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## Human Rights and Arms Transfer Policy

### Keywords

Human Rights Law, Congress, International Relations, Legislation, States

# Human Rights and Arms Transfer Policy\*

CEDRIC W. TARR, JR.\*\*

## I. INTRODUCTION

This paper will attempt to assess the impact of human rights considerations on arms transfer policy since 1973 when Congress began to pressure the Executive branch to insert the human rights factor into the decisionmaking process. Arms transfer policy is defined to include the provision of military equipment and training by means of grants and credits, plus government regulation of commercial sales. Arms transfers have become, since the Second World War, a principal ingredient of American foreign policy. A variety of purposes can be identified: the containment of communism; the forestallment of regional military imbalances in order to promote stability and reduce the chances of conflict; the maintenance of favorable relations, hopefully to influence countries which request arms; to establish/improve transit rights; to support/promote specific regimes; to increase economic incentives such as reducing balance of payments deficits; and to maintain markets in the face of competition from other suppliers. The effort to use arms transfer policy as a means of improving the human rights performance of foreign regimes has added a new purpose. No attempt will be made to evaluate the effectiveness of arms transfers in reaching these goals, nor to explore the larger question of whether or not human rights should be an important ingredient of U.S. foreign policy. The emphasis will be on the process by which human rights considerations have been built into foreign policy decisions.

## II. HUMAN RIGHTS AND THE WEAVERS IN CONGRESS

Deputy Secretary of State Warren Christopher, before the Senate Subcommittee on Foreign Assistance in March 1977, stated that "[t]he concern for human rights will be woven into the fabric of our foreign policy."<sup>1</sup> This process was actually

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\* Adapted from a paper prepared for a presentation to the Midwest Regional Conference of the International Studies Association, May 6, 1978.

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1. *Human Rights: Hearings Before the Subcomm. on Foreign Assistance of the*

begun in 1973 as a result of congressional prodding of a reluctant Executive branch where Henry Kissinger continued to preside over U.S. foreign policy. Kissinger made no secret of his lack of interest in altering the fabric of his policy:

We have generally opposed attempts to deal with sensitive international human rights issues through legislation, not because of the moral view expressed, which we share, but because legislation is almost always too inflexible, too public, and too heavily handed a means to accomplish what it seeks.

Through quiet diplomacy, this Administration has brought about the release or parole of hundreds of prisoners throughout the world and mitigated repressive conditions in numerous countries. But we have seldom publicized specific successes.<sup>2</sup>

The International Organizations and Movements Subcommittee, chaired by Rep. Donald Fraser, of the House Committee on Foreign Affairs held a series of fifteen hearings beginning in August 1973.<sup>3</sup> The purpose was to propose recommendations for "raising the priority given to human rights in U.S. foreign policy, and strengthening the capacity of international organizations to insure protection of human rights."<sup>4</sup> The final report included twenty-nine specific recommendations,<sup>5</sup> including the one which urged the Department of State to "treat human rights factors as a regular part of U.S. foreign policy decision-making," and to "prepare human rights impact statements for all policies which have significant human rights implications."<sup>6</sup>

Going beyond recommendation, Congress began to insert human rights provisions into legislation. Section 32 of the Foreign Assistance Act of 1973<sup>7</sup> expressed the sense of the Congress that "the President should deny any economic or military as-

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*Senate Comm. on Foreign Relations* 62, 95th Cong., 1st Sess. (1977).

2. Kissinger, *Moral Promise and Practical Needs*, 75 DEP'T STATE BULL. 597, 603 (1976).

3. *International Protection of Human Rights: The Work of International Organizations and the Role of U.S. Foreign Policy*, *Hearings Before the Subcomm. on International Organizations and Movements of the House Comm. on Foreign Affairs*, 93d Cong., 1st Sess. (1973) [hereinafter cited as *1973 Hearings*].

4. REPORT OF THE SUBCOMM. ON INTERNATIONAL ORGANIZATIONS AND MOVEMENTS OF THE HOUSE COMM. ON FOREIGN AFFAIRS, HUMAN RIGHTS IN THE WORLD COMMUNITY: A CALL FOR U.S. LEADERSHIP, 93D CONG., 2D SESS. (1974) [hereinafter cited as *1974 HUMAN RIGHTS REPORT*].

