

January 1979

Human Rights and U.S. Foreign Policy under Carter: Continuity and Change

Ved P. Nanda

Follow this and additional works at: <https://digitalcommons.du.edu/djilp>

Recommended Citation

Ved P. Nanda, Human Rights and U.S. Foreign Policy under Carter: Continuity and Change, 8 Denv. J. Int'l L. & Pol'y 517 (1979).

This Article is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Denver Journal of International Law & Policy by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, digitalcommons@du.edu.

Human Rights and U.S. Foreign Policy under Carter: Continuity and Change

Keywords

Human Rights Law



Denver Journal

OF INTERNATIONAL LAW AND POLICY

Human Rights and U.S. Foreign Policy Under Carter: Continuity and Change

VED P. NANDA*

President Carter has taken a bold initiative to make human rights a fundamental precept of U.S. foreign policy. Many examples might be cited to illustrate the heightened importance which human rights is playing in our foreign policy particularly as compared with the previous administration. Moreover, it must be reckoned that even with the best intentions, any government will find that the international promotion of human rights is a very difficult task. At the same time, however, within and without the Federal bureaucracy, there are competing interests which at times have muted our voice and vitiated our effectiveness in our efforts to promote human rights.¹

This statement by Donald M. Fraser, former Congressman and Chairman of the Subcommittee on International Organizations of the House Committee on International Relations, is an accurate reflection of the change in emphasis on human rights instituted by the Carter administration. President Carter is to be commended for enhancing the priority of human rights considerations in U.S. foreign policy decisionmaking as compared with the past. Equally significant, however, is the role of the Congress in providing the necessary leadership in taking legislative measures designed for the promotion and the advancement of human rights abroad. In fact, the pertinent congressional initiatives and actions predate the Carter administration.²

* Professor of Law and Director, International Legal Studies Program, University of Denver.

1. *Human Rights and United States Foreign Policy: A Review of the Administration's Record, Hearing Before the Subcomm. on International Organizations of the Comm. on International Relations, 95th Cong., 1st Sess. 1 (1977)* [hereinafter cited as *1977 Human Rights Hearing*].

2. For a comprehensive and incisive commentary on these initiatives, see 14 VA. J. INT'L L. 591 (1974).

To illustrate the progress made toward making human rights an integral component of U.S. foreign policy, U.S. military and economic assistance is now allocated based in part on the human rights practices of the recipient country. As President Carter remarked at a ceremony at the White House on December 6, 1978, commemorating the thirtieth anniversary of the adoption of the Universal Declaration of Human Rights: "In distributing the scarce resources of our foreign assistance program, we will demonstrate that our deepest affinities are with nations which commit themselves to a democratic path to development. Toward regimes which persist in wholesale violation of human rights, we will not hesitate to convey our outrage nor will we pretend that our relations are unaffected."³ Also, U.S. representatives on multilateral financial institutions have attempted to place high priority on human rights issues in two ways: one, by making recommendations on applications for loans only after an analysis of human rights conditions in the country seeking the loan;⁴ and two, by making known to other donor countries the U.S. position and concern with regard to those countries where serious violations are reportedly occurring.⁵

The Administration has demonstrated its commitment to ratification of the Genocide Convention,⁶ the International Covenant on Civil and Political Rights,⁷ the International Covenant on Economic, Social, and Cultural Rights,⁸ the Convention on Racial Discrimination,⁹ and the Inter-American Convention on Human Rights.¹⁰ The President has already signed the important human rights Treaties and is seeking Senate ratification of these instruments.¹¹ In Assistant Secretary Patri-

3. 78 DEP'T STATE BULL. 1 (Jan. 1979).

4. 1977 *Human Rights Hearing*, *supra* note 1, at 10.

5. *Id.*

6. U.N. Doc. A/760, Dec. 3, 1948 at 9.

7. G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 52-58, U.N. Doc. A/6316 (1966).

8. G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49-52, U.N. Doc. A/6316 (1966).

9. Covenant on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force, Jan. 4, 1969).

10. American Convention on Human Rights, signed Nov. 22, 1979, O.A.S. Official Records, OEA/Ser.K/XVI/1.1, Doc. 65 Rev.1, Corr.1 (Jan. 7, 1970), *reprinted in* 9 INT'L LEGAL MATERIALS 99 (1970).

