form of governance abroad was not a bequest that could be conferred on recalcitrant regimes by the United States, nor by any alien power. The enduring easement of repression and the lineaments of a more humane order in a national society would be realized essentially by those who live and die within their native lands. The efforts of heroic individuals and peoples to combat injustice could at times be protected or facilitated by foreign encouragement. But essentially they waged a solitary struggle within their own borders, their hope and courage sustained by the strength of their commitment and the support of their fellow citizens.

The most steadfast external allies of those striving to defend human rights would not be foreign governments but the vigilant independent organizations—Amnesty International with its militant concern for prisoners of conscience, the International Committee of the Red Cross with its judicious efforts to foster humanitarian criteria, the International Commission of Jurists with its campaign to promote the rule of law, and the many other active professional, specialized, and religious agencies. These non-official bodies remain the stubborn advocates and defenders of international human rights. Small and limited in resources and authority as many are, they alone could be imbued with that unswerving consistency of purpose and principle—as critic, goad, conscience, reporter and publicist—which transcends the expediency and compromise inherent in the exercise of power. The spotlight cast by the Carter administration facilitated their work; it was not, and could not be, a substitute for their basic mission.

A Legacy of Importance

Despite functional limitations on its power and uncertainties in its performance, however, the Carter administration achieved one historic objective of transcendent importance. It was the political pioneer that placed the issue of human rights openly on the international agenda. The

unprecedented American endorsement of human rights standards gave pause and deterrence to some despotic regimes engaging in repressive practices. It moderated or enhanced the political image of the United States among intellectual, reformists, and democratic socialists in Third World countries, particularly in Latin America, who had traditionally viewed American actions as a primary defender of the *status quo*. "In several Latin American countries," political scientist Lars Schoultz observed in an analysis of human rights policies in the region, "the 1970s ended with a considerable increase in the level of respect for human rights related to the integrity of the person—the right to be free from torture, cruel and inhuman treatment, and prolonged detention without trial."¹⁵

Most significantly, global awareness of human rights soared to the foreground as President Carter reiterated this theme as a principal American concern. Few other declaration or appeals by him resonated with the same force at home or abroad. The bully pulpit of the Presidency was used to foster, perhaps irreversibly, international recognition of the thesis that individual governments should be held publicly accountable for the treatment of their citizens.

The question of how the state should act toward its peoples, long viewed as an internal matter for the exclusive determination of national governments, was thrust decisively into the international vocabulary and the dialogue among nations. Western allied governments were stimulated, or pressured, by the early American advocacy to accord greater recognition to human rights factors in foreign policy considerations. Elsewhere in the world, opposition political movements and professional societies like bar associations were emboldened to speak out more forthrightly for human rights standards. Tyrannical regimes no longer could assume they would be immune to a groundswell of protests and representations from aroused private and public sources; valiant dissenters and innocent victims no longer felt so isolated nor so alone. Increasing credence was accorded the belief that peoples, regardless of political system, no longer need be destined to remain the passive victims of state-inflicted repression and mistreatment.

Essentially, however, the Carter advocacy of international human rights in operational terms was not undergirded by a coherent program or even a systematic policy. It remained basically an article of faith which rested on the premise that more just governance could lead to improved individual and collective well-being. A foreign policy seeking to extend the frontiers of human decency would be an expression of the aspiration for greater civility among peoples and nations. It could help to edify

¹⁵"*Human Rights and United States Policy toward Latin America*," by Lars Schoultz, Princeton University Press, 1981.

societies that strive to exemplify these principles, and to encourage others to aspire to them. It would often be more significant for what it sought than for what it could foreseeably attain. Its legacy would be the vision of a more just international society rather than a blueprint for achievement; its justification the prospect of a more tolerable set of relationships between the rulers and the ruled.

III

THE REAGAN ADMINISTRATION: The First Thirty Months

The principal foreign policy advisers to President Reagan, like their predecessors in previous administrations, arrived in Washington with missionary zeal to restore the international authority of what they perceived as a great but damaged nation. Sustained by the certitude of untested political theorems, they planned from a plateau of unaccustomed prominence and limited experience to rectify prevailing errors through a disavowal of past policies.

The Carter human rights policy was quickly singled out as one major cause of American problems and set-backs abroad. Senior aides, speaking for a neophyte President with negligible background in foreign affairs, advocated the dismantling of a program which they claimed had prejudiced U.S. overseas interests, destabilized friendly governments, and favored this country's adversaries. The Reagan team planning for the State Department transition recommended, "Internal policy-making procedures should be structured to ensure that human rights is not in a position to paralyze or unduly delay decisions on issues where human rights concerns conflict with the vital United States interests."

This basic approach had been largely shaped by two influential counsellors, Jeane J. Kirkpatrick, Leavy Professor of Political Science at Georgetown University, and Ernest W. Lefever, Director of the Ethics and Public Policy Center of Georgetown University. Dr. Lefever, in extended criticisms of the Carter administration, had written:

The consistent and single-minded invocation of the "human rights standard" in making United States foreign policy decisions serves neither our

interests nor the cause of freedom. . . . Making human rights the chief, or even major, foreign policy determinant carries dangers: [It] subordinates, blurs, or distorts all other relevant considerations. . . . We have no moral mandate to remake the world in our own image.¹⁶

The Carter campaign has confused our foreign policy role and trivialized the concept of human rights."¹⁷

In a much noted article, which brought her views on distinctions between "authoritarian" and "totalitarian" regimes to Ronald Reagan's attention, Professor Kirkpatrick wrote:

The failure of the Carter administration's foreign policy is now clear to everyone except its architects. . . . [In] Iran and Nicaragua, the Carter administration . . . actively collaborated in the replacement of moderate autocrats friendly to American interests by less friendly autocrats of extremist persuasion. . . .

The [Carter] administration's conception of national interest borders on doublethink . . . [Its] foreign policy fails . . . for lack of realism about the nature of traditional versus revolutionary autocrats. . . . Only intellectual fashion and the tyranny of Right/Left thinking prevent intelligent men of goodwill from perceiving the *facts* that traditional authoritarian governments are less repressive than revolutionary autocracies, that they are more susceptible of liberalization, and they are more compatible with U.S. interest.¹⁸

Professor Kirkpatrick's and Dr. Lefever's opinions, endorsed by other neo-conservative intellectuals in the Regan camp, profoundly influenced the new Administration's international stance. Tough-minded firmness toward totalitarian adversaries and a more conciliatory approach to authoritarian allies, it was indicated, would rectify the Carter vacillations that had encouraged Soviet aggression and tilted the balance of global power against the United States.