5. *Id.* at 3-8.

6. *Id.*

7. Foreign Assistance Act of 1973, Pub. L. No. 93-189, § 32, 87 Stat. 714, 733 (1973).

sistance to the government of any foreign country which practices the internment or imprisonment of that country's citizens for political purposes."<sup>8</sup>

What was to become the major legislative guideline was placed in the Foreign Assistance Act of 1974, section 502B.<sup>9</sup> Introduced by Representative Fraser, it stated that:

(a) It is 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, including torture or cruel, inhuman or degrading treatment or punishment; prolonged detention without charges; or other flagrant denials of the right to life, liberty, and the security of the person.

(b) Whenever proposing or furnishing security assistance to any government falling within the provisions of paragraph (a), the President shall advise the Congress of the extraordinary circumstance necessitating the assistance.<sup>10</sup>

In paragraph (b) Congress first crossed the threshold from recommending to requiring by placing a reporting requirement on the Executive. The Department of State had responded to the growing congressional prodding by making a number of small changes<sup>11</sup> in order to give the appearance of cooperation without actually making the fundamental changes in the substance and process of foreign policy implied by the various resolutions and recommendations.

In response to section 32 regarding political prisoners, American embassies were asked to report on the situation in their countries and to make the foreign governments aware of section 32 as a warning. Subsequently, the State Department broadened the subject matter to include: torture, arbitrary arrest and detention, arbitrary curtailment of existing political rights, unlawful killing and seriously unfair trials.<sup>12</sup>

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8. 1974 HUMAN RIGHTS REPORT, *supra* note 4, at 3-8.

9. Foreign Assistance Act of 1974, Pub. L. No. 93-559, § 502B, 88 Stat. 1795, 1815 (1974).

10. *Id.*

11. Salzberg & Young, *The Parliamentary Role in Implementing International Human Rights: A U.S. Example*, 12 TEX. INT'L L. J. 251, 275 (1977).

12. SUBCOMM. ON INTERNATIONAL ORGANIZATIONS OF THE HOUSE COMM. ON INTERNATIONAL RELATIONS, 95TH CONG., 1ST SESS., HUMAN RIGHTS IN THE INTERNATIONAL COMMUNITY AND IN U.S. FOREIGN POLICY, 1945-1976, 47 (Comm. Print 1977) [hereinafter cited as 1977 HUMAN RIGHTS REPORT].

However, the response to the reporting requirement in section 502B was not considered satisfactory. Secretary of State Kissinger, in November of 1975, declined to allow a country-by-country report to be released and substituted a report indicating that all countries violate human rights, and that it would not be in the national interest to single out specific violators.<sup>13</sup> Congress responded by including in the International Security Assistance and Arms Export Control Act of 1976,<sup>14</sup> a stronger version of section 502,<sup>15</sup> which was vetoed by President Ford on the ground that it permitted Congress to terminate, restrict, or continue security assistance for any country found in violation of human rights by means of a concurrent resolution, which is not subject to veto.<sup>16</sup> Still another version of 502B was subsequently adopted by both houses which was essentially the same as the one that had been vetoed, except that it stipulated congressional termination by means of a joint resolution rather than a concurrent resolution, which satisfied the Administration's requirements.

The revised section 502B states that it is the policy of the United States to promote and encourage increased respect for human rights and fundamental freedoms for all, and that, except under special circumstances, "no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights."<sup>17</sup> Such violations are defined as: torture or cruel, inhuman, or degrading treatment or punishment; prolonged detention without charges and trial; and other flagrant denials of the right to life, liberty, or the security of person.

The Secretary of State may still attempt to provide security assistance if he can convince Congress that "[e]xtraordinary circumstances exist which necessitate a continuation of security assistance . . . ."<sup>18</sup> No examples of what

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13. *Id.* at 57-58.

14. 22 U.S.C. § 2304 (1976).

