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THE CARTER ADMINISTRATION: AN APPRAISAL

A Congressional Perspective*

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I. INTRODUCTION

This is an appropriate time to discuss the human rights policy of the Carter administration, and some of the issues both of principle and strategy which need further clarification. However, before considering some of the problems faced by the Carter administration in its formulation and implementation of a human rights policy, it would be useful to emphasize the fundamental change which has taken place since this Administration took office in January 1977. Under the Nixon and Ford administrations, human rights was hardly considered a relevant factor in U.S. foreign policy decisionmaking. Now it is a legitimate factor in the decisionmaking process, and often does influence the outcome of decisions.

As a further prefatory comment, the complexity of the human rights issue in foreign policy should be underscored, especially the difficulties in achieving progress in this field. It is important to recognize the limitations of the United States' influence to affect human rights change in any given country. Governments believe that repression is essential for the maintenance of control. No matter how much they might value the friendship of the United States, if they have to choose between their own survival as a regime and their relationship with the

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United States, it is obvious which option they are likely to choose.

Consequently, our efforts may have only a limited impact on the status of human rights in the country concerned. In many cases, the most that we may be able to achieve is to dissociate our government from the repression in that country by removing the supporting relationship which we have with that government, particularly in terms of military and economic assistance programs.

The Administration's human rights policy will be briefly analyzed here by reference to bilateral assistance programs, the Administration's role in the multilateral arena, and the Administration's initiatives designed to promote human rights.

II. HUMAN RIGHTS AND MILITARY ASSISTANCE PROGRAMS

It was in the field of military assistance that Congress placed the initial emphasis in relating human rights and U.S. assistance programs, for military assistance provides the most direct, symbolic, as well as practical, relationship between our government and the repressive practices of foreign governments. Most repressive governments are military governments, and the armed forces are frequently involved in day to day law enforcement, and regrettably, in serious violations of human rights. Perhaps one of the most blatant examples of the military's role in repression is in Argentina, where the military forces are involved in kidnappings, murder, and torture, without identifying themselves as military personnel. Our own military equipment may be involved in these actions, and the personnel involved may have received U.S. military training.

Consequently, military aid should be the first form of aid sanction in the case of repressive governments. In 1974 Congress adopted in its initial form section 502(B) of the Foreign Assistance Act,¹ regarding military sales to repressive regimes, which was revised and strengthened in 1976.² Under this law, all forms of military assistance and sales are to be denied to governments engaged in a consistent pattern of gross violations of internationally recognized human rights, unless extraordinary circumstances necessitate such assistance. Under this

1. Foreign Assistance Act of 1974, Pub. L. No. 93-559, 88 Stat. 1795 § 502(B).

2. Foreign Assistance Act of 1976, Pub. L. No. 94-330, 90 Stat. 771.

provision the Department of State is required to submit annually to the Congress a report on the status of human rights in each country which is to receive either military or development assistance.

Regretfully, except in a few instances, there is very little tangible evidence that this legislation has been implemented by the Carter administration. For example, while the Administration made a serious effort at relating military assistance with human rights in the relatively small country of Nicaragua, even in that instance, the Administration's record has been somewhat ambiguous. The Administration signed foreign military sales agreements for fiscal 1977 and 1978 for Nicaragua, but said it would not implement these agreements unless there was improvement in human rights. However, it has decided not to go forward with new bilateral economic programs for Nicaragua. Subsequently, however, it cancelled all military sales to Nicaragua, including those in the pipeline.

Ironically, the most significant relationship of military assistance and human rights has been taken at the initiative of several recipient Latin American governments. In response to the State Department's Human Rights Country Reports issued in 1977,³ the countries of Brazil, El Salvador, Guatemala, Argentina, and Uruguay decided, on their own initiative, that they would not accept U.S. military assistance. They did this on the grounds that they felt that such treatment was insulting to their national dignity. Subsequently, the government of Guatemala reversed its position and requested military training assistance. Human rights violations continue in Guatemala with serious allegations of government complicity in acts of assassination and violence. More recently, the Governments of the United States and the Philippines have reached an agreement on the military bases which will entail interested U.S. support for the martial law regime in the Philippines.

This reticence to relate military assistance to human rights may be a result, at least in part, of (1) a tendency to exaggerate the importance of our security assistance programs to some countries which have been exempted from the human

3. DEPARTMENT OF STATE, HUMAN RIGHTS PRACTICES IN COUNTRIES RECEIVING U.S. SECURITY ASSISTANCE, 95TH CONG., 1ST SESS. (Comm. Print 1977).

rights considerations on grounds which do seem justified, and (2) the inadequate focus which the Administration places on human rights and military assistance programs. A few examples follow for illustrative purposes.