Early Reagan Administration Position

The new policy-makers lost little time in announcing their position. At his confirmation hearing, Secretary of State-designate Alexander Haig declared, "International terrorism will take the place of human rights in our [foreign policy] concern." National security adviser Richard Allen

¹⁶"Morality and Foreign Policy," Ethics and Public Policy Center, Georgetown University, 1977.

¹⁷"The Trivialization of Human Rights." *Policy Review*, Winter 1978.

¹⁸"Dictatorships and Double Standards," *Commentary*, November 1979.

asserted that the new Administration would "not place as much ideological emphasis on human rights."

Professor Kirkpatrick, appointed U.S. Permanent Representative to the United Nations, reiterated her opposition to the Carter human rights program "Because it was utopian, because it was conducted outside of the political and historical context, and because it didn't work. . . . Our position in the Western Hemisphere has deteriorated to the point where we must now defend ourselves against the threat of a ring of Soviet bases being established on and around our borders. I'm not saying that the Carter human rights policy was the only factor in bringing this about, but it certainly played a role. . . . The central goal of our foreign policy should not be the moral elevation of other nations, but the preservation of a civilized conception of our own national interest."¹⁹

Even President Reagan's instinctual reactions were repudiated by his policy-makers. On April 30, 1981, at a "Day of Remembrance" ceremony for Holocaust victims, the President departed from his prepared speech with the improvised pledge, "I intend that [the Presidency] shall be used on every occasion . . . to point a finger of shame . . . wherever it takes place in the world against the act of violence or terrorism . . . [and] the persecution of people for whatever reason . . . —that it is a matter to be on the negotiating table or the United States will not belong at that table."

The next day the Washington press reported, "President Reagan yesterday raised the previously downgraded banner of human rights, only to have his spokesman lower it." The President, a White House spokesman hastily announced, had "not meant to alter his policy of playing down the human rights issue in foreign relations."²⁰

The changes in administration tone and verbiage were matched by changes in substance and policy. The high-level Inter-Agency Committee, created to consider human rights factors in foreign economic policy, was disbanded. The administration urged that Argentina, Chile, Guatemala and Uruguay, all previously denied military and economic aid because of human rights violations, should have such assistance reinstated. U.S. delegates at the international development banks were directed not only to reverse the U.S. opposition to loans for authoritarian Latin American governments, but for the Philippines and South Korea. In the United Nations and other international agencies, U.S. representatives emphasized Soviet human rights violations while largely ignoring comparably repressive actions by friendly authoritarian regimes; at the 37th session of The Commission on Human Rights in February, 1981,

¹⁹*U.S. News and World Report*, March 2, 1981.

²⁰*Washington Star*, May 1, 1981.

the United States voted with Argentina, Brazil and Ethiopia in an unsuccessful attempt to abolish the United Nations Working Group on Enforced or Involuntary Disappearances established the previous year. And the strategic post of Assistant Secretary of State for Human Rights remained conspicuously empty amid mounting rumors that the Human Rights Bureau would be either discarded or left to wither on the State Department vine.

Finally, in the late spring of 1981, Ernest Lefever was proposed by the White House as the new Assistant Secretary of State for Human Rights and Humanitarian Affairs. The American human rights community, normally a loose assembly of discrepant and even vying organizations, joined in a rare display of unity to mobilize Congressional and public opinion against the nomination. Despite overt Presidential endorsement, the Senate Foreign Relations Committee on June 5th voted 13-4 to reject the Lefever appointment and to provide the President with his first major defeat on a foreign policy issue.

The *Congressional Quarterly*, in reporting the situation, noted:

Lefever's nomination generated controversy on two counts: First, because of the man himself, who proclaimed his devotion to human rights but whose sincerity was questioned by his opponents; secondly, because of rancor of the human rights debate. . . .

For all the criticisms of Lefever personally, the root issue was the Reagan human rights policy in general. Lefever and other critics of the Carter policy complained that it alienated friendly authoritarian regimes, such as Argentina's, while overlooking greater human rights abuses by totalitarian communist nations such as the Soviet Union. His supporters, including Reagan, said abuses in anti-communist authoritarian regimes could be reduced most readily by offering their leaders the security of U.S. friendship, quietly using the influence thus gained. . . . Advocates of the Carter policy contended that . . . "quiet diplomacy" would mean ignoring human rights abuses by anti-communist U.S. allies while publicly condemning abuses only in Marxist nations.²¹

Commenting on this period, Representative Jim Leach, ranking Republican on the Subcommittee on Human Rights and International Organizations, concluded, "The inauguration of Ronald Reagan as the 40th President of the United States marked the inauguration as well of a new approach to human rights policy—an approach motivated . . . more by an intense desire to repudiate the tactics of the preceding Administration than by a willful design to establish a vision for the future. . . . The

²¹"Reagan's First Year," Congressional Quarterly, Inc., Washington, D.C., 1981.

Lefever nomination was an unambiguous signal of the administration's rejection of the Carter human rights approach [and] implied an abandonment not only of the methodology but of the substance of American human rights concern."²²

Change in the Administration Posture

The strong opposition to the Lefever nomination from diverse sources—Congressional, public interest, academic and religious—precipitated a clamorous public debate. It revealed that the issue of human rights had a vocal constituency within and outside the Congress far deeper and wider than the new Washington policy-makers had anticipated. The Carter program against which they had leveled their most scathing criticisms had proven to have generated extensive support at home and abroad which could not be casually disregarded. A decided moderation in the tone and nature of official rhetoric ensued which amounted to a virtual repudiation of earlier policy declarations.

In June, soon after the Lefever rejection, Secretary of State Haig delivered a major address in Washington entitled "Human Rights and American Interests" to the Trilateral Commission. "Human rights are not only compatible with our national interests," he informed his audience, "they are the major focus of our foreign policy."

That same month, national security adviser Richard Allen assured a New York rally protesting the treatment of Jews in the Soviet Union that the Reagan foreign policy was "inescapably linked to human rights."

In July, testifying before a Congressional Foreign Affairs Subcommittee, Under Secretary of State Walter J. Stoessel stressed, "Ours is not a policy of selective indignation," but of opposition to human rights violations "whether by ally or adversary, friend or foe. . . . The overall thrust of our policy is to be even-handed."

In August, in a New Delhi speech on American foreign policy to an audience of Indian diplomats and scholars, Ambassador Kirkpatrick attacked what she described as the "myth" that the Reagan Administration was unconcerned about human rights.

The task of fashioning new directions in a complex international society had turned out to be neither so simple nor so easy as had been anticipated by the Reagan policy-makers. Academic abstractions conceived in secluded study centers were proving oddly discordant with the harsh realities of an untidy world. Emergent developments in disparate parts of the world were already impinging on U.S. foreign policy that

²²Human Rights Symposium, Georgetown University Law Center, Washington, D.C., March 22, 1983.

gave pause to those who had once advanced sweeping ideological generalizations on categorical differences between authoritarian and totalitarian regimes as final policy truths.