15. *Id.* § 2304(a)(2). For a thorough analysis of § 502, see Weissbrodt, *Human Rights Legislation and U.S. Foreign Policy*, 7 GA. J. INT'L & COMP. L. 231, 241-87 (1977).

16. S. 2662, 94th Cong., 2d Sess. (1976). See, 122 CONG. REC. S6715-16 (daily ed. May 10, 1976).

17. 1977 HUMAN RIGHTS REPORT, *supra* note 12, at 53.

18. 22 U.S.C. § 2304(c)(C)(i) (1976).

might constitute extraordinary circumstances were provided. The Secretary of State is required to furnish annually to Congress, along with the supporting materials, a full and complete report on the human rights practices in each country,<sup>19</sup> which is proposed as a security assistance recipient. In order to reduce the possibility of a whitewash, section 502B requires that the findings of appropriate international organizations be taken into consideration in the preparation of the report. The extent to which these organizations have been given access for their investigations by the governments in question is also to be considered.

Should the Senate or the House, or their relevant committees, at any time request a report on a specific country the Secretary of State must respond within thirty days.<sup>20</sup> If the report is not received in that time, all security assistance will be terminated until a report is received. When a report is received, Congress may still terminate, restrict, or continue assistance by means of a joint resolution.

Finally, the revised version of section 502B sought to reinforce these provisions by requiring the establishment in the Department of State of a Coordinator for Human Rights and Humanitarian Affairs, to report directly to the Secretary of State. This official would be appointed by the President with the advice and consent of the Senate. The Coordinator would have responsibilities in the areas of refugees, prisoners of war, and U.S. military personnel missing in action, as well as human rights. In addition to reviewing, analyzing, and gathering information, the Coordinator would have responsibility for preparing the required reports. It was also directed that the Secretary of State "shall carry out his responsibility under section 502B of the Act through the Coordinator for Human Rights and Humanitarian Affairs."<sup>21</sup> Congress was clearly trying to legislate a substantive change in the decisionmaking process and was aware that the creation of new institutions is, by itself, no guarantee. The first Coordinator's office was staffed with one Foreign Service Officer and one deputy, to compile reports.

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19. *Id.* § 2304(b).

20. *Id.* § 2304(c)(1).

21. 1977 HUMAN RIGHTS REPORT, *supra* note 12, at 55.

Congress also used the more direct method of terminating or reducing military aid to specific countries. Starting in 1974, military assistance to Chile was eliminated and limits were placed on the amount of economic assistance that could be provided.<sup>22</sup> In the case of South Korea, where security considerations are more apparent than in Chile, military assistance was limited until the U.S. President reported that significant progress had been made in the observance of human rights.<sup>23</sup> The President was also instructed to express forcefully to the government of South Korea the American concern over the erosion of human rights. Thus, Congress demonstrated its willingness to apply the human rights standard selectively, depending upon individual circumstances. In 1976 Congress prohibited military assistance to Uruguay.<sup>24</sup>

### III. ARMS TRANSFERS AND THE NEW ADMINISTRATION

A campaign pledge of Jimmy Carter's was to return morality and idealism to American foreign policy. A Carter foreign policy would make human rights a major factor in the formulation of policy. Carter also pledged to reduce American arms transfers to other countries on the grounds that being the world's major arms supplier set a bad example and was not consistent with the goals of peace and arms control. Thus, with the advent of a new administration, Congress gained an ally in the cause of human rights. Within a year the position of the newly designated Coordinator for Human Rights, Patricia Derian, had been upgraded to that of Assistant Secretary of State for Human Rights and Humanitarian Affairs, in charge of a Bureau (HA), which has as one of its three main subdivisions, an Office of Human Rights. Arms transfer policy is handled in this office. Human Rights Officers have also been designated at each U.S. Embassy to engage in ongoing monitoring and reporting of the local human rights situation. Additionally, in other parts of the State Department, such as Policy Planning, the Legal Division, and International Organizations,

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22. International Security Assistance and Arms Control Act of 1976, Pub. L. No. 94-329, § 406, 90 Stat. 729, 758. *See also*, Salzberg, *supra* note 11, at 263-66.

23. Salzberg, *supra* note 11, at 266-69.

24. Foreign Assistance and Related Programs Appropriations Act, 1977, Pub. L. No. 94-441, § 505, 90 Stat. 1465, 1473 (1976); *see also*, 122 CONG. REC. S16406 (daily ed. Sept. 22, 1976).



there are people with responsibilities in the human rights areas. Human rights policy is also being included in the training programs of the Foreign Service and military services.

However, the fact that the new Administration was committed to placing greater emphasis on the human rights factor did not prevent Congress from continuing to use its powers over appropriations, and over Executive branch organization to influence both the process and the substance of foreign assistance policies. The Foreign Relations Authorization Act, FY 1978, required a full report from the Secretary of State by January 31, 1978 on the steps that had been, and were being, taken to "strengthen human rights and humanitarian considerations in the conduct of United States foreign policy."<sup>25</sup>

#### IV. THE POLICY PROCESS

There are two general categories of military assistance. One is commercial sales from an American company to a foreign government, requiring a license from the U.S. Government. The other category is government-to-government transactions. These can be in the form of foreign military credits, or sales (FMS), grant military assistance (MAP), security supporting assistance (SSA), and international military education and training (IMET).

The time between the first request and the actual delivery of the items may be as long as three years. The system is tortuous and sluggish because of the complex clearance process in the Executive branch and a congressional phase which can involve as many as eight separate hearings. Formalization of the human rights factor has simply inserted another hurdle, another potential point of delay, into an already cumbersome process.

##### A. *Phase One—The Department of State*

A request from a foreign government is first evaluated in the regional bureau which involves the Department of Defense on questions of military and technological implications. The desk officer or country director then evaluates the political considerations.

The Bureau's human rights officer may get involved at this stage. Informally, the human rights factor has to be kept in

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25. 124 CONG. REC. S1422-1426 (daily ed. Feb. 7, 1978).

mind by all concerned simply because an independent office of advocacy, backed at the highest policy levels has joined the circuit. It is also possible for a request to be turned down at this stage for reasons other than human rights, *e.g.*, if the requesting government has not made a convincing case of need, or if Bureau policy forbids certain types of equipment. The Latin American bureau, for example, will not approve requests for export licenses for incendiary munitions, silencers, and other items which appear to lack a legitimate function.<sup>26</sup>

Beyond this, President Carter, following up on his pledge to reduce the American role as arms merchant, in a statement on May 17, 1977, placed added restrictions on conventional arms transfers through FMA and MAP. The restrictions apply to all countries except those with which the U.S. has major defense treaties (NATO, Japan, Australia, New Zealand). According to one analysis, however, this new policy has not yet resulted in significant restraint in the use of arms transfers as a tool of foreign policy.<sup>27</sup>

The Bureau of Politico-Military Affairs (PM) looks at the proposed arms transfer (in the case of major items) from the standpoint of regional and global implications and also drafts the regional Bureau's justification. Although PM's role is that of neutral reviewer and drafter, the human rights advocates in the State Department do not regard it as particularly sympathetic to their cause.

The arms request takes the form of an Action Memo which circulates back through the regional bureau and to HA. Policy Planning then looks at all of the arguments to evaluate the justifications and possibly to challenge weak points. If disagreements are not worked out at the Bureau level, the issue can be referred to the Undersecretary of State for Security Assistance, and then possibly to the Secretary of State.

An interdepartmental group, the Arms Export Control Board (AECB) was established by the new Administration to have jurisdiction over all aspects of its arms transfer policy.

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26. Interview with Col. Stuart Quigg, Bureau of Inter-American Affairs (March 1978).

27. Shandler, *Implications of President Carter's Conventional Arms Transfer Policy*, Cong. Research Serv. 77-223 F (Sept. 22, 1977), at 99.

The Assistant Secretary for HA is a permanent member, as are representatives from PM, DOD, NSC, OMB, Treasury, CIA, and ACDA. The AECB has responsibility for overall policy and procedures for arms transfers, but does not usually act as a review and clearance committee to consider specific recommendations emerging from the arms transfer bureaucracy in the State Department. This function is by statute the sole responsibility of the State Department, which is not anxious to bring other departments into the system.

By contrast, recommendations for economic assistance are reviewed on a case by case basis by a new interdepartmental committee chaired by the Deputy Secretary of State, Warren Christopher. The Inter-Agency Committee on Human Rights and Foreign Assistance includes representatives from HA and others from the State Department, along with DOD, Commerce, Agriculture, Treasury, NSC, OPIC, AID, and U.S. participants from international financial institutions. There have been complaints that the "Christopher Committee" is a major bottleneck in the clearance process.

When the annual arms transfer package is finally approved, the request, with supporting material, is sent to Congress. Section 502B requires that this include a report on the human rights conditions in every country recommended for military assistance. This becomes part of the public record, a practice Kissinger tried unsuccessfully to prevent.

The first full set of reports, prepared by the State Department under the Ford Administration, included eighty-two countries and was transmitted to the Congress in April 1977.<sup>28</sup> As a result, five Latin American countries renounced their requests for military aid: El Salvador, Argentina, Brazil, Guatemala, and Uruguay.

The second set of reports was submitted in February 1978 and included 105 nations. The larger number results from an amendment of section 116 of the International Development and Food Assistance Act of 1977 which requires a human rights report on all nations recommended for development assistance. There were even more entries in the third set (115) because

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

President Carter ordered that countries requesting police and civil law enforcement aid also be included in the human rights review process (Presidential Determination #30, February 17, 1978).

Each country report is divided into four sections:

1. Respect for the Integrity of the Person, Including Torture; Cruel, Inhuman or Degrading Treatment or Punishment; Arbitrary Arrest or Imprisonment; Denial of Fair Public Trial; Invasion of the Home.
2. Governmental Policies Relating to the Fulfillment of Such Vital Needs as Food, Shelter, Health Care, and Education.
3. Respect for Civil and Political Liberties, Including Freedom of Thought, Speech, Press, Religion, and Assembly; Freedom of Movement Within the Country; Foreign Travel and Emigration; Freedom to Participate in the Political Process.
4. Government Attitude and Record Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights.<sup>29</sup>

The State Department does not interpret any part of section 502B to require either a ranking of nations according to their human rights record on a scale of good to bad, or the establishment of some sort of blacklist of gross and consistent violators, although anyone is free to use the reports for that purpose. Pressure to do this has been resisted. Patricia Derian was castigated for refusing to do so by Representative Clarence Long of Maryland, Chairman of the House Appropriations Committee, Subcommittee on Foreign Operations and Related Agencies.<sup>30</sup> Evidently, the Department has concluded that the disadvantages of determining a formula of eligibility, which would eliminate the freedom to make exceptions for individual circumstances, far outweigh the disadvantages of the present flexible system in which aid to each country is subject to multi-lateral bureaucratic negotiation and bargaining, with the result

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29. U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, 95TH CONG., 2D SESS. (Comm. Print 1978).

30. *Foreign Assistance and Related Agencies, Appropriations for 1978: Hearings Before the Subcomm. of the House Comm. on Appropriations* 355, 95th Cong., 1st Sess. (1978) [hereinafter cited as 1978 *Appropriations*].

that human rights sanctions are applied inconsistently. It is a no-win situation, a dilemma for which there is no resolution in sight. According to Assistant Secretary Derian: "I think that the thing that would probably subvert our human rights initiatives more than anything is a grossly inconsistent pattern of application."<sup>31</sup> Yet there is general agreement in the Department (including HA), in Congress, and even among some non-governmental promoters of human rights, that there will be times when security considerations have to take precedence over human rights. There may be differences of opinion over specific security situations, but the principle is accepted. Iran, Korea, and the Philippines are examples of countries which continued to receive military aid in spite of serious human rights violations.

A frequent complaint is that Latin America is a prime example of the inconsistent application of our human rights policy. Assuming that the human rights behavior of the Latin American nations is no worse than those in other regions, this region has received a disproportionate share of human rights sanctions. But Latin America has always held a somewhat special status in American arms transfer policy, according to a RAND study by David Ronfeldt and Caesar Sereseres.

No other region—whether Africa, the Middle East, South Asia, or Southeast Asia—has been so subject to critical U.S. treatment and legislation *as a region*. Historically, the presumed homogeneity of nations and comparatively low threats to U.S. interest in Latin America have made it easy to generalize and skip exceptions and distinctions that have stood out elsewhere, such as Iran, South Korea, and the Philippines.<sup>32</sup>

The new emphasis on human rights has served only to reinforce an existing tendency in the U.S./Latin American arms transfer policy; it did not cause it. In spite of President Carter's efforts to assign greater importance to Latin America in U.S. foreign policy, security considerations are relatively unimportant in Latin America. Thus, human rights factors can weigh more heavily in foreign policy decisions, a luxury not available with respect to U.S. policy toward many of the countries of black Africa, the Middle East, or Asia.

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31. *Id.* at 253.

32. Ronfeldt & Sereseres, U.S. Arms Transfers, Diplomacy, and Security in Latin America and Beyond (October 1977) (Rand Paper P-6005), at 2-3.

### B. *Phase Two—Congress*

In addition to the evaluations prepared in the Executive branch, as of 1978, hearings of the House International Relations Committee had been held on the human rights situations in approximately twenty countries, and separate reports had been requested and provided by the Congressional Research Service on fifteen countries. These hearings and reports tend to rely most heavily on unofficial, nongovernmental sources of information, such as studies and testimony from NGOs, private citizens, and church groups in the countries under consideration.

Arms transfer recommendations from the Executive are subject to modification or elimination in the appropriations process. In some cases aid has been prohibited to countries not included in the Administration's package. Aid was prohibited to Vietnam, Uganda, Cambodia, Cuba, Laos, Angola, Brazil, and Argentina in the Foreign Assistance and Related Programs Appropriations Act of 1978.<sup>33</sup>

The same Act prohibited various categories of military assistance to Uruguay, El Salvador, and Guatemala, and reduced the amounts requested for the Philippines, all on human rights grounds.<sup>34</sup> Ethiopia was also dropped, as recommended by the Administration, but less on human rights grounds than because of its growing relationship with the Soviet Union.

When Congress is in the mood to determine specific policy details, bureaucratic battles lost in Phase One may be reversed in Phase Two. This inevitably leads to informal alliances between like-minded participants in Congress and the bureaucracy. Although these relationships are not explored in the present study, they deserve further attention.

### C. *Phase Three—Implementation*

It is still possible to alter decisions emerging from Phases One and Two in the presumably routine stage when the Executive actually obligates money, issues licenses, schedules delivery, etc. The report to Congress from the Secretary of State serves notice that human rights considerations will be brought

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33. Pub. L. No. 95-148, §§ 107, 114, 503B, and 506, 91 Stat. 1230, 1234, 1235, 1239, and 1240 (1977).

34. *Id.* §§ 503A, 503B, 503C.

to bear again.<sup>35</sup> Congress had expressed its displeasure over human rights in Nicaragua by reducing the FY 1978 aid authorization, and the Executive decided not to sign an aid agreement with Nicaragua pending improvement in its human rights situation.<sup>36</sup> Later in the year, in response to a question from the Fraser Subcommittee, the State Department pointed out that even the signing of an agreement does not mean that the money will be forthcoming. An agreement with Nicaragua was signed for FY 1977, but no drawdown was requested by Nicaragua. Under these circumstances, Nicaragua declined to make a request for FY 1979 security assistance.

Human rights factors are applied to the implementation of commercial sales licensing as well as security assistance. One example is the M-16 sling swivel case. Nicaragua had previously purchased 5,000 M-16 rifles from Colt and discovered that the sling swivels were corroded. In May of 1977, Colt requested a permit to replace them. When HA refused to agree on human rights grounds, the ensuing deadlock brought the issue to the level of the Secretary of State, where no decision was made, and none is likely—a sort of pocket veto.<sup>37</sup>

There may also be attempts to stop a transaction, which has already been concluded, short of delivery. HA attempted unsuccessfully to block the sale of \$9 million worth of Beech aircraft to Argentina. It would have meant cancelling a good faith contract for which, presumably, the company would have to be compensated. The prospect brought interventions from the Kansas congressional delegation and ultimately from the White House.<sup>38</sup>

## V. BUREAUCRATIC POLITICS

There is a good deal of unhappiness with a human rights policy that is delineated and applied by people in the regional bureaus, the overseas missions, and those parts of the DOD involved in arms transfers. There are complaints that HA is doctrinaire and is given to the use of delay tactics. It is felt by many that the proper goals of U.S. diplomacy should be the

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35. 123 CONG. REC. S1424 (daily ed. Dec. 7, 1977).

36. 1978 *Appropriations*, *supra* note 30, at 4.

37. Interview with Ellis O. Jones, III, Bureau of Human Rights and Humanitarian Affairs (March 1978).

38. *Id.*

cultivation of favorable relations and influences with foreign governments, and that an improvement in the treatment of their own citizens should be, at most, a secondary objective. Then there are those who believe that it is important for the United States to use its influence to promote human rights abroad, but that the methods should be confined to "quiet diplomacy" rather than public evaluations and the denial of aid as a form of punishment.

There is resistance, however, and although it is not possible under normal circumstances to bypass HA entirely, there will be attempts to control information in the hope that HA can be kept out of the picture long enough to develop a broader constituency and momentum. To prevent this, the staff people in HA try to "bird dog" issues so as not to be dependent on the normal channels of information. Of course, effectiveness is dependent on experience with the system. It takes time to tap the informal information channels and sources of influence which are present in any complex organization.

It is possible to bypass the system, however, if the White House wants something in a hurry. According to Ellis Jones, the original arms transfer policy officer, it took only two and a half days to arrange arms transfer eligibility for Somalia, and HA was confronted with a *fait accompli*. Even so, he estimated that delivery can still take six months to a year. It is the opinion of another participant/observer that fewer such instances have occurred during the Carter administration than during the Kissinger tenure.<sup>39</sup>

## VI. CONGRESSIONAL POLITICS

Although both the House and Senate have participated in the human rights movement, it is the House which plays the more prominent role, in large part because it is the first to review Administration appropriations requests, giving it the initiative and greater visibility. The Senate often plays a moderating role and provides the Executive with an opportunity to reverse a setback in the House.

Not all members of Congress, or of the relevant committees, see eye to eye on the subject of human rights, and there

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39. Interview with Priscilla Clapp, Bureau of Politico-Military Affairs (March 1978).



are mixed motives among the supporters of sanctions against countries.<sup>40</sup> The result has been the inadvertent alliance of strange bedfellows: human rights crusaders who are anxious to punish transgressors, along with anti-aid people who seek to terminate giveaway programs and are delighted to be able to obscure their real motives under the banner of human rights. Arms transfer policy is somewhat less affected by this combination because much of it involves sales which do not require appropriations, and also because anti-aid factions are more likely to train their sights on economic assistance, including American participation and support for international financial institutions. Aid has also been opposed for purely parochial reasons which are disguised as human rights concerns, such as the protection of home district economic interests from foreign competition.

Members of Congress who are in neither camp are placed in a difficult position. For example, Congressman Charles Wilson of Texas, a member of the Long Subcommittee, is generally supportive of foreign aid, but he feels that the President has provided a handy club to opponents of assistance in the State Department and in Congress with which to belabor the Administration's own program. In the absence of ranking, or formula of eligibility, almost any country is open to attack on human rights grounds.<sup>41</sup>

The installation of the 96th Congress in January 1979 may have marked the end of the era in congressional human rights activism that began in 1973. Not only was Congressman Fraser defeated in his bid for a Senate seat, but there was a move to abolish his International Organizations Subcommittee altogether. This was averted, but it is clear that the Chairman of the International Relations Committee, Clement Zablocki, does not intend to allow the subcommittee to play the same activist role that it did under Fraser. The present Chairman, Don Bonker of Washington, is a supporter of human rights but does not have the comparable status and seniority of Fraser.

Other departures have thinned the ranks of human rights advocates. In addition to Fraser, Joshua Eilberg of Pennsyl-

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40. 1978 Appropriations, *supra* note 30, at 350.

41. Interview with Noel Holme, staff of Congressman Charles Wilson (March 1978).

vania, Michael Harrington of Massachusetts, Helen S. Meyner of New Jersey, Yvonne Burke, and Leo J. Ryan of California are no longer on the scene. In the Senate, the death of Hubert Humphrey and the defeat of Richard Clark of Iowa removed two prominent human rights supporters. These and other losses have eliminated the majority that previously supported, for example, sanctions against Rhodesia.

The congressional attention span tends to be short and, in any case, the more pressing issues of inflation, energy, and arms control were bound to reduce legislative attention towards human rights. But the era of activism established a legacy of statutory provisions and organizational structures which assures the human rights factor a role in the policymaking process, despite the level of congressional or Executive interest.

## VII. CONCLUSION

Human rights considerations have become an important new element in the arms transfer decisionmaking process since 1977. The change came about because of congressional pressure, organizational changes in the Department of State and, most importantly, Presidential interest.

Congress led the human rights battle between 1973 and 1977 and made organizational changes to induce aid reductions and terminations. The Ford administration complied only minimally with the congressional requirements, while its initiatives were designed to placate Congress and to deflect and confine the issue to the ambit of international organizations. American efforts to improve human rights were confined to "quiet diplomacy," and changes were pursued bilaterally. Congress, however, wanted that and much more. If the Ford administration had remained in office after the election, a major collision would probably have occurred over the issue of economic and military assistance policies.

At the beginning of the Carter administration, concern was expressed by human rights advocates in and out of Congress that bureaucratic resistance would undermine the new Administration's efforts to effect genuine change in policy.<sup>42</sup> The

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42. For an excellent analysis of the background and political undercurrents of the Carter human rights policy see Drew, *A Reporter at Large: Human Rights*, New Yorker, July 18, 1977, at 36.

doubters soon realized however, that a real change had taken place. Although the Administration toned down its public rhetoric, the subject of human rights violations in other nations has become a major consideration in the decisionmaking process.

Differences between the Carter administration and Congress arose over economic assistance and U.S. participation in international financial institutions, rather than over the arms transfer policy. Nonetheless, the implementation and application of an arms transfer policy based on human rights considerations is difficult. Inconsistent application is particularly acute as it is generally recognized that exceptions must be made on national security grounds, while exceptions to nonmilitary forms of assistance are more difficult to justify. Evaluating and comparing the human rights performance of governments is difficult. There is inevitably disagreement over the basis of a valid claim for exemption or the extent to which any given country has changed its human rights performance. The evidence available is always conflicting, except for such pariahs as Uganda, Cambodia, and North Korea. Nevertheless, there is evidence, and for this reason much of the argument within the bureaucracy tends to center on questions of performance rather than security. It is easier for human rights advocates to argue, for example, that the human rights situation in the Philippines has not improved, or has worsened, than to contend that the Philippines is not sufficiently important to American security interest in Asia to justify an aid grant in spite of human rights violations.

The security factor tends to prevail, however, particularly in countries with a major American military presence, such as the Philippines, South Korea, and formerly, Iran. The Carter administration requested \$95.7 million in military assistance for the Philippines in FY 1980, triple the amount requested for FY 1979. The Asian and Pacific Affairs Subcommittee of the House Foreign Relations Committee voted to delete \$7.9 million on human rights grounds, but the amount was restored by a 14-11 vote in the full Committee.<sup>43</sup> At the same time, cuts in aid to several Latin American countries were sustained, thus continuing the tradition of allowing human rights considera-

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43. Felton, *House Panel Backs Military Aid Request for Philippines*, 37 CONG. Q. WEEKLY REP. 542 (1979).

tions to weigh more heavily in decisions regarding aid to that region.

It may be possible to avoid the appearance and the reality of "chaos," but inconsistency is endemic to any policy absent a precise formula. This insures that foreign assistance policy-making will continue to be contentious, and the proper weight to be given to human rights considerations in policy decisions will remain a source of controversy.