With respect to the Philippines, for instance, the importance of our military bases has led this Administration to believe we are without any options with respect to military assistance. It has been the Congress, rather than the Administration, that has invoked military aid sanctions with respect to the Philippines.

The situation in South Korea is notably complex. Moreover, our policy of troop withdrawal, now somewhat amended, has complicated the situation and diminishes possibilities for military aid as leverage for human rights in that country. Nevertheless, the linking of military aid with human rights is possible but has been foreclosed by this Administration.

In Indonesia our concern for maintaining friendly relations has preempted use of military aid as a human rights sanction. While, on the one hand, it is encouraging that approximately 20,000 of the long term political prisoners have been released, about 10,000 remain detained without charges and trial. Moreover, the recent crackdown on the press and student protest indicates that aside from the long term detainee problem, human rights restrictions in Indonesia remain very real and pervasive. An additional and significant negative factor in the Indonesia human rights picture is the forcible annexation by that government of the Portuguese territory of East Timor—a clear case of naked aggression by Indonesia in violation of the United Nations Charter. Moreover, the United States Government concurs in the judgment of the U.N. General Assembly that the Timorese people have not yet exercised the right of self-determination. Nevertheless, we continue to provide military assistance to Indonesia, and such aid was substantial in facilitating the occupation of East Timor and continues to be used today to suppress liberation fighters.

Another instance where the importance of friendly relations has compromised the Administration's commitment to human rights is the case of Western Sahara.⁴ This is another

4. See Franck, *The Stealing of the Sahara*, 70 AM. J. INT'L L. 694 (1976).

non-self-governing territory which has been annexed, in this case by Morocco and Mauritania, in contravention of United Nations resolutions and the U.N. Charter principle regarding the right of self-determination.⁵ The Moroccan Government has used U.S. military equipment in its efforts to control the territory of Western Sahara. Although we have, through quiet diplomatic representations, urged the Moroccan Government not to use our arms in the Sahara, violations have occurred, and we have not contemplated using military aid as a sanction with respect to Morocco.

Perhaps the Administration has exaggerated the national security considerations with respect to these countries. Clearly these countries are important to our national interest, but that does not foreclose the possibility of using our military aid, at least in a limited form, as a sanction with respect to human rights. Moreover, one can seriously question whether our national security rests on solid ground if it is dependent upon alliances with repressive regimes.

With respect to the inadequate bureaucratic focus, while the Administration has established the Inter-Agency Committee on Human Rights and Foreign Assistance to deal with economic issues, both bilaterally and through the multilateral financial institutions, there is no comparable committee which focuses on human rights implications of military aid. The Inter-Agency Committee, chaired by the Deputy Secretary of State, Warren Christopher, has representatives from the Departments of Treasury, Commerce, State, Agriculture, the White House, and other relevant agencies concerned with economic assistance programs and their human rights implications. This task force focuses solely on the human rights implications of particular economic aid programs. As a consequence of this emphasis, the Administration has used economic aid as a sanction in many instances. The United States delegates to the Inter-American Development Bank, the World Bank, and other international financial institutions have frequently either voted against or abstained on loans or notified countries applying for them that the loans should be withheld temporarily

5. See *inter alia* Nayar, *Self-Determination Beyond the Colonial Context: Biafra in Retrospect*, 10 *TEX. INT'L L. J.* 321 (1975); and Dinstein, *Collective Human Rights of Peoples and Minorities*, 25 *INT'L & COMP. L.Q.* 102 (1976).

until an improvement in the human rights situation takes place.

It is ironic that the Administration does not have a comparable committee to deal with human rights implications of military aid, especially in view of the fact that such implications are considerably more far-reaching than are the human rights implications of economic aid. To meet some of these inadequacies in the Administration's policy with respect to security assistance, Congressman Fraser introduced during the mark-up session of the military aid bill for fiscal year 1979 several amendments⁶ which served to tighten the restrictions on the use of military equipment and military training with respect to repressive countries. Although the Administration opposed these amendments, eleven of them were adopted.

The first of three amendments clarifies the language in the provisions of section 502(B). It deletes the word "policy" from the language in the section that "it is the policy of the United States that gross violators shall not receive military aid assistance." By virtue of that language, the Administration had interpreted section 502(B) as not providing a mandatory requirement prohibiting military aid to gross violators except under extraordinary circumstances, thereby permitting it to provide military aid to gross violators even when there were not extraordinary circumstances justifying such assistance. Consequently, the provision on military aid and human rights had a less stringent standard than the human rights provision to economic assistance, which does not contain the "policy" language.