- The most dramatic modern effort to achieve non-violent change and internal liberalization in a non-democratic country was being attempted, not in a traditional authoritarian state, but by a people's movement in communist Poland.
- The Secretary of State was about to leave on his first official trip to the People's Republic of China, a self-professed exemplar of revolutionary Marxist-Leninist communism, which he described on his return as a "friendly nation" to which the sale of offensive military weapons would be advocated.
- The Reagan administration was preparing to declare its support for opposition forces in Cambodia, led by Pol Pot whose deposed totalitarian despotism had perpetrated the most ferocious genocidal massacres known to recent history.
- Negotiations were underway which resulted in U.S. Export-Import Bank approval of an \$85 million credit for an off-shore oil development project in communist Angola, where 20,000 Cuban troops supported a regime described by the administration as a classic example of revolutionary totalitarianism.
- Jacobo Timerman's graphic memoirs had just been published to describe inhuman torture chambers, not in a totalitarian gulag, but in the jails of the authoritarian military government of his native Argentina.
- Haitian refugees continued to risk their lives in a desperate mass flight to escape chronic oppression and economic degradation imposed by a traditional family-ruled pro-American authoritarian government.

New Directives For Human Rights

But, nine months after the Reagan Administration had taken office, the symbolically important post of Assistant Secretary for Human Rights was still unfilled and the Bureau of Human Rights was virtually inoperative. By this time, however, a few intermediate-level Reagan appointees, supported by some career State Department officials, were urging reconsideration of the policy that denigrated human rights. They found an unexpected ally in the arrival of an inexperienced new Deputy Secretary of State, Judge William P. Clark, a trusted California political associate of the President.

A memorandum dated October 27, 1981, written by Assistant Secretary for International Organization Affairs Elliott Abrams for Deputy Secretary Clark and Richard T. Kennedy, Under Secretary of State for Management, was sent to Secretary Haig which recommended a basic administration policy revision. The memorandum, Assistant Secretary

Abrams later said, "crystallized recognition of a growing realization of the need for change. A consensus in key policy-making circles was built to introduce a revised approach and develop a more positive acceptance of human rights."²³ The document, approved by Secretary Haig, affirmed:

Human rights is at the core of our foreign policy because it is central to what America is and stands for. . . . Congressional belief that we have no consistent human rights policy threatens to disrupt important policy initiatives . . . Our human rights policy must be at the center of our response. Overall foreign policy, based on a strong human rights policy, will be perceived as a positive force for freedom and decency. This policy must be applied even-handedly. If a nation, friendly or not, abridges freedom, we should acknowledge it. . . . Human rights is not advanced by replacing a bad regime with a worse one, or a corrupt dictator with a zealous communist politburo.

A human rights policy means trouble, for it means hard choices which may adversely affect certain bilateral relations. At the very least, we will have to speak honestly about our friends' human rights violations and justify any decisions wherein other considerations (economic, military, etc.) are determinative. There is no escaping this without destroying credibility of our policy, or otherwise we would simply be coddling friends and criticizing foes.

Despite the costs of such a human rights policy, it is essential. . . . While we need a military response to the Soviets to reassure our friends and allies, we also need an ideological response. . . . We seek to improve human rights performance wherever we reasonably can. We desire to demonstrate, by acting to defend liberty and identifying its enemies, that the difference between East and West is a crucial policy distinction of our times.

The memorandum recommended the appointment of Elliot Abrams as Assistant Secretary of State for Human Rights and Humanitarian Affairs, and noted that "H.A. [Humanitarian Affairs] should be designated the lead agency on human rights, not only for the Department but also for the Government, with a specific role providing policy guidance on human rights [to other relevant agencies]."

The Abrams nomination was reinforced by an unusual White House disclaimer which denied charges that human rights had been derogated in the Administration's foreign policy. "The promotion of liberty," President Reagan asserted, "has always been a central element of our nation's foreign policy. In my administration, human rights considerations are important in all aspects of our foreign policy." Then, in sharp contrast

²³Interview with author, Washington, D.C., February 2, 1983.

to the acrimonious debate that enveloped the Lefever nomination, the Senate Foreign Relations Committee on November 17 unanimously approved the Abrams appointment.

A revised public style was rapidly evident in the operations of the revived Human Rights Bureau. Human rights leaders were no longer ignored; some were even courted. The new Administration approach was actively proselytized among public opinion groups. Officials insisted that an "even-handed" approach to human rights would be pursued; at the same time, the actions of the Soviet Union and its surrogates continued to be emphasized as the primary threat to international peace and stability.

Annual Reports on Human Rights— Publication and Responses

The basic administration policy position was spelled out less than three months later in the first annual human rights report prepared by the Reagan administration. "During the past year," the Report noted, "the U.S. has taken the lead in opposing in international fora the double standard applied to human rights violations. . . . We have stressed that the United States was particularly concerned that Latin American countries supportive of the West were being singled out for condemnation while equal or greater violations of human rights in Eastern Europe, the Soviet Union and Cuba went virtually unnoticed. . . . We hope to move further in the coming year towards encouraging greater impartiality in evaluating human rights conditions in Latin America. . . .

"How to embody the fundamental principles of democratic societies—human rights—in foreign policy has become an especially pressing question for the United States. . . . There is a fundamental consensus among the American people on the aims of human rights policy; there is disagreement only about means and carrying out details. . . . This administration believes that human rights is an area of central importance to relieve suffering and injustice, to link foreign policy with the traditions and aspirations of the American people. . . . A consistent and serious policy for human rights in the world must counter the U.S.S.R. politically and bring the Soviet bloc's human rights violations to the attention of the world over and over again.

"At the same time, the United States must continue to respond to serious human rights problems in friendly countries. U.S. human rights policy will not pursue a policy of selective indignation. . . . We will sometimes be forced to make hard choices between the need to answer human rights violations and other foreign policy interests, such as trade or security. . . . United States policy is guided primarily by the *criteria*

of effectiveness, choosing the response that is most likely to improve human rights."²⁴

The 1981 "Country Reports on Human Rights Practices" was eagerly awaited, scrutinized and greeted with mixed reviews by human rights observers and activists. It was criticized for tendentious interpretations of some countries, primarily in Latin America, to which the United States attached high strategic importance. It was lauded, even by inveterate critics, for comprehensive and objective reporting on many individual countries. It was accepted, sometimes grudgingly and often with surprise, as better prepared and more complete in many particulars than predecessor volumes. "With all its faults," a human rights leader admitted privately, "it provides the fullest and most detailed coverage of any single public volume on international human rights conditions."