11. *See* note 3 *supra*; 78 DEP'T STATE BULL. 24, 29 (Mar. 1979).

cia M. Derian's words, Senate ratification is "crucial to the international credibility of this country's human rights policy. It is ludicrous for us to base an enormous part of our foreign policy on the fundamentals of human rights and fail to ratify the implementing instruments that are in the international world."¹²

A major departure from the past administrations is the Carter administration's style in handling human rights issues. As Assistant Secretary Derian recently suggested: "Our approach has not been limited to quiet diplomacy. We have practiced vigorous diplomacy in which all available instruments are used. They include symbolic affirmations of our concern. . . . We will continue to assert human rights concerns as vigorously as we have during the past 2 years in our dealings with all governments."¹³

In answering critics of U.S. policy in regard to the recent emphasis on human rights abroad, especially pertaining to its timing or the tactics used, President Carter recently remarked: "[F]ew can dispute an important fact of this experience: our concern for human rights has met with great resonance in the world at large. The very term has entered the language and become imbued with an everyday familiarity that was simply unknown little more than two years ago."¹⁴ In addition to the heightened global awareness of human rights issues, the Administration spokesmen have repeatedly asserted the practical tangible results of the fresh approach, indications of concrete progress in many parts of the world. Examples would be the release of political prisoners, less oppression of political opposition, the holding of elections in many countries, and the return of some countries to multiparty and civilian democratic systems.¹⁵

Nevertheless, in spite of the current emphasis of the Carter administration on human rights, critics have questioned the genuineness of President Carter's commitment, particularly in the face of competing claims, such as, national security, and

12. *Supra* note 3, at 7.

13. *Id.* at 6.

14. President Carter's State of the Union Message to the Congress, *reprinted in* 78 *id.* 24, 29 (Mar. 1979).

15. See *supra* note 3, at 5, 7; and 1977 *Human Rights Hearing*, *supra* note 1, at 6.

the lack of effective actions by the Administration regarding human rights violations in countries closely aligned with the U.S., such as South Korea, the Philippines, and Iran under the Shah. Even in Congress there is speculation as to how long the human rights fervor will last. While a number of human rights policy decisions have been incorporated into legislation, there has been a high attrition rate of human rights activists in Congress in recent elections. In short, while the Carter administration has taken a number of important steps toward making the United States an international leader in promoting human rights, there still remain a number of questions as to the efficacy and sincerity of President Carter's program, as well as speculation on how long the enthusiasm can be kept alive in the face of myriad setbacks and conflicting interests.

These are valid concerns, some of which were aired at a conference on human rights held in Denver-Boulder in May 1978, cosponsored by the Graduate School of International Studies and the International Legal Studies Program at the University of Denver, and the Department of Political Science at the University of Colorado, Boulder. The conference invited several close observers of the changes regarding human rights issues instituted by the Carter administration. What follows is primarily an adapted version of some of the papers delivered and presentations made at the conference.

A recurring theme in these papers is the acknowledgement of the significant changes introduced under the Carter administration. John Salzberg¹⁶ and Stephen Collins¹⁷ provide two different perspectives—that of the U.S. Congress and the A.I.D. respectively—in appraising the accomplishments under President Carter. While both Salzberg and Collins note the positive aspects of Carter's policy and the structural changes within the Administration designed to implement the human rights priority in U.S. foreign policy, Salzberg cites several instances, such as the Philippines, South Korea, Indonesia, and the Western Sahara, where the Administration's commitment to human rights has been compromised by its reticence to re-

16. Salzberg, *The Carter Administration: An Appraisal, A Congressional Perspective, infra*.

17. Collins, *The Carter Administration: An Appraisal, A Perspective from the Agency for International Development, infra*.

late military assistance to human rights. His study leads him to the sobering conclusion that "the international protection of human rights is an extremely difficult task with no ready formulas or easily achieved results."¹⁸

James Walczak¹⁹ pursues the theme of "human rights and economic development" introduced earlier by Collins. The focus of Walczak's inquiry is the U.S. Food Aid Program which he studies in an historical context. In his words, "this nation's commitment to the conquest of hunger and malnutrition is a critical indicator of our overall sincerity towards human rights."²⁰ After studying the various congressional and executive actions, he notes that the evolution of the Food Aid Program "continues in the direction of greater emphasis upon the humanitarian and developmental aspects."²¹ However, he finds the overall level of such aid discouraging.

Cedric Tarr²² assesses the impact of human rights considerations on U.S. military assistance since 1973. He describes the intricate arms transfer decisionmaking process in Washington and concludes that human rights considerations have become an "important new element" in this process since 1977, a change which "came about because of congressional pressure, organizational changes in the Department of State and, most importantly, Presidential interest."²³

Lars Schoultz²⁴ compares the Ford and Carter administrations' policies toward human rights in Latin America. He restricts his inquiry to the twenty-three aid-receiving nations in Latin America and uses the rather innovative technique of expert evaluation to measure the comparative level of human rights violations. His objective is to investigate "how and to what extent the U.S. Government is involved in encouraging or discouraging the violation of human rights in Latin America."²⁵ He examines U.S. bilateral and multilateral aid to the

18. Salzberg, *infra*, at 536.

19. Walczak, *New Directions in United States Food Aid: Human Rights and Economic Development*, *infra*.

20. *Id.* at 544.

21. *Id.* at 571.

22. Tarr, *Human Rights and Arms Transfer Policy*, *infra*.

23. *Id.* at 588.

24. Schoultz, *U.S. Policy Toward Human Rights in Latin America: A Comparative Analysis of Two Administrations*, *infra*.

25. *Id.* at 598.

selected countries under the two Administrations and concludes that "the performance of the Carter administration in dissociating the U.S. bilateral aid programs from unusually repressive Latin American governments is impressive."²⁶ However, he notes that in the area "of commercial transactions by U.S.-based corporations, the Carter administration has failed to use its full influence to promote human rights."²⁷ He warns that

it would be a grave error to underestimate the number of U.S. foreign policy officials who are waiting quietly for the human rights issue to disappear. The plea of these people, whether it concerns IFI loans or Food for Peace allocations, is that they must be allowed to 'de-politicize' the U.S. aid program. . . . Their aim is not to 'de-politicize' aid but to 'de-fuse' human rights considerations. It would be lamentable if human rights activists, looking at encouraging data from the U.S. bilateral aid program to Latin America, were lulled into a complacency which permitted these officials to succeed in their efforts.²⁸

James Nafziger²⁹ offers a rather intriguing idea: that of devising an immigration policy which would help bring people to the resources. He asserts that the United States immigration law will remain an unsatisfactory means of regulating the inward flow of undocumented aliens as long as it responds to misplaced fears and fails to take into account the facts and world order interests. Current Mexican migration is a case in point. He urges the Federal Government to develop a comprehensive policy framework in which the United States would be viewed as an important agent in the rational process of human migration. He recommends the reform of immigration law and policy to allow a shift from the current emphasis on distributing resources abroad in favor of bringing people to the resources. He considers such a shift to be in the national interest, furthering the advancement of human rights, and helping this country fulfill its global responsibilities.

Laurie Wiseberg and Harry Scoble³⁰ provide a comprehen-

26. *Id.* at 602.

27. *Id.* at 604.

28. *Id.* at 605.

29. Nafziger, *An Immigration Policy of Helping Bring People to the Resources*, *infra*.

30. Wiseberg & Scoble, *Recent Trends in the Expanding Universe of Nongovernmental Organizations Dedicated to the Protection of Human Rights*, *infra*.

sive survey of the expanding role of nongovernmental organizations (NGOs) dedicated to the protection of human rights. Noting a shift away from the promotion of human rights to that of protection, the authors describe the types of organizations involved, types of groups receiving concern, cooperation and coordination of activities among the various NGOs, and strategies and tactics of implementation used by NGOs in selecting "relevant targets of their activities." In evaluating the effectiveness of NGOs, the authors note encouraging trends. However, they urge continued vigilance by NGOs, since:

the motivation to retain power and privilege is enhanced at the same time that the technology for repression has become more sophisticated and regional cooperation among dictatorial regimes has been demonstrated. For the human rights movement, therefore, the challenges remain at least as demanding as ever and there are no immediate prospects for sudden or dramatic victories.³¹

The conclusion seems inescapable that although the Carter administration has taken the necessary first steps toward achieving a place of legitimacy and respectability for human rights in U.S. foreign policy, the continued viability of this changed posture which will assure the maintenance of a high priority to human rights considerations both in the formulation and implementation of U.S. foreign policy is by no means certain. A comment on the recent Vienna meeting is indicative of the fragile nature of the progress made thus far: "Secretary of State Cyrus Vance's sudden cancellation of a private meeting here on June 21 to report Vienna summit progress on human rights in the Soviet Union laid bare this tragic fact: human rights, the shining emblem of Jimmy Carter's foreign policy, vanished almost without a trace in Vienna."³²

Unfortunately, the human rights constituency in this country is woefully weak: witness the plight of the Genocide Convention in the U.S. Senate. It seems imperative that human rights advocates build and nurture such a constituency, whose voice is strong and clear and will be heard and heeded in Washington. If the U.S. is to provide a forceful leadership in the global human rights movement, is there an alternative?

31. *Id.* at 658.

32. Evans & Novak, *U.S. Human Rights Effort Fading*, Den. Post, June 27, 1979, at 24, col. 1.