The second amendment offered by Congressman Fraser concerned the sale of equipment which goes to police forces and other forces engaged in law enforcement activity. Such equipment may be sold in several ways: (1) as military equipment through the foreign military sales program; (2) as a commercial item under the U.S. munitions list; or (3) as a commercial item subject to the Department of Commerce's Export Administration Regulations. The Fraser amendment, which applies to all

6. For the text of these amendments, see COMMITTEE ON FOREIGN RELATIONS & COMMITTEE ON FOREIGN AFFAIRS, LEGISLATION ON FOREIGN RELATIONS THROUGH 1978, VOLUME I, 96TH CONG., 1ST SESS. 65-67 (Joint Comm. Print 1979).

the above kinds of sales of police equipment, prohibits such sales to governments engaged in a consistent pattern of gross violations of human rights, unless the President certifies in writing that extraordinary circumstances warrant such assistance.

Under prior Department of Commerce Export Administration Regulations, except for South Africa and Communist countries, police equipment could be sold to any country without a validated license. This had meant, in effect, that police equipment sales could have taken place without review of the human rights implications of providing such equipment to repressive governments. Under the Carter administration, there has been an effort to review some of these sales by virtue of a voluntary agreement between the Department of Commerce and the Department of State. However, since the exporters are not required to have a validated license, the U.S. Government was not fully aware of who was exporting what items and to what countries. The category of crime control and detection instruments under the Export Administration Regulations includes such items as leg irons, shackles, shotguns, shock batons, straight jackets, psychological stress analysis equipment, dart guns, and even thumb screws. It is incredible that regulations with respect to the sale of such equipment had been so lax. The Fraser amendment on police equipment will rectify that situation.

The third Fraser amendment provides that no country, the government of which is engaged in a consistent pattern of gross violations of human rights, shall receive military training, unless the President certifies in writing that such assistance is warranted by extraordinary circumstances. Of all forms of security assistance and sales, military training provides the most profound relationship between the United States and another government. When that government is engaged in gross violations of human rights such aid presents a special difficulty. It needs no documentation that the military services are often the ones engaged in repressive activities. It is true that under the existing regulations, military officers who receive training are required not to go directly into activities of a law enforcement nature, thus limiting their involvement to matters concerning the external defense of their country. However, this require-

ment obviously could not apply permanently to the personnel concerned, and after about a year from the completion of their training, they could be assigned to law enforcement duties. It is interesting to note that while the Carter administration had held up on the foreign military sales credits for Nicaragua, until recently it had continued to allow military training to be provided to the National Guard of Nicaragua, although the National Guard has been the principal violator of human rights in Nicaragua.

III. INTERNATIONAL ORGANIZATIONS AND HUMAN RIGHTS

It is desirable that high priority be given to pursuing every avenue of promoting human rights through multilateral as opposed to bilateral institutions. On this score, the Carter administration has a good record. One could cite, among others, such initiatives as (1) the efforts to encourage governments to permit the Inter-American Commission on Human Rights to visit their countries; (2) the efforts to encourage other donor governments within the international financial institutions to take human rights into account in their policies; and (3) the efforts to encourage the U.N. Commission on Human Rights to take constructive steps to respond to violations of human rights. On the other hand, this Administration's decision to withdraw from the U.N. agency which is doing the most effective work in human rights, the International Labor Organization, was a great disappointment.

The Administration's decision to sign and support ratification of the various human rights conventions—the International Covenant on Civil and Political Rights,⁷ the International Covenant on Economic, Social and Cultural Rights,⁸ the Convention on the Elimination of All Forms of Racial Discrimination,⁹ and the American Convention on Human Rights¹⁰—is

7. International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 52-58, U.N. Doc. A/6316 (1966).

8. International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 49-52, U.N. Doc. A/6316 (1966).

9. The 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, 1969 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).

commendable. While the Administration has sent these conventions to the Senate for ratification, unfortunately, it has attached to these treaties a series of reservations, understandings, and declarations which could seriously undermine the impact of U.S. ratification. The critics could accuse the Administration of purportedly signaling to the Senate that ratification of these treaties should not have any effect on our laws and practices even when they are clearly deficient.

Ratification of these treaties with the Administration-recommended reservations, understandings, and declarations would expose us to charges that our commitment to the rule of international law in human rights is halfhearted at best. Moreover, such action could set an unhealthy precedent for other governments and thus might lead to a weakening of the international standards. It will be desirable for the Administration to reconsider its position on this issue.

Thus, while there are some misgivings with respect to the Carter administration's human rights policy, it should, however, be emphasized that many aspects of this Administration's commitment to human rights are well deserving of praise. For example, the effort which the U.S. has placed on increasing the effectiveness of multilateral institutions in the field of human rights, such as the Inter-American Commission on Human Rights and the United Nations, especially its Commission on Human Rights, marks a striking departure from past U.S. practices.