A critical analysis of "fifteen countries chosen for their ideological and geographical diversity," by the Lawyers Committee for International Human Rights, noted, "Many of the 1981 State Department reports are well-documented, detailed and for the most part objective. Yet in several instances, strong political biases are evident which distort the reporting process and which seem to reflect efforts to further various political objectives of the Administration. In almost all of these instances, the reports suffer from improper emphasis, selective omission or distortions rather than outright factual misstatements."²⁵

Administration Policy Emphasis

Increasingly, the central thrust of the administration human rights policies was assessed in the Congress and by outside observers within the context of conditions in Central America. Unfolding events in that region—where civil war and insurrection raged in El Salvador and to a lesser degree in Guatemala, and where a Marxist government had taken power in Nicaragua—were emphasized by the Administration as a direct threat to the national interest. Washington policy-makers stressed that communist-controlled regimes in the area would produce a pervasive destabilization of proximate Latin American countries. "If guerrilla violence succeeds," President Reagan declared, "El Salvador will join Cuba and Nicaragua in spreading fresh violence to Guatemala, Honduras, even Costa Rica. The killing will increase and so will the threat to Panama, the Canal and ultimately Mexico."²⁶

²⁴"Country Reports on Human Rights Practices for 1981," Department of State, issued February 1982.

²⁵"An Evaluation of the State Department's Country Reports on Human Rights Practices for 1981." The Lawyers Committee for International Human Rights, April 28, 1982.

²⁶Speech to National Association of Manufacturers, Washington, D.C., March 10, 1983.

In turbulent El Salvador—where congressional legislation required a biennial presidential certification that progress has been made in human rights as a condition for U.S. military aid—the Administration strongly supported the beleaguered regime whose army and security forces were directly responsible for a pervasive campaign of violence and intimidation against the civilian population. In late January 1983, President Reagan certified to Congress that, despite “great obstacles,” El Salvador was making progress in human rights and in laying the foundation for democratic government. The 67-page submission acknowledged that “human rights abuses continue,” but certified that “the government of El Salvador has made progress [and displayed] increased consciousness of the importance of more effective action on human rights. . . . The situation is not perfect and progress is not as great as desired, but it is progress nonetheless.”

On July 20, 1983, Secretary of State George P. Shultz announced a further administration recertification for El Salvador, and stated that the government’s human rights record met the legal requirements for continuing U.S. foreign aid. The Secretary’s introduction to the recertification report noted, however, that human rights progress was “disturbingly slow,” and that the Salvadoran authorities had failed “to achieve more positive results in establishing discipline over the security forces and in assuring that those, military or civilian, who commit gross violations of human rights will be brought to justice and held accountable under law.”

In troubled Guatemala, senior State Department officials indicated that the United States planned to end the freeze on military aid because of “signs that the government of President Efraín Ríos Montt had made progress in improving human rights conditions.” Assistant Secretary Abrams became an overt spokesman for administration policies. “There seems to be a growing consensus now that Ríos Montt really does mean to eliminate political killing and bring the armed forces under control” he noted. “We want very much to encourage him to continue in that, and one way to do so is to give his government more support than we gave the last government.”²⁷

Other administration actions construed by critics as inimical to human rights were noted. The Export-Import Bank and the International Monetary Fund were encouraged to extend loans to Chile, in contrast to the restrictive policies adopted by the Carter Administration. Increased military aid was furnished to El Salvador, Honduras and Zaire; international development banks loans were supported for Guatemala; a favorable vote was cast for the \$1.1 billion International Monetary Fund loan to South Africa; military, security and police supplies were sold to South

²⁷*New York Times*, January 2, 1983.

Africa and South Korea; the training and supply of anti-Sandinist forces based in Honduras were reinforced by the dispatch of U.S. military advisers.

By early 1983, more than halfway through the Reagan administration incumbency, American human rights organizations continued to react at least skeptically, and more often negatively, to administration human rights policies. Criticisms mounted as the administration sought to shore up allied governments in the mounting Central American crisis and to support anti-Sandinist rebels in Nicaragua. The Administration was accused of "cheapening the currency of human rights," and of invoking human rights criteria to "criticize governments perceived as hostile to the United States" while ignoring "abuses by governments it perceives as friendly to the United States."²⁸

Second Annual Report on Human Rights—and responses

On February 8, 1983, the Reagan administration issued its second annual "Country Reports on Human Rights Practices For 1982" which, in language similar to the predecessor volume, emphasized "an active, positive human rights policy" that places "human rights at the core of American foreign policy. . . . The Reagan administration's test is effectiveness. With friendly governments we prefer to use diplomacy, not public pronouncements. We seek not to isolate them for their injustices, but to use our influence to effect desirable change." The Report described human rights violations in the Soviet Union and Eastern bloc nations, and in other nations with which the United States had strained or adversary relationships. But examples of torture, violence and other abuses were also detailed for South Africa, Pakistan, El Salvador and other countries with close ties to the Administration. "Moves toward democracy" were cited in such countries as Brazil, Uruguay, El Salvador and the Dominican Republic.

The annual review of the Reports by three private human rights monitoring groups repeated an assessment of the previous year that the volume constituted "an invaluable source of information about the human rights situation world-wide. . . . In several instances the reporting has improved. . . . We commend the Department of State for its attentiveness to criticism and for its evident concern to improve the standards of reporting. Unfortunately, [in some instances] the reporting is worse than last year.

"Of the 22 [country] reports we have examined, we find serious distor-

²⁸"The Reagan Administration's Human Rights Policy: A Mid-Term Review," Americas Watch, Helsinki Watch, Lawyers Committee for International Human Rights, New York, N.Y., December 10, 1982.

tions or inaccuracies in twelve,—Argentina, Chile, Colombia, El Salvador, Guatemala, Haiti, Honduras, Pakistan, the Philippines, Turkey, Yugoslavia, Zaire. . . . For the most part, the distortions that appear . . . are not so great as to prevent informed policy-makers from grasping the essentials of the human rights situation in a particular country.

...
“[We] commend the Reagan administration for its responsible, though seriously flawed, compilation of information. Our satisfaction . . . is tempered by awareness that the Reagan administration shows little disposition to shape its policy to match its own fact-finding.”²⁹

A shorter critique by the Washington Office on Latin America, a church-supported research and study center concerned with human rights and U.S. policy in the hemisphere, concluded: “The administration’s foreign policy agenda determines their evaluation of the human rights situation in many countries. . . . Their predetermined agenda leads to unsubstantiated assertions [about Latin America] and an unevenness of application which is misleading and biased in some cases.”³⁰

The Administration Response

Assistant Secretary Elliott Abrams vigorously disagreed with critics of Administration policies. Described as a “blunt articulate defender of a policy that tends to excoriate left-wing and communist regimes and mutes criticisms of such rightist countries as the Philippines, South Korea, Taiwan and South Africa,”³¹ Abrams insists that the Reagan administration seeks even-handedly to mitigate human rights violations wherever necessary and regardless of the political complexion of the government in question.

Comparing the Reagan and Carter administrations, Abrams declared, “I strongly believe that we have been infinitely more influential in getting our way and eliciting tangible responses. From Central America to Poland we have expressed our views and sought constructive change, and have been helpful as in South Korea with the release of Kim Dae Jung. Our policy has worked better, not only for human rights but for our overall foreign policy. We press for constructive change, but privately.

“But with ‘quiet diplomacy,’ one pays a price; we cannot advertise our accomplishments. There have been free elections in Latin America—El Salvador, Dominican Republic, Honduras and Guatemala. A murderous

²⁹“Review of the Department of State’s Country Report on Human Rights Practices 1982,” Americas Watch, Helsinki Watch, Lawyers Committee for International Human Rights, February 1983.

³⁰Statement issued February 11, 1983, Washington, D.C.

³¹*New York Times*, October 19, 1982.

regime in Guatemala has been replaced by a better one (Rios Montt).³² Without our pressures, the alternatives would be worse. Naturally we have setbacks. But our record on the whole is creditable.

"The Carter administration emphasized criticism. We are not so punitive or reactive. We are concerned more with the disease than the symptoms. As a result, we are reluctant to use economic aid as a tool for our policy; we rely on persuasion rather than intimidation. But our overall goals are more similar than is generally acknowledged or recognized."³³

Ambassador Kirkpatrick similarly defends the administration human rights efforts: "We are concerned about human rights. An effective human rights policy can get innocent people out of prison, get them out of their countries and give them refuge. It can move some governments and peoples a long way toward acceptance of the rule of law, although there is not much any of us can do about real monsters."

"We now pursue pragmatic human rights objectives. We recognize the difficulty of getting things done in politicized public bodies with Soviet and Third World dictators; unpublicized meetings, discussions and representations are often the best channels through which to press our views.

"Doing good is an end and a purpose in itself. If the objective is economic aid, we must help people to be better fed and less in want. If it is the rule of law, we want to see fewer innocent victims in prison or abused by state tyranny. Respect for human rights is a measure of a country's readiness to belong to the international community.

"The United States was founded on an idea, and not as an ethnic nation. The idea of 'American exceptionalism' entails a commitment to moralism in world affairs. It is linked to the concept of human rights which is central to our sense of nationhood. It is an objective we endorse and promote."³⁴

A career State Department officer, who served in both the Carter and Reagan administrations, privately disagrees with the Abrams and Kirkpatrick judgments. "H.A. [the human rights office] loses more decisions than it wins in its differences with the entrenched power centers in the Department," the official said. "The Bureau was weak under Derian, and it is weaker under Abrams. There is inadequate contact with other sectors of the Department, no committee or inter-agency meetings, nor meaningful consultations. There are just memoranda. The idea of human

³²On August 8, 1983 President Rios Montt, after seventeen months in office, was overthrown by a military coup led by Defense Minister Brigadier General Oscar Humberto Mejia Victores who was sworn in that day as President.

³³Interview with author, Washington, D.C., February 11, 1983.

³⁴Interview with author, New York City, February 18, 1983.

rights is still something of an orphan, adopted periodically when convenient or expedient."

A Mid-term Report

At the end of its mid-term period, the Reagan human rights record still lacks credibility with much of the American human rights community and with foreign political movements seeking constructive social and economic change. It has not overcome the problems posed by initial anti-human rights declarations, by the almost one-year delay in appointing an Assistant Secretary for Human Rights, and by policies that support actively a number of repressive regimes, particularly in Latin America. Critics contend that current policies tend selectively to reinforce repressive authoritarian regimes, alienate potential allies in the non-capitalist world, prejudice democratic and human rights aspirations in fragile and vulnerable societies, foster anti-American sentiments and dim the international lustre once accorded human rights issues.

As the Reagan administration moves toward the final year of its incumbency, proponents and opponents of its human rights performance continue to differ strenuously about the worth and effectiveness of its policies. One clearly salient difference between the present administration and its predecessor can, however, be noted in the comportment of the Bureau of Human Rights, the central agency and symbolic exemplar of government policies. In the Carter years, the Assistant Secretary for Human Rights viewed the Bureau as the in-house advocate for human rights, and championed its cause publicly against repressive foreign governments and privately against collegial indifference or opposition. Its primary clients were seen as victims of oppression whose interests were to be defended both abroad and in Washington. After its second year, the Bureau was often a lonely and disregarded voice in the high councils of policy-making.

In the Reagan era, the Bureau is ideologically in harmony with the basic foreign policy thrust of the Administration. It shares and endorses the view that the principal threat to world peace, national security and American interests is the pervasive influence of Soviet communist imperialism. It accepts the premise that the battle now joined in Central America is the adjacent extension of a perilous global confrontation. Human rights objectives are not pursued as a neutral moral abstraction or as a discrete political objective; they are weighed and integrated into the calculus of the larger perspective of official Washington goals. The Bureau of Human Rights pursues its policies and proffers its judgments with full recognition of the political gradations implicit in administration foreign policy priorities.

IV

A SUMMING UP: Some Basic Issues and Questions

The past half century has been marked by the struggle for national independence of the vast populations of what was the colonized world. The present and forthcoming decades will be marked by the struggle of these peoples, and of others in poor countries, to overcome indigenous penury and to gain a larger measure of social, economic and political equity. Whatever may be the current policies and attitudes of their governments—many of which now oppose the aspirations of their citizens—the reality of popular demands for various forms of human rights, including greater economic justice and political freedom, has become clearly evident.

The immense power of the United States, economic and military, has made this country a dominant world force. If this power is used in a sustained and visible commitment to promote the political and economic objectives embodied in *human rights*, a valid ideology can be provided to render American authority more tolerable, plausible and respected. But if the United States rejects the objectives of human rights by supporting oppressive governments—whether they be termed authoritarian or totalitarian—it will be viewed by diverse peoples of the world as their adversary, and they will be more susceptible to the political appeal of those who oppose and attack the United States.

An American policy for international human rights will comprise both a practical program of action and a moral or ethical perception of how mankind and societies should behave politically. It will be based on the principle that acceptance of the rule of law by governments can produce a more just and humane co-existence among peoples and nations. It

cannot always be measured quantitatively nor defined absolutely.

Recognition of human rights will not put bread directly into empty stomachs; but a government that is prepared to endorse human rights should be more disposed to all forms of justice, including social and economic, than one dominated by autocratic power. Observance of human rights will not be a guarantor of peace; but a government that displays respect and concern for its citizens should be less inclined to aggression than one disposed to the use of force and intimidation.

Consistency of purpose will be essential; but consistency of purpose by itself will not be sufficient unless illuminated by vision and clarity. The trouble with the Carter human rights policy, a critic observed, was the inconsistency between what it originally said and what it subsequently did. The trouble with the Reagan policy, the same critic later noted, was the consistency between what it originally said and subsequently did.

The modern concept that sovereign states, individually and collectively, have the obligation to protect human rights derives primarily from the United Nations Charter and Universal Declaration of Human Rights. Explicit incorporation of these principles into American foreign policy is only a decade old. In historical terms, the national experience is still in its infancy. It will be subject to recurrent modifications and refinements as it continues to encounter the complex realities of an untidy world.

Formidable issues and questions still attend the tasks of human rights policy-makers, activists and scholars. On some, broad areas of public agreement have been reached; others remain yet to be thoroughly analyzed and clarified. A number of these points are now summarily posited.

Significance of the American Human Rights Experience

The American experience of the past decade reveals that Government advocacy of international human rights can furnish, despite finite limitations on national power and influence, an important lifeline of hope and support to those who combat injustice on the front-lines of tyranny. A foreign policy seeking to promote human rights can express the aspiration for a more humane order by peoples everywhere.

Such a policy can act as a catalyst to hearten or fortify indigenous movements for greater justice in diverse and unexpected parts of the world. It may deter or give pause to governments normally heedless of their abusive actions. It can aid and save individual victims of injustice. It can gain the confidence of dissidents and opposition leaders in many parts of the world who may later come to office, and with whom the United States will need to establish workable relationships. It will give greater credibility and substance to American foreign policy among all

peoples and with many governments throughout the world.

Conversely, a global power insensitive or indifferent to human rights can have a decisive capacity to impair the cause of those striving for improved conditions abroad. What a major government fails or refuses to do can be just as determinative as what it seeks overtly to do. If the conscious effort to achieve constructive change in distant places does not always succeed, an official policy of inertia or indifference will serve to sustain prevailing abuses and inequities. Victims of injustice will more surely be persecuted or languish in unrelieved misery; lives that could be saved will be needlessly lost. The ultimate consequence will be to place the United States on the far side of its own best traditions and on the wrong side of history.

Time for an Assessment of Human Rights Legislation

The passage of successive U.S. legislative enactments since 1974, their public endorsement by the Carter administration, and subsequent acceptance by the Reagan administration have led to the assumption that human rights objectives are now firmly rooted in American foreign policy.

The practical effectiveness of these measures in achieving the original legislative intent has yet to be systematically appraised. The principal Congressional actions—the amendments to the Mutual Security and Foreign Assistance Acts, the Jackson-Vanik amendment, various directives to U.S. representatives in the international financial institutions—have two primary features.

1) They are essentially punitive in nature; they call for severance of assistance, trade curtailment or economic sanctions against governments construed as “gross violators” of human rights.

2) They can be applied only to governments allied or having a functional relationship with the United States; thus, brutal offenders of international human rights standards like North Korea and Cambodia remain beyond the working perimeters of American diplomatic influence or economic pressures.

The problem of how American legislation on human rights may become a more effective instrument of foreign policy will require thorough and objective study—thus far conspicuously lacking—by relevant Congressional Committees, the State Department, human rights organizations and scholarly institutions. Basic questions to be addressed would include:

What have been the consequences of legislative policies predicated largely upon public censure, aid severance and economic sanctions—has the domestic behavior of miscreant governments been constructively altered; have better conditions been produced for the victimized; how has

this policy affected or modified U.S. relations with the miscellany of governments that comprise the international community?

To what extent has traditional or "quiet" diplomacy been utilized to gain human rights objectives—where and under what conditions has it proved effective, or ineffective; has it tended to add to or detract from the objectives explicitly sought by legislative measures?

Can more positive inducements be devised—through trade, aid and diplomatic means—to favor governments, particularly in the developing world, that display a manifest concern for the rule of law and observance of human rights standards?

Some of these questions were addressed in a report issued by the American Association for the International Commission of Jurists which concluded, *inter alia*, "U.S. economic assistance should be clearly weighted to favor governments which seek to meet international human rights norms. At the time when an allocation of aid is made, the United States government should make its assessment of the prospects for human rights in the country concerned, and of how the aid program could further such rights. Mutually acceptable criteria should be established with the recipient government to ascertain the extent to which the aid program is helping to promote human rights. . . . Clearly established minimal standards of human rights conduct should be expected of recipients of U.S. development assistance as a basic condition of eligibility for such assistance."³⁵

Human Rights and the National Interest

Earlier assertions that international human rights are inimical to the U.S. national interest are now noticeably subdued. No longer is it publicly claimed that U.S. human rights policies have caused the downfall or demoralization of vulnerable allied governments. The language of senior Carter and Reagan foreign policy officials has become virtually interchangeable.

Assistant Secretary Abrams states, "There is no contradiction between the two objectives of national security and human rights; although there may sometimes be short-term differences, there are rarely long-term contradictions."³⁶ Anthony Lake, the former State Department Policy Planning director, observes, "In the short run, there can be problems, but in the longer term the pursuit of human rights is in the national interest."³⁷

³⁵"Toward an Integrated Human Rights Policy," American Association for the International Commission of Jurists, December 1979.

³⁶Interview with author, Washington, D.C., February 2, 1983.

³⁷Interview with author, Washington, D.C., March 9, 1983.

It is in the short term, however, that tensions between human rights objectives and national security emphases have been conspicuously evident. The unvarnished fact, once official hyperbole is discounted, is that the foreign policy of the United States has been recurrently susceptible to diverse and conflicting pressures by competing government jurisdictions with differing responsibilities. The priorities attached to eruptive security and economic problems do not always coincide comfortably with the longer-range political and humanitarian goals implicit in the pursuit of human rights standards.

Trade-offs—between short-term emergencies and longer-term goals, between expediency and principle—need constantly to be weighed. In both the Carter and Reagan administrations, the need for the quick response invariably dominated concern for the longer-term judgment. The task of creative statesmanship will be to recognize the potential for confrontation between the antinomial pressures which compose the national polity; and to reconcile recurrent differences between the claims of immediate needs and the more enduring commitment to an improved international order. The task will require sustained deliberation, thus far singularly neglected, in the high councils of Washington policy-making.

Economic and Social/Political and Civil Rights

U.S. legislation construes human rights largely in terms of political and civil criteria. The Carter Administration attempted to expand the Congressional frame of reference by endorsing the full range of goals spelled out in the Universal Declaration of Human Rights and its supporting Covenants. U.S. advocacy of human rights was defined to repose on a tripodal base comprising "1) the right to be free from violations of the integrity of the person . . . 2) the right to fulfillment of such vital needs as food, shelter, health care and education . . . 3) the right to enjoy civil and political liberties . . . Our policy is to promote all these rights."³⁸

The Reagan administration endorses the objectives of integrity of the person and of political and civil rights. It rejects public advocacy of economic and social rights on the dual grounds that national economic performance should be determined by the law of the market place, and that Marxist governments historically have exploited economic and social aspirations to destroy political and civil liberties. Marxist governments also reject the full range of human rights described in United Nations documents. Political and civil rights are decried as a "bourgeois" conception designed to prevent poorer nations from attaining economic parity with the capitalist powers.

³⁸Law Day Address by Secretary of State Cyrus Vance, University of Georgia, Athens, Ga., April 30, 1977.

Those who espouse one form of internationally accepted human rights while repudiating another accept the principle of an implicit contradiction or conflict within the totality of goals supported by United Nations documents and conventions. This issue was addressed by the American Association for the International Commission of Jurists report which noted:

All governments are committed under the Charter of the United Nations to observe economic, social and cultural rights as well as civil and political rights . . . (although) these two sets of rights are considered in some parts of the world to be competitive rather than mutually compatible and supportive. . . . No persuasive evidence has been adduced that civil and political rights need to be derogated or sacrificed to meet essential human needs . . . These two sets of freedom are in practice of comparable value to individuals throughout the world no matter what economic or political system they live under. The U.N. instruments have created an obligation on governments to promote them to the extent that such a capacity lies within their power. . . . Essential rights—political and civil, economic and social—need to be encouraged with equal favor.³⁹

While all “essential rights need to be encouraged with equal favor,” differences in the national capability and time frame required to establish them cannot be disregarded. The most basic civil and political rights—freedom from torture, from arbitrary arrest and from cruel and inhuman treatment, or the right to freedom of movement within or from countries—can be implemented forthrightly if official resolve and intent to do so are manifested by the governing authorities. They can be assured within an early or finite period by a government genuinely solicitous of the welfare of its citizens.

Economic and social objectives—such as improved access to food, shelter, health facilities or education—cannot however be bestowed simply or quickly by government fiat or decree. They require, beyond good intentions, indigenous attributes like available economic resources, functioning managerial skills, an adequate educational infrastructure, workable distribution facilities and reasonable limitations on public corruption and misfeasance. Different or graduated forms of economic and social rights will therefore be established at varying stages over time in a nation’s development.

For this reason, the United Nations International Covenant on Economic, Social and Cultural Rights notes that national and historical factors may require these objectives to be established “progressively . . . according to (national) resources.” But no such cautionary reserva-

³⁹“Toward an Integrated Human Rights Policy,” American Association for the International Commission of Jurists, December 1979.

tion is cited in the Covenant on Civil and Political Rights which stipulates that, even under conditions of public emergency, no derogations should be permitted which impede, delay or deny observance of specified civil and political rights (e.g., right to life, freedom from torture, slavery or servitude, retroactive criminal laws, the right to recognition before the law and to freedom of thought, conscience and religion).

The Issue of National Sovereignty

Earlier claims by domestic critics that U.S. advocacy of international human rights constitutes an unwarranted intrusion into the internal affairs of sovereign states are now largely muted. But many foreign governments, particularly those that flagrantly mistreat their citizens, still take refuge in this ancient diplomatic canon. Those with the most dubious records are often the most vehement in their insistence on the need for greater respect for sovereign rights. A historical reference on how the world community reacted not too long ago to state-inflicted tyranny can be a reminder of the potential consequences of international indifference and passivity.

In July 1938, representatives of thirty-two nations convened in Evian-les-Bains, France to examine what could be done to aid victims of the German Reich's anti-semitic campaign. Not one of the western powers offered refuge to the menaced Jews in Germany or to those who had escaped to camps in Switzerland and Luxembourg; their sole response was to form a still-born Inter-Governmental Committee on Refugees. The French Foreign Office then sent a placatory memorandum to the German Foreign Ministry stressing, "None of the states would dispute the absolute right of the German government to dictate with regard to its citizens such measures as are within its own sovereign powers." Hitler subsequently proclaimed, "We shall solve the German Jewish problem in the immediate future. . . . The Jews will disappear."

Four months after Evian, on November 22, 1938, *Das Schwarze Korps*, the official Gestapo newspaper, announced, "Because, after all, no power on earth can hinder us, we will now bring the Jewish question to its totalitarian solution. . . . The result will be the actual and definite end of Jews in Germany and their complete extermination."

Over a generation later President Carter, in an address to the United Nations in early 1977, affirmed, "All the signatories have pledged themselves to observe and 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 the world."

Speaking subsequently as a private citizen, the former President re-

marked, "I am thankful that in recent years our nation chose not to remain silent (on human rights) . . . This is in marked contrast to the tragic apathy and indifference of the world at the Evian Conference in 1938 when Jewish refugees from Nazism were almost universally denied admission. This silence did not help the German people, but led to a tragedy of unbelievable proportions for them and to death and suffering for millions of others."⁴⁰

Basic Human Rights: A Universal or a Western Concept?

American human rights critics and Marxist governments have often joined in paradoxical ideological union to derogate the relevance of basic human rights to non-Western cultures. They assert that U.S. emphasis on human rights reflects an alien value system inapplicable to most societies, constitutes an intrusive example of external moralizing, and represents an unrealistic utopianism ignored or flouted within the United States. Their claim to speak for peoples of diverse cultural and geographical traditions is dubious. They are best answered by those who have personally known or seen the consequences of repressive or alien rule.

William Demas, the West Indian President of the Caribbean Development Bank, notes, "The real question is the extent to which it is possible in a developing country . . . to provide the maximum possible degree of respect for fundamental civil and political liberties within the framework of the Rule of Law. . . . It should be possible to have a wide range of civil and political liberties immediately (including) the right to participation of the people in government planning and elections; the right to freedom of thought, assembly, expression, association and worship; the right to freedom from arbitrary arrest and imprisonment, and to enjoyment of the Rule of Law: the right to freedom from forced labor, coercion, and inhuman or degrading forms of punishment."⁴¹

Andrei Sakharov, from internal exile in the Soviet Union, writes: "The global character of (human rights) is particularly important. . . . The same legal and moral criteria to human rights violations (should be applicable) throughout the world—to Latin America, Africa, Asia, the socialist countries, to one's own country. . . . The ideology of human rights is probably the only one which can be combined with such diverse ideologies as communism, social democracy, religion, technocracy and those ideologies which may be described as national and indigenous. It

⁴⁰Address to the New York Board of Rabbis, New York City, May 16, 1983.

⁴¹Seminar on Human Rights and Development, sponsored by the International Commission of Jurists and the Organization of Commonwealth Bar Associations, September 1977, Barbadoes, West Indies.

can also serve as a foothold for those . . . who have tired of the abundance of ideologies, none of which have brought mankind simple human happiness. The defense of human rights is a clear path toward the unification of people in our turbulent world, and a path toward the relief of suffering."⁴²

Taking International Cooperation Seriously

International legal scholars have asserted in multiple opinions that the United Nations agreements, conventions and covenants comprising the International Bill of Human Rights are *de facto* treaties which constitute a recognizable code of human rights law binding in principle on signatory states. But even the most committed advocates of the international juridical legitimacy of these documents recognize that their functional validity is flawed by two factors.

1) The implementation of international human rights law depends largely on the voluntary consent of nations; 2) The legal or institutional mechanisms for observance, compliance or enforcement are still in their infancy.

Palpable acceptance of the fundamental provisions of the International Bill of Rights by the world community remains the sole or primary means to give substance and significance to these legal signposts. The United States, despite its public advocacy of human rights objectives, still refuses to ratify any of the major international and regional human rights agreements—the Genocide Convention, the Convention on Racial Discrimination, the Civil and Political Covenant, the Economic and Social Covenant, and the American Convention. The U.S. commitment to international human rights will not be fully effective nor a credible global model as long as official approval is withheld from basic international documents that give symbolic legitimacy to public expressions of concern.

Ultimately, U.S. advocacy of human rights norms will be made more meaningful only as it commands a greater degree of international support. The promotion of international human rights undertaken in concert with other like-minded countries clearly will carry more weight and influence than if it is attempted alone. In practical political terms, moreover, collective or joint intercession on behalf of human rights can permit the demand for changed policy in an offending regime to be presented with far less adverse consequences for continuing bilateral relationships than if it is issued as a unilateral demarche.

"During the early Carter period of human rights advocacy," the director of a major international human rights organization commented, "the

⁴²Article reprinted in *Dialogue*, Fall 1979.

President spoke as if he was the head of a non-governmental organization rather than as president of a powerful country. He issued moral ukases when he should have tried to build intergovernmental and regional alliances to protect human rights. But more serious," he concluded, "is the fact that the Reagan administration appears to do neither, and may have largely dissipated what little credit the United States still has in this area."

International and regional organizations dealing with human rights—the United Nations and its relevant agencies, the Conference on Security and Cooperation in Europe, the Inter-American Commission on Human Rights—should be viewed as major channels for the expression of public policy and commitment. The difficulties in seeking functional results, which go beyond unenforceable resolutions, in the highly politicized international agencies, are formidable. A United Nations resolution passed in 1982 authorizing the Secretary General to investigate human rights conditions in Poland could not be effectively implemented; three years of meetings at the Madrid Conference on Security and Cooperation in Europe produced only meagre and inconclusive agreement among the contesting powers. A nucleus of supportive and committed governments does, however, exist whose acceptance of basic human rights criteria has been manifest in their national and international conduct. They comprise the essential constituency for a concerted international effort to gain greater recognition of basic norms codified in United Nations articles comprising the International Bill of Human Rights.

This document, honored more in the breach than in practice, embodies a set of objectives to which most nation states have given formal recognition; accountability can still be demanded even if not enforced. The International Bill of Rights, although not formally binding, constitutes the framework for a series of standards which has gained nominal international recognition and whose language permits judgments to be passed on the comportment of national governments. It incarnates a code governing the conduct of states toward their citizens that has been validated by international charter, approved in principle by diverse nations, and can therefore be cited as an accepted criterion for public attention and remedial action. It provides the germ of an as yet unrealized hope that, as legal scholar Erwin Griswold wrote of the Magna Carta, "It is not significant for what it was, but for what it was made to be."

THE LAW OF HUMAN RIGHTS

Major Contemporary Treaties, Conventions, Agreements, Accords and Legislation

International

July, 1945	Charter of the United Nations
9 December, 1948	Convention on the Prevention and Punishment of the Crime of Genocide
10 December, 1948	Universal Declaration of Human Rights
1 July, 1949	Right to Organize and Collective Bargaining Convention (I.L.O.)
12 August, 1949	The Geneva Conventions of 1949
28 July, 1951	Convention Relating to the Status of Refugees
20 December, 1952	Convention on the Political Rights of Women
23 October, 1953	Slavery Convention signed at Geneva on 25 September, 1926 as amended by Protocol of 23 October, 1953
7 September, 1956	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
25 June, 1957	Abolition of Forced Labour Convention (I.L.O.)
31 July, 1957	Standard Minimum Rules for the Treatment of Prisoners
25 June, 1958	Discrimination (Employment and Occupation) Convention (I.L.O.)
21 December, 1965	International Convention on the Elimination of All Forms of Racial Discrimination

16 December, 1966	International Covenant on Economic, Social and Cultural Rights
16 December, 1966	International Covenant on Civil and Political Rights
16 December, 1966	Optional Protocol to the International Covenant on Civil and Political Rights
16 December, 1966	Protocol Relating to the Status of Refugees
30 November, 1973	International Convention on the Suppression and Punishment of the Crime of Apartheid
18 December, 1979	Convention on the Elimination of All Forms of Discrimination Against Women

Regional

2 May, 1948	American Declaration of the Rights and Duties of Man
4 November, 1950	European Convention for the Protection of Human Rights and Fundamental Freedoms
20 March, 1952	Protocol to the European Convention
8 June, 1960	Statute of the Inter-American Commission on Human Rights
18 October, 1961	European Social Charter
22 November, 1969	American Convention on Human Rights
1 August, 1975	Final Act of the Conference on Security and Cooperation in Europe (Helsinki Agreement)
1977	European Convention on the Legal Status of Migrant Workers
27 June, 1981	African Charter on Human and People's Rights (not yet in force)

United States

1973	Section 32, Foreign Assistance Act of 1973
1974	Section 502B, Foreign Assistance Act of 1974
1974	Trade Reform Act of 1974 (Jackson-Vanik amendment)
1975	Section 116, International Development and Food Assistance Act
30 June, 1976	Revised Section 502B, International Security and Arms Control Act of 1976
30 March, 1976	Human Rights Conditions Voted for U.S. Contributions to African Development Fund and the Inter-American Development Bank—International Development and Food Assistance Act
1977	Section 701, International Financial Institutions Act of 1977

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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**

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in Commemoration of
the 35th Anniversary of the
signing of the Declaration of
Human Rights**