IV. POSITIVE PROMOTION OF HUMAN RIGHTS

A brief comment on two congressional initiatives which sought to improve human rights through positive measures is in order. At the initiative of Congressmen Fraser and Fascell, the House Committee on Foreign Affairs adopted in May 1978 a bill to establish an Institute for International Human Rights.¹¹ The bill provides that the Institute would be an independent agency of the United States Government, providing assistance for programs to promote universal respect for and observance of human rights and fundamental freedoms. Assistance would be provided primarily to nongovernmental and

11. H.R. 12598, 95th Cong., 2d Sess., 124 CONG. REC. H3948 (daily ed. May 5, 1978).

international organizations in that field. Assistance could be for such programs as conferences and seminars, publication of works that have been suppressed, research, fellowships, assistance to victims of persecution, and assistance for the legal defense of political dissidents. The bill provides the Institute with a broad mandate—its assistance can be for organizations both within the United States and abroad.

The Institute would be governed by a Board of Directors of seven members, appointed by the President with the advice and consent of the Senate, from among individuals who have demonstrated a concern for human rights and fundamental freedoms. No officer or employee of the federal government may be appointed as the Director, thus insuring its independence. The Board would select an Executive Director who would be the chief executive officer of the Institute. The bill authorized \$1 million for fiscal year 1979.

The subcommittees held three hearings on this bill. Considerable attention was given to the importance of the independence of the Institute from the Department of State. For these reasons, a section of the original bill which attempted to formalize that relationship was deleted from the bill. It is interesting to note that the Department itself preferred this arrangement, thus relieving it of any responsibilities for the Institute's actions.

Another concern of the witnesses was that the Institute not compromise the independence and autonomy of nongovernmental organizations. This concern obviously relates to ensuring the independence of the Institute, which would be essential to guarantee that the independence of the nongovernmental organizations is not compromised. This concern is particularly felt in terms of gaining receptivity by nongovernmental organizations in foreign countries to receiving funding from the Institute. Obviously, there are many groups that would not wish to receive Institute funds, and this is a position which one can highly respect.

Another concern expressed by witnesses was for the Institute to be politically objective and to demonstrate its concerns through its assistance programs regarding violations of human rights by both leftist and rightist governments. The independence of the Institute should help to ensure this quality as well,

and it was hoped that the Administration would appoint members to the Board who have this concern in mind.

The Institute could have provided us with an additional approach to pursue the advancement of human rights: an Institute not tied to any particular Administration, and an Institute which could by its actions receive acceptance both by the non-governmental community here as well as abroad. Unfortunately, an amendment was offered on the floor of the House to defeat the Institute which was adopted.¹² Few members, of course, had detailed knowledge about the Institute. It appeared that most members voted against the Institute because of a general opposition to establishing new governmental agencies. Perhaps the Congress and the Administration will reconsider this proposal. An argument which is quite persuasive in favor of the Institute is that it would continue beyond a particular administration and, hopefully, would not be affected by changes in the human rights policy from one administration to the next. The Institute would thus provide a permanent and continuing commitment to human rights by the United States Government and not be subject to transitory political designs.

Meanwhile, through another initiative by Congressman Fraser, the Agency for International Development (AID) is providing funding for programs and activities which promote civil and political rights. Section 116(e) of the Foreign Assistance Act¹³ encourages AID to spend up to \$1.5 million in fiscal year 1979 for such programs. The projects thus far approved serve a variety of purposes: some are educational in nature, some serve to increase communication between various national groups struggling to defend human rights in different countries, and some provide assistance to such groups. It may be hoped that the success of the AID program will testify as to the usefulness of creating an Institute along the lines of the Fascell-Fraser bill.

V. CONCLUSION

On balance, the Carter administration's human rights policy, compared with its predecessors', is a desirable step forward. In a relatively short time frame this Administration has

12. 124 CONG. REC. H4706 (daily ed. May 31, 1978).

13. International Development and Food Assistance Act of 1978, Pub. L. No. 95-424, 92 Stat. 947 § 109.

made significant progress in elevating the priority given to human rights in U.S. foreign policy, and has had a noticeable impact on human rights conditions abroad.¹⁴ However, the international promotion of human rights is an extremely difficult task with no ready formulas or easily achieved results. It is hoped that the Administration will continue its efforts toward the utilization of the available bilateral and multilateral channels for such promotional activities.

14. *Thirtieth Anniversary of the Universal Declaration of Human Rights*, 79 DEP'T STATE BULL. 1 (Jan. 1